RESEARCH REPORT

MUNICIPAL REGULATORY INITIATIVES: PROVIDING FOR AFFORDABLE HOUSING

HOUSING AFFORDABILITY AND FINANCE SERIES

Canada

CMHC SCHL
HOME TO CANADIANS

CMHC—HOME TO CANADIANS

Canada Mortgage and Housing Corporation (CMHC) is Canada's national housing agency. We contribute to improving the living conditions and the well-being of Canadians.

Our housing finance activities centre around giving Canadians access to affordable financing solutions. The main tool to achieve this goal is our mortgage loan insurance program.

We help lower-income households — seniors, people with disabilities, Aboriginals, women and children fleeing family violence, youth at risk, and individuals who are homeless or at risk of homelessness — to gain access to safe, affordable housing.

Through our research, we encourage innovation in housing design and technology, community planning, housing choice and finance. We offer a wide variety of information products to consumers and the housing industry to help them make informed purchasing and business decisions.

We also work with our government partners and industry to promote Canadian products and expertise in foreign markets, thereby creating jobs for Canadians here at home.

In everything that we do, we are committed to helping Canadians access a wide choice of quality, affordable homes, and making vibrant and sustainable communities a reality across the country. CMHC is home to Canadians.

Visit us at www.cmhc.ca

You can also reach us by phone at 1 800 668-2642
(outside Canada call 613 748-2003)
By fax at 1 800 245-9274
(outside Canada 613 748-2016)

Canada Mortgage and Housing Corporation supports the Government of Canada policy on access to information for people with disabilities. If you wish to obtain this publication in alternative formats, call 1 800 668-2642.

Municipal Regulatory Initiatives: Providing for Affordable Housing

1999

Richard Drdla Associates Inc.
Toronto, Ontario 416 967-2831
rd@drdla.on.ca

To:
David Scherlowski
Research Division
Canada Mortgage and Housing Corporation

Cette publication est aussi disponible en français sous le titre : *Initiatives de réglementation municipales : production de logements abordables,* PF0326.

This project was funded by Canada Mortgage and Housing Corporation (CMHC) but the views expressed are the personal views of the author(s) and CMHC accepts no responsibility for them.

Canadian Cataloguing in Publication Data

Main entry under title:

Municipal regulatory initiatives: providing for affordable housing

Issued also in French under title: Initiatives de réglementation municipales, production de logements abordables.

Includes bibliographical references

ISBN 0-660-17754-4
Cat. no. NH15-300/1999E

1. Public housing – Canada
2. Housing – Law and legislation – Canada
3. Housing – Economic aspects – Canada
4. House construction – Economic aspects – Canada
5. House policy – Canada
I. Canada Mortgage and Housing Corporation

HD7305.M86 1999 363.5'0971 C99-980155-4

Printed in Canada
Produced by CMHC

Acknowledgements

This report was funded by the Canada Mortgage and Housing Corporation, and prepared under the supervision of David Scherlowski, Research Division, CMHC

It also drew on the assistance of many housing officials and other experts associated with the profiled programs in all of the municipalities.

Purpose

This report examines three types of regulatory initiatives used by municipalities to provide for affordable housing. These consist of inclusionary zoning, a variety of exaction programs including linkage fees, and density bonusing—also known as incentive zoning in many places.

All these initiatives rely on the development approval process to encourage, enable or require for-profit developers in some way to provide for housing affordable specifically to lower-income households. While only used to a limited extent in Canada, they have been increasingly used across the United States since cutbacks to federal funding in the early 1980s.

This report is intended to make the opportunities offered by these initiatives more widely known to local housing officials and others involved in the development of affordable housing in Canada.

The recent experience with these initiatives in both countries is reviewed, drawing upon both published and municipal reports as well as extensive telephone interviews. The findings are presented mainly through an overview of the three types of initiatives and profiles of two dozen of the most important or representative examples.

Executive Summary

Municipal governments in the United States are using various regulatory initiatives associated with their development approval powers to encourage, enable or require for-profit developers and builders to provide for affordable housing.

The most common of these regulatory initiatives fall into three categories: inclusionary zoning, exaction programs including linkage fees among others, and density bonusing. These initiatives are used both on their own and in combination with each other, in a wide variety of ways. They have been increasingly used by American municipalities since deep cuts in federal funding began in the early 1980s in that country. To date, they have only been used to limited extent by Canadian municipalities, but with the recent withdrawal of federal funding for new social housing projects, these municipalities too are facing similar pressures to consider locally based ways of supporting affordable housing.

This report focusses on initiatives providing for "affordable housing." Across the United States, this term is generally accepted to mean housing affordable to low- and moderate-income households, or lower-income households for short. These terms, in turn, are tied to specific income levels in the local housing markets.

In many areas, the housing is also called "below-market" housing. This term reflects the fact that housing is provided, using some form of subsidy, at a price or rent below that otherwise available in the private market.

Inclusionary zoning

Inclusionary zoning as used in the United States, typically requires or encourages developers of market residential projects to construct some proportion—generally from 10 to 25 per cent—for affordable housing. Fees-in-lieu, land and other contributions of an equivalent value are sometimes accepted.

Inclusionary zoning is the most prevalent of the regulatory initiatives used by U.S. municipalities to provide for lower-income housing. There are probably 200 or more programs in the United States—75 in California, a similar number in New Jersey and the rest spread across 11 or more other states.

As with the other initiatives examined in this report, inclusionary zoning depends on a buoyant housing market to capture the affordable housing. It is used mostly by growing suburbs and towns. Some urban areas have also implemented these measures, but they are more likely to use density bonusing and exaction programs to provide for affordable housing.

Inclusionary zoning can be either mandatory or incentive-based. In mandatory programs, the builders are required to contribute affordable housing as a condition of development approval. Density bonuses and other concessions such as fee waivers, fast-tracked approvals and reduced development standards—but not financial subsidies—are generally given as cost offsets. In incentive-based programs, sometimes also called discretionary or voluntary programs, the builders are offered the density bonuses and other incentives as inducements to contribute the housing on a voluntary basis. In both cases, the amount and type of housing contributions, the density bonus and other concessions are all governed by established rules.

Incentive-based programs are attractive to municipalities because they are less likely to generate developer opposition and legal challenges than mandatory programs. Unfortunately, all the evidence collected for this report—which includes various surveys and the anecdotal input of many experts—shows that incentive-based programs produce significantly less affordable housing than mandatory ones. For this reason, this report mainly profiles mandatory programs.

The affordability of the inclusionary below-market units is controlled to ensure that the public subsidy provided by the density bonus and other concessions is not lost. The initial price or rent is set by the terms of the program, and first occupancy is limited to income-eligible households. Restrictions are also placed on the subsequent occupants, and on rent increases and the resale prices, but these vary widely. These controls in most jurisdictions rely on covenants registered in the deeds, and typically run for 30 years or longer.

Strictly speaking, there are no equivalent inclusionary zoning programs in Canada. A number of Canadian cities—Toronto, Vancouver and Burnaby—have successfully used a variation of inclusionary zoning through a comprehensive rezoning process for major private redevelopment sites. These programs differ from conventional inclusionary zoning in the United States in that they are directed at securing developable land for non-profit housing to be built with government funding, rather than at obtaining below-market units constructed by for-profit developers.

Exaction programs

These programs essentially require certain types of developers—mainly, but not only, commercial—as a condition of development approval, to contribute fees toward the provision of affordable housing. No cost offsets, such as density bonuses, are given in exchange.

These fees are typically paid into trust funds dedicated to affordable housing, and used in combination with grants and loans from federal, state and other sources to provide mainly non-profit and low-income rental housing.

The best known of these exactions are linkage fees. What characterizes linkage fees is that they are seen as mitigation measures to offset the adverse impact of major new commercial and other job-generating developments on the local housing conditions. As various reports have shown, these developments directly and indirectly create many new low-paying jobs, which in turn can attract new households often unable to find affordable housing. The fees are intended to recover part of the cost to the municipality in providing the needed additional housing.

Linkage fees are most strongly identified with the two major pioneering programs, in San Francisco and Boston, which impose fees on new major downtown office developments. The two remain the most successful examples of all the regulatory initiatives in terms of fees generated and housing produced.

At least 12 other jurisdictions, all in California, now also use linkage fees. Where these programs differ from the two downtown programs is that the fees are imposed on a wider range of new job-generating developments and generally, at lower rates graduated according to the low-wage jobs associated with the various uses.

There also is a variety of similar other fees—variously called development fees, development levies, excise taxes and voluntary contributions. They differ principally in how the fees are justified and what uses are charged.

The largest number of exaction programs occurs in New Jersey. To meet their state-mandated affordable housing obligations, more than 85 municipalities there charge development fees on both new residential and non-residential projects according to their assessed market value.

In Canada, three municipalities in British Columbia and one in Alberta currently collect fees for affordable housing of some type. Two of these, Whistler and Banff, could be considered types of linkage fees. The fee in Vancouver is a development charge for various capital improvements, including low-rent housing. Richmond has collected fees through comprehensive development agreements for large residential projects.

Density bonusing

Density bonusing, also known as incentive zoning in some places, encourages developers of new commercial and residential projects to provide for affordable housing and various public amenities on a voluntary basis in exchange for increased developable floor space.

Density bonusing is generally associated with downtown and similar intensively developed areas, where additional revenue-generating space can be offered and also where increased building size will not impose on the surrounding environment or infrastructure.

This category also could include incentive-based inclusionary programs. In both, density bonuses are essentially traded for affordable housing. Nevertheless, the two are conventionally seen as being different because of the type and scale of development with which they are associated.

This report focusses only on municipal programs that provide for affordable housing in structured and sustained ways. In the case of density bonusing, it typically means bonuses offered as-of-right according to some established and standard rules across broad classes of sites. Many municipalities use density bonusing on a negotiated, ad hoc basis on individual sites, but these efforts are outside the scope of this report.

Few cities in the United States appear to use density bonusing on a programmed basis to provide for affordable housing. Only one residential bonusing program—that in New York City—was identified. Although there are many commercial bonus programs, most are used to obtain various public amenities, and only a few for lower-income housing. Of these, only the program in Seattle has been productive and, then, only to a limited extent.

In Canada, only Toronto has used commercial bonusing on a sustained basis to provide for affordable housing. Strictly speaking, this was not a formal program because the bonuses were provided on a negotiated basis without prescribed rules and limits. Nevertheless, it merits attention because the process was used regularly on many sites. Furthermore, it also appears to be the single most successful example of density bonusing in both countries.

As noted earlier, Vancouver, Toronto and Burnaby have had significant success in securing non-profit housing sites through a comprehensive rezoning process for major private residential developments. Although not density bonusing in the conventional sense, this process is similar in that it does rely essentially on trading increased density for the affordable housing provision.

Vancouver and Toronto also have tried various as-of-right density bonuses aimed primarily at encouraging private developers to incorporate government-assisted units within their projects. They were frequently used by the non-profit sector, but seldom by the private sector.

While there are too few examples from which to draw firm conclusions, one significant pattern appears to emerge from the experience to date. Negotiated bonusing, in which the bonuses and amenities are determined site by site, has been very successful in providing for affordable housing. On the other hand, programmed bonusing, in which the bonuses and amenities are determined by fixed limits and other rules applied generically, so far has not proven itself capable of producing affordable housing to any notable extent.

Table of Contents

List of Tables

Purpose of report

Municipal governments in the United States are using various regulatory initiatives associated with their development approval process to encourage, enable or require for-profit developers and builders to provide for housing affordable specifically to lower-income households.

The most common of these regulatory initiatives fall into three categories: inclusionary zoning, exaction programs which include linkage fees among others, and density bonusing, which is also known as incentive zoning in some places.

These initiatives have been increasingly used by American municipalities in response to deep cuts in federal funding that started in the early 1980s. As a result of those cuts, local governments are having to turn more to locally based ways of supporting affordable housing.

To date, these initiatives have been used to a limited extent by Canadian municipalities. With the curtailment of federal funding for new non-profit development in 1993, they too are facing pressures to use these or similar locally based ways of supporting affordable housing.

This report is intended to make these initiatives more widely known to local housing officials and others involved in the provision of affordable housing.

Contents of report

The report draws on the recent experience with these initiatives in both countries. It incorporates information from past studies and surveys, current literature, municipal ordinances and reports, as well as extensive interviews with housing officials and experts. Telephone interviews were held with at least one representative for each of the profiled programs to present, as much as possible, the current situation as of mid-1998.

The findings are presented in three parts—one for each main type of regulatory initiative. In each case, there is a brief overview that introduces the main features and other key points. Following that, profiles of some of the most important or representative examples of these initiatives are presented. To facilitate comparison and access to the key information, each profile is accompanied by a one-page summary.

The appendixes contain a list of selected references and a description of the legal framework for these initiatives in the United States.

Some of this information, and some similar information on other initiatives and aspects, was presented in earlier unpublished CMHC reports completed in 1992, 1995 and 1996. The 1992 and 1995 versions, notably, also cover the corresponding initiatives undertaken by state and provincial governments to provide for affordable housing. The key difference between this report and the earlier ones is that its relies much more on information collected first-hand rather than on published reports.

Description of regulatory initiatives

The various regulatory initiatives examined in this report have been grouped in three categories.

- *Inclusionary zoning* typically requires or encourages developers of market residential projects to provide some prescribed proportion of the housing for lower-income households. Fees-in-lieu or land to an equivalent value are sometimes accepted. Density bonuses and other concessions are generally given in return to offset the cost of providing the affordable housing.

- *Exaction programs* essentially require developers of certain types of development—mainly, but not entirely, commercial—to contribute fees toward the provision of affordable housing. No density bonuses or other offsets are given in exchange. The best known of these are linkage fees, but a variety of other approaches, including impact fees, development levies, excise taxes and "voluntary contributions," also are used.

- *Density bonusing* generally encourages developers of new commercial and residential projects to provide for affordable housing on a voluntary basis in exchange for increased developable floor space. That provision might be made through the contribution of cash, construction of housing, donation of land or other means.

As will be seen, these categories are not entirely distinct, and they may be becoming even less distinct as the initiatives evolve. Nevertheless, these categories are based on some fundamental differences and remain a useful starting point for describing the various approaches.

Many of the municipalities in the United States combine these initiatives to achieve a more comprehensive approach and to secure greater assistance. For example, the use of inclusionary zoning for residential development is being coupled widely with development charges on commercial development.

There are other types of regulatory initiatives that are not covered or extensively examined in this report.

- *Transfer of density rights* (or TDR) allows the unused development rights of existing structures to be transferred and built on other sites—generally more valuable commercial ones—on the condition that the existing structures be rehabilitated and maintained. TDR has been widely used for landmark structures, but not so much for housing. The best known example, Seattle's program that is used to protect existing low-rent units, is presented in this report (see discussion under Seattle in Density bonusing section).

- *Replacement programs* require developers demolishing or converting lower-income accommodation to assist in providing for suitable replacement housing. Most typically, this is handled by the payment of fees, generally into housing trust funds. These initiatives are useful in retaining the existing inventory stock, but not in providing additional housing, which is the focus of this report.

- *Expedited approvals* are widely used to facilitate the development of affordable housing. While expedited approvals no doubt are beneficial, unlike the initiatives reviewed in this report, they do not by themselves provide a incentive to provide that housing.

- Special development permits typically couple a fast-tracked approval process for affordable housing projects with additional zoning and other concessions needed to make the projects feasible. This approach is used primarily by some state governments as a tool against municipalities that improperly frustrate the development of affordable housing or do not meet their mandated requirements.

Definition of affordable housing

This report focusses on affordable housing, which across the United States is generally accepted as meaning housing affordable to low- and moderate-income households (or lower-income households for short). Hence, throughout this report, the term "affordable housing" is used interchangeably with the terms "low- and moderate-income housing" and "lower-income housing."

These terms are tied to certain income levels based on a common yardstick, the median household income for the local housing market as defined by the Standard Metropolitan Statistical Area (SMSA). Every year, a federal agency determines the median household income for each SMSA across the country.

When defining affordable housing, most jurisdictions set the upper threshold at 80 per cent of the median household income for the local SMSA. To be affordable, the price or rent of the housing typically cannot exceed 30 per cent of the gross household income at that level. Adjustments are made to the income figures for different household sizes.

Having said that, it is important to note that the federal government has caused some confusion by using different definitions in two important pieces of legislation. In one, moderate income is related to 80 per cent and low income to 50 per cent. In the other, low income is related to 80 per cent and very low income to 50 per cent. Some states such as Massachusetts and New Jersey use the former terms, and others like California and Florida use the latter. Nevertheless, while the names might be somewhat different, the actual income thresholds are the same.

In this report, to simplify the descriptions and reduce the need for repeated definitions, the terms "moderate income" and "low income" have been used consistently when referring to the 80 and 50 per cent income thresholds, even in those jurisdictions that use different terms when referring to these same thresholds. Only in the few places using other thresholds are they defined.

In many areas, affordable housing is also called "below-market" housing. This term is particularly apt because it reflects the fact that the housing is provided, using some form of subsidy, at a price or rent below that otherwise available in the private market. This term remains the single best shorthand description of the housing targeted by the American initiatives reviewed in this report.

Few affordable housing programs in the United States assist households earning more than the 80 per cent. As a matter of policy, given the limited public resources, government programs stay away from helping the private market in the provision of market-rate housing.

Other thresholds, as might be expected, are also used for particular programs and in particular areas. For example, the federal government uses 60 per cent when defining low-income housing for its tax-credit program.

While all the above terms are used to some extent in Canada as well, they do not generally have the same explicit meanings as in the United States.

Ontario is the only province that appears to have formally introduced and defined "affordable housing." In its 1989 policy statement, affordable housing was defined as housing affordable to households in the lowest 60 per cent of the income distribution for the housing market area. That policy statement along with this definition is now defunct, but similar definitions have been adopted by some Ontario municipalities.

British Columbia mandates that municipalities provide for affordable housing, but leaves them to define the term as they deem appropriate.

Overview of the U.S. experience

This report draws extensively on the experience of municipalities in the United States over the last 10 to 20 years with these regulatory initiatives. They adopted these measures in response to certain changing conditions in that country. A broad understanding of those conditions appears to be relevant because many of them can be found as well in Canada.

These regulatory initiatives first appeared in the United States in the early 1970s, but started spreading widely in the early 1980s. This period saw a massive growth of new housing development, in which the number of units in the country increased by half. At the same time, despite all this activity, the amount of affordable housing provided fell well below what was needed.

During this period, housing affordability generally declined across the country. In the state of California between 1970 and 1993, for example, the average gross rent increased by 40 per cent more than the average household income, and the average home price by more than double—or 130 per cent more. Even wider disparities occurred in many locales within the state and elsewhere across the country.

The decline in housing affordability affected the less well-off more than is indicated by the above figures. When the inflation and taxes are included, the average net household income for the country barely rose over this period and then, mainly, because of the additional two-income households. That means the effective income of households earning below this average actually dropped over this time, thereby widening even more the gap between what housing was provided and what they could afford.

Over this same period, the federal supports for affordable housing were substantially dismantled. The federal assistance for new public housing was effectively curtailed in the mid-1970s. The Reagan administration made the deepest cuts in the early 1980s, when it eliminated the urban renewal programs and cut many of the associated housing programs. The last incentives supporting rental construction were removed by the 1986 tax reforms. Every succeeding administration has made even further reductions. Although the reports vary, the current federal aid is probably less than 10 per cent of what it was about 25 years ago.

The cutbacks of the federal programs have had a major impact on the municipalities. While the states have responded in various ways with different types of supports, none has ever have come close to replacing the lost federal dollars. As a consequence, the affordable housing burden really has been dropped onto the local governments.

Municipalities have limited resources and powers to use in providing for affordable housing. The use of these regulatory initiatives, which depend on the regulatory powers associated with the development approval process, is one of few ways open to most of them.

The majority of municipal initiatives occur in New Jersey and California. In this context, it is relevant to note that California was the fastest-growing state during this period, while New Jersey has been the most developed state for many years.

Both these states have strong legislated mandates that oblige their municipalities to provide for their fair share of affordable housing. Neither of these mandates actually require that regulatory initiatives be used, but they do authorize and advocate them as effective tools. Furthermore, these mandates are backed by the threat of court sanctions for municipalities not meeting their obligations.

California's mandate was substantially established through various laws passed between 1979 and 1982 in response to rapid growth and rising housing costs, but it has been expanded and strengthened since then.

New Jersey's mandate was the result of the landmark Mount Laurel decisions in 1975 and 1982 by the state's top court. That court declared that all developing municipalities in the state were obliged to adopt affirmative measures in support of affordable housing. These rulings were incorporated in the state's comprehensive and exacting affordable housing mandate enacted in 1985. While not binding in other states, their persuasive arguments have been used elsewhere to support the more proactive intervention by municipalities into the housing market for the provision of affordable housing.

These two state mandates have been responsible for most of the regulatory initiatives implemented to date. Nevertheless, there are many examples in other states without these mandates and many in these states which were implemented before the mandates. Furthermore, it is the initiatives developed outside these mandates that generally have been the most innovative and progressive of these programs.

The type of municipality adopting these initiatives is revealing. Contrary to what might be expected, it does not include any of the declining urban areas with the most serious and deeply embedded housing problems. It does include many of the most attractive and prosperous communities in the country. To be more specific, all municipalities adopting these measures seem to share one significant characteristic: they are all thriving communities that have gone through one or more periods of strong economic growth.

The initiatives are associated with these particular communities for two related reasons. On the one hand, these initiatives essentially leverage new development to provide for affordable housing. They can be productively used only in buoyant markets sustained by economic growth. On the other, while growth in a sense provided the solution, growth also created the problem in the first place in these municipalities.

The adverse impact of the rapid growth on housing affordability is identified in virtually all these municipalities as the main reason for implementing these programs. While economic growth generated wealth, that wealth was not spread across the community. Furthermore, by increasing the competition for land and other resources, the growth drove up housing prices far more rapidly than lower-income wages. As a consequence, rather than improving housing prospects for everyone, growth made housing far less affordable for a significant and increasing proportion of the population.

The resulting housing crisis in some of these communities mobilized a broad coalition of interests to support municipal involvement in affordable housing. These coalitions went well beyond the conventional supporters such as housing advocates for the homeless and the poor. They included, in many places, significant portions of the middle class because for the first time many households with solid but relatively modest-paying jobs found themselves being left out of the housing market.

The coalitions also were supported by many civic leaders who recognized that the housing problem threatened the continued prosperity of their communities. Among these were major employers and manufacturers who could not attract workers for their expanding industries, or at least not without paying high salaries, due to the lack of affordable housing. Also included were public officials who for the same reason could not find firefighters, nurses, teachers and other essential service personnel.

A wide diversity of regulatory initiatives has been tried across the United States in communities of varying sizes and different political and legal environments. It is only now, after 10 to 15 years of experimentation, that both the limits and the potential of these measures are becoming evident. These initiatives can be applied only in prospering communities, and many of them have not been productive. Moreover, they clearly cannot by themselves replace federal funding. Nevertheless, some of these initiatives have proven to be effective in addressing at least a part of the affordable housing need. As a consequence, the existing programs continue to be fine-tuned and extended, and new programs continue to be introduced in other municipalities.

Response of the building industry

The building industry has consistently opposed the implementation of mandatory initiatives, specifically mandatory inclusionary zoning and fee-based programs. At the very least, they are considered additional and unnecessary red tape. At the very worst, they are considered an unfair cost burden.

The building industry, whenever faced with the prospect of these programs, favours as an alternative the use of discretionary incentive-based programs. As noted elsewhere in this report, the incentive-based programs to date have failed to produce much affordable housing, especially when compared with the mandatory programs.

In the face of that opposition from the building industry, some municipalities have attempted to soften the burden wherever possible. In the case of inclusionary zoning, they offer concessions—mainly through density bonuses—that offset the cost of providing the units and, in some cases, allow for a profit. They also provide as much flexibility as possible by permitting various compliance alternatives. In the case of the fee-based programs, they reduce the recovery rate to as little as possible—sometimes to only 10 per cent of the development's cost impact on the municipality. While these efforts reduce the opposition, they can not be expected to eliminate it totally.

Who pays for these housing programs, in any case, remains a moot issue. The question has not been empirically answered, and it may not be, because the pricing process in the development industry does not lend itself to precise analysis.

The building industry and other critics say that the cost of these programs is passed on to the consumer. When linkage fees are charged on offices, for example, the businesses must pay higher rents. When inclusionary below-market units must be provided, the purchasers of the market-rate units in the development must pay higher prices.

Land economists say that is unlikely to happen. These fees and other higher costs can be passed on to the consumer only when the price is elastic, that is, when there is no resistance to a price increase. Since this condition seldom occurs in the property market, the cost of exactions must be absorbed mostly, if not entirely, elsewhere.

Under those circumstance, the answer to "who pays?" is somewhat complicated. It depends largely on who owns the land when the exactions are imposed. To the extent that an exaction reduces the potential development return, it will reduce the amount that developers are willing to pay for the land in the first place. Therefore, over the long term when the market has fully adjusted to the fees, the cost of the fees will be passed back and reflected in reduced land prices. Until that occurs, particularly when the developers already hold the land, they must absorb the cost by accepting reduced profits or making other adjustments in the quality or timing of their product.

Inclusionary zoning as used in the United States requires or encourages developers of market-rate residential projects to construct some proportion of the housing for lower-income households at below-market prices or rents.

Density bonuses, and possibly other development concessions or incentives, are often provided in exchange for the inclusionary housing. These are meant to cover at the very least the developer's losses in providing the below-market units, and in some programs even provide a reasonable profit.

As a consequence of this process, inclusionary programs tend to produce homeowner housing affordable for moderate-income families, particularly in townhouses and multifamily condos. To provide support for low-income and non-profit housing, many municipalities couple inclusionary zoning with exaction programs.

Types of programs

Inclusionary zoning is the most prevalent of the regulatory mechanisms used by U.S. municipalities to provide for lower-income housing. There are probably 200 or more programs in the United States—75 in California, a similar number in New Jersey, and the rest spread across 11 or more other states.

As with the other mechanisms in this report, inclusionary zoning depends on a buoyant housing market to capture the affordable housing. For this reason, this particular mechanism has been used mostly, but not exclusively, by growing suburban and rural communities developing greenfield sites.

Strictly speaking, there are no equivalent inclusionary zoning programs in Canada. As described shortly, some municipalities in this country have used a variation, in which inclusionary principles are applied through the rezoning of redevelopment sites. This approach is particularly suitable for urban jurisdictions.

The existing inclusionary programs vary widely in how certain aspects are addressed. Some of the main variations include the following.

- *Set-aside requirements*: The programs set different minimum percentages, anywhere from 10 to 25 per cent typically, for the lower-income units that must be provided. These requirements also might vary within a municipality according to the zoning category, geographical district, base density, housing price and housing tenure.
- *Development offsets*: Most programs provide incentives or concessions in some form to the private developers in exchange for the inclusionary housing. The most important and widely used are density bonuses, which also vary typically from 10 to 25 per cent, often in relation to the set-aside requirements. Other benefits might include expedited approvals, cost-saving reductions in development standards, and waived fees and levies.
- *Contribution options*: The inclusionary obligation often can be met in various alternative ways of providing an equivalent value. Fees-in-lieu are common. Other alternatives might include the dedication of developable land and the rehabilitation of existing run-down properties. Development of the required units on another site is sometimes permitted. In many cases, the use of these alternatives is subject to a higher obligation.
- *Design controls*: Various regulations are used to control aspects such as the minimum size, external appearance and the distribution of the units on the site.

The regulations governing all these aspects are generally adopted in the zoning by-laws or related documents. As a consequence, these programs operate essentially on an as-of-right basis. The terms of the fundamental exchange—what housing is required, and how much density and other offsets are given—are set. Any negotiations will be limited primarily to such issues as what compliance alternative will be accepted in the particular circumstances and, possibly, what additional subsidies might be available for providing affordable housing serving a lower income level than required.

Mandatory versus incentive-based provisions

The most fundamental difference in these programs is between those that are mandatory and those that are incentive-based. In mandatory programs, the builders are required to contribute affordable housing as a condition of development approval, while the density bonuses and other concessions are typically given to offset the additional costs. In incentive-based programs, the builders are encouraged to contribute voluntarily in exchange for the density bonuses and other offsets.

Incentive-based programs are attractive to municipalities because they are less likely to provoke developer opposition and legal challenges than mandatory programs. Developers generally support incentive-based programs. They argue that these programs can be just as effective as mandatory ones, saying that all it takes are sufficient inducements and appropriate regulations.

All the evidence collected for this report, however, shows that incentive-based inclusionary programs are far less productive than mandatory ones. This evidence comes from a number of surveys and interviews with many housing officials and experts familiar with these programs.

When given the choice, few private developers seem to take the opportunity to build affordable housing for various possible reasons. In some programs, the housing brings additional administrative burdens. In any case, the housing is less profitable and riskier to build than market-rate housing. For most developers, it also raises concerns about the potential for marketing problems with the other units in the project.While presumably greater production from voluntary programs could be achieved by hiking the incentives and reducing the regulations, the experience to date indicates that the needed enhancements are well beyond what municipalities are willing to offer on an as-of-right basis for a wide range of sites.

Controls on affordability

Controls on the long-term affordability of the inclusionary units are essential features of these programs. The units are sold or rented at below-market price only as a result of indirect subsidies from the municipality. Without these controls, these subsidies would be lost in windfall profits to the owner on the sale of the property.

These controls are placed on both the for-sale and rental units. Because the controls on the for-sale units are more complex, and have not been used much to date in Canada, only they are briefly reviewed below.

The initial sales price is determined by what the targeted lower-income households can afford, based on current mortgage rates and various standard criteria (see section, Definition of affordable housing, earlier). The potential buyers are screened with regard to household income and size, and sometimes other factors such as assets and duration of residency in the community. Rather than depend on the developers, more municipalities are taking responsibility for the screening, possibly through a public housing agency or a designated non-profit agency.

The subsequent affordability of the for-sale units is usually enforced through covenants registered in the deeds. The duration of the restrictions varies in different jurisdictions. The minimum generally has been five years, but 30 years appears to be the norm, while perpetuity is frequently used.

During this period, the resale price is limited to something less than the full market value by some established formula. These vary widely from municipality to municipality. It might reflect the relationship of the initial below-market price to the then market price of the unit. Alternatively, it might be based on a price increase determined by the intervening rise in the consumer price index, average household income, average housing price or average construction costs.

In all cases, the municipalities attempt to find a balance between giving the homeowner a reasonable equity stake in the property and keeping the unit affordable for subsequent owners. Providing a reasonable equity stake is considered necessary to encourage purchase in the first place, ensure the property is well-maintained and enable homeowners to move up in the market if they want.

When the homeowner wants to sell, the municipality or a designated agency generally retains the first right of refusal at the permitted resale price. If they pass on that option, the sale is often restricted to another eligible household at the permitted resale price. If no eligible household can be found, the unit can be sold on the open market, but the owner typically receives only the permitted resale price, while the rest goes to the municipality for re-investment into other affordable housing.

Table 1:
Comparison of inclusionary practices

In Canada:	In the United States:
Process	
The affordable housing contributions and the offsetting incentives or concessions are determined by negotiation within few or broad guidelines.	The contributions and offsets are made as-of-right according to explicit and established rules. Alternatives are permitted, but the value of the exchange must be the same.
Areas	
Inclusionary principles are applied selectively only to certain areas, mainly large redevelopments subject to rezoning applications.	The provisions are applied to all new residential developments across the municipality, although there might some variation in the regulations.
Contributions	
First priority has been given to the contribution of land to be developed through government funding. Fees-in-lieu are accepted as a second priority, but mainly to buy sites or write down the cost of land.	First priority is the construction of new units. Other alternatives sometimes are allowed, including fees-in-lieu and land, but value of obligation is measured in terms of the units.
Distribution	
The affordable housing is provided in separate buildings.	The inclusionary units in most programs must be intermixed with the market-rate units. Furthermore, as much as practical, the two must look like each other on the outside.

Examples in Canada

There are a handful of Canadian programs that might be described as inclusionary zoning, but they have applied the principles in a significantly different way (see Table 1). Among these are past and existing programs in Toronto, Vancouver, Burnaby and Richmond. They all provide for affordable housing through comprehensive rezoning agreements for major developments. Those differences primarily reflect the reliance to date in this country on federal and provincial government funding to build below-market housing.

These particular programs do not fit comfortably in any of the categories used in this report. They have been included in the section on density bonusing because they seem most comparable to those types of programs.

Although the term was never used, Ontario also introduced what might be considered a limited form of inclusionary planning in its 1989 policy statement, "Land Use Planning for Housing." The statement essentially directed all growing municipalities to plan for at least 25 per cent of all their new housing to be affordable housing. Affordable housing was defined more loosely than in the United States; it encompassed both low-end-of-market and below-market housing.

These provisions were subsequently revised in new policies introduced in 1994 and then effectively dismantled in 1996. The revisions essentially required all municipalities to plan for at least 15 per cent of new housing as low-end-of-market and 15 per cent as below-market "wherever feasible." The obligation to provide for below-market housing was qualified by the "wherever feasible" because it was recognized as being dependent on the availability of federal or provincial subsidies.

U.S. Examples Profiled

Moderately Priced Housing Program

(Montgomery County, Maryland)

Montgomery County, a fast-growing county outside of Washington, District of Columbia, has one of the oldest and most successful inclusionary programs in the United States. This program was enacted in 1973, but has been amended several times since then. It was enacted after earlier efforts to encourage affordable housing through incentives proved ineffective (see summary, page 11).

Main regulations

The program requires all residential projects with 50 or more units to provide 12 and one-half per cent of the units as "moderately priced dwelling units" (MPDUs). Housing projects in three central business districts must provide a minimum of 15 per cent. Housing on lots larger than one-half acre (0.2 ha) is exempt.

No density bonuses are given for this basic requirement, but they are available for contributions beyond this requirement. The bonus essentially allows for up to a 22 per cent increase in the number of units, provided 30 per cent of that increase goes to additional inclusionary units. The permitted increase is subject to the approval of the county. This bonus is available in all residential zones, except in areas such as "planned unit developments" (PUDs) where the additional density is difficult to achieve.

In general, the MPDUs must be built on site with the market-rate units. Only in exceptional cases are fees-in-lieu, off-site construction or suitable lands accepted, and then only when "significantly more" affordable units must be provided or assisted.

Until recently, the objective of the program was to obtain moderately priced units. To this end, the county twice yearly set the maximum sales prices and rent levels for a standard range of 12 or so modestly sized and stripped-down unit types.

These prices and rents were reduced as much as possible, while still giving the builders "reasonable prospects of realizing a profit." Changes in the rates were negotiated where necessary to accommodate local conditions and design changes.

Although this program did not set the prices strictly according to what was affordable to lower-income households, a significant proportion of the units over the years went to lower-income households. For example, all the recent for-sale inclusionary units have been townhouses, selling to households earning at about 60 to 65 per cent of the median income. In earlier years, detached as well as attached units were built.

This pricing system was recently dropped to simplify the administration. Now the inclusionary units are required to be affordable to households earning at or below 60 per cent of the median income, and half to households at or below 50 per cent.

The county expects the MPDUs as much as practical to look like the market-rate units. The developers seem to enforce this condition more strictly than the county because they feel it is necessary to reduce sales resistance for the market-rate units. The former pricing system allowed them to obtain price adjustments for external up-grades to the inclusionary units so that they would match the others.

Summary

Name of Initiative:	***Moderately Priced Housing Program.***
Municipality:	Montgomery County, Maryland.
Population:	840,000.
Type of Initiative:	Inclusionary zoning—mandatory.
Start:	1973.
Purpose:	To provide new housing affordable to lower-income households.
Regulations:	All residential projects of 50 or more units and having lots less than 0.2 hectare in size are required to provide 12 and one-half per cent on site as affordable units. Density bonuses of 22 per cent maximum are available only for contribution of additional affordable units above this requirement. Payment of fees-in-lieu, donation of developable land or construction on another site are accepted only in "exceptional circumstances," and then only when "significantly more" affordable units are assisted or provided.
Achievements:	Construction of 10,100 units, but only approximately 6,500 remain affordable due to lapse in controls on affordability.
Contact:	Eric Larsen (301 217-3705) Director of Moderately Priced Housing Program Department of Housing and Community Development

The county retains control over the inclusionary units for 10 years. During that period, only eligible lower-income households can buy or rent the units.

The county has considered extending the period of control, but has not done so. The 10-year limit has been defended because the program is seen as principally serving young first-time buyers who in time will wish to move out and up. In any case, the units are relatively small and are likely to retain a lower price.

Overall results

The program from 1976 through 1997 has produced over 10,100 MPDUs—7,300 (72 per cent) for-sale units and 2,800 rental units. Over 1,200 units were produced in the peak year of 1984. Even during the recession of the early 1990s, the program continued to produce roughly 300 to 400 MPDUs per year.

The affordability of many of these units—maybe up to a third—might have been lost because the 10-year period of control has lapsed.

No record is kept of the number of units generated by the density bonus. Most of the developments apparently obtain bonuses. In that case, somewhere between a quarter and a third of the units might come from the incentive bonuses.

Other programs

The county established a housing trust fund in 1981. It has been supported by revenues from a number of sources: a tax on the conversion of rental units to condos, the proceeds from the sale of county-owned land, the proceeds from the sale of the MPDUs, the repayment of loans from the trust fund and part of special development charges in certain areas. From 1989 through 1995, these provided over $13.5 million in revenue, while state appropriations added another $2.5 million.

The trust fund loans money—often at very favourable terms—mostly to assist the development, renovation or purchase of multifamily rental housing for lower-income households. For-profit and non-profit builders, as well as public agencies, have used these resources.

The county's housing agency has a major role in the provision of affordable housing. It has provided low-interest mortgages and rent supplements for the purchasers and renters of the inclusionary units. The mortgages are financed by tax-exempt bonds issued by the county.

The agency also has the authority to purchase a third of the MPDUs at the reduced price for renting to lower-income households. It has purchased 14 per cent of those units to date. Up to another six and two-thirds per cent of the MPDUs can be bought at the reduced price by non-profit groups for special housing needs.

Affordable Housing Program and Housing Opportunities Program

(Orange County, California)

Orange County, a large and fast-growing county in southern California, developed one of the pioneering mandatory inclusionary programs. It took what might be called a pro-developer approach to the regulations. The result was briefly one of the most productive programs in the country, before it was converted to a voluntary system (see summary, page 13).

Its mandatory program, the Affordable Housing Program, was adopted in 1979. The discretionary program, the Housing Opportunities Program, was introduced over a three-year period starting in 1983. Both were implemented as part of the county's housing plan.

The initial program was implemented following a period of burgeoning growth, during which the creation of jobs in the country greatly outstripped the provision of housing affordable to the new workers. While that set the stage, what actually triggered the implementation was a law suit challenging the county for not complying with state affordable housing legislation as well as environmental legislation designed to cut long-distance commuting.

Summary

Name of Initiative:	***Affordable Housing Program.***
Municipality:	Orange County, California.
Population:	200,000 (in unincorporated areas).
Type of Initiative:	Inclusionary zoning—mandatory.
Start (Revisions):	1979 (phased out 1983 to 1986).
Purpose:	To provide housing affordable to medium-income households, that is, those earning at or below 120 per cent of area median income.
Regulations:	Residential developmentsof five and more units were required to provide 25 per cent as inclusionary units. With subsidies, 15 per cent of the units had to be affordable to medium-income households and 10 per cent to lower-income ones. Without subsidies, all could be for medium-income households. The dedication of land to an equivalent value and construction on another site are accepted, but not fees-in-lieu. Density bonuses, expedited approvals, waived fees and reduced development standards are offered as cost offsets.
Achievements:	Construction of 6,400 units.
Name of Initiative:	***Housing Opportunities Program.***
Type of Initiative:	Inclusionary zoning—voluntary.
Start (Revisions):	1986.
Purpose:	Same as above.
Regulations:	Residential developments are encouraged to provide 25 per cent as inclusionary housing, in return for density bonuses and other benefits.
Achievements:	Construction of approximately 1000 units.
Contact:	Bob Aldrich (714 834-2166) Sr Planner Advance Planning Division

Both of these measures have been applied only in the unincorporated areas of the county. Many of the incorporated municipalities have their own inclusionary programs.

Initial regulations: Affordable Housing Program

The program required residential projects with five or more units to provide at least 25 per cent as inclusionary units. In exchange, the country provided density bonuses according to state law, expedited approvals, waived fees and reduced development standards.

California's density bonus law was first passed in 1979, but has been revised many times, most recently in 1990. The law now requires that local governments grant as-of-right a minimum density bonus of 25 per cent, plus additional concessions, to new mixed-income projects combining market-rate units with either 20 per cent for the moderate-income households, 10 per cent for low-income ones or 50 per cent for seniors. The legislation identifies a range of additional concessions that can be used. It leaves the selection open to negotiation, but the total value must be sufficient to make the lower-income housing financially feasible.

Some form of government subsidy was considered necessary to produce low- and moderate-income housing. When these subsidies were available from the state or federal government, 10 per cent of the units were required for lower-income households, and 15 per cent for medium-income households earning between 80 and 120 per cent of the median household income. When subsidies were not available, all of the inclusionary housing could be for the medium-income households.

The principal form of subsidy was below-market mortgages for homebuyers financed through the county's tax-exempt bonds. Other subsidies were made available through public land write downs and federal funding.

This program allowed considerable flexibility in how the requirements were met, but fees-in-lieu were not accepted. It did allow the dedication of land to an equivalent value and off-site construction subject to county approval. It did not require the integration of the inclusionary and market-rate units. Exemptions were made for sites in areas where 25 per cent of the housing was already affordable.

To add further flexibility, the county also gave one credit for every medium-income unit and one and a half credits for every lower-income unit built above the requirement. These credits could be used to reduce future obligations, or sold or traded to other developers.

The affordability of the inclusionary units had to be protected for 10 years. The building industry was directly involved in shaping the provisions of this program. It was designed "to encourage the economic feasibility of private sector construction of affordable housing." As a corollary, it was also meant to relieve the county from any obligation to subsidize the units directly.

The industry's influence can be seen in various ways. The builders were given a wide range of compliance alternatives. Density bonuses and other concessions were provided to offset their costs. The obligation to provide below-market housing was made dependent on the availability of public funding. Finally, the main beneficiaries of the program were homebuyers of modest means rather than renters or low-income households.

Despite these favourable features, the building industry successfully lobbied to have the program dismantled, arguing that affordable housing could be built just as well on an entirely voluntary basis.

Current regulations: Housing Opportunities Program

The revised program continues to target the provision of 25 per cent of units overall for affordable housing and 10 per cent specifically for lower-income housing, but now entirely on a voluntary basis. The cost offsets and public subsidies remain the same, as do the compliance alternatives including the credit system. No affordability controls are placed on the for-sale units, while the affordability of the rental units is controlled for five years.

Overall results

The output from program has not been monitored for a number of years. According to the best available information, the mandatory program generated nearly 6,400 units between 1979 and 1983. Since then, the voluntary program apparently has produced less than 1,000 units. No information is available on the proportion for lower-income units.

Although the voluntary program by all reports has been much less productive than the mandatory, there are two other factors contributing to the decline in production. First, unlike some parts of the state, the county suffered a prolonged recession during most of the 1990s. As a consequence, all housing production dropped significantly.

The program is also being applied to the ever diminishing unincorporated areas of the county. Most of the development in the county has been undertaken in planned communities, which, over time, have incorporated as municipalities. The county's inclusionary program now applies to a population base of less than 200,000 out of the 2.7 million in the whole county.

On the other hand, these incorporations probably have caused a significant underreporting of the inclusionary units generated by the mandatory program. Through the long-term development agreements used in these planned communities, the mandatory program secured commitments for a very large number of affordable units that were to be built over many years in step with the other residential development. These units are not tallied in the county totals because they are no longer under its jurisdiction.

Affordable Housing Ordinance

(City of Davis, California)

Davis, a bedroom community and university town outside Sacramento, was one of the first cities to adopt mandatory inclusionary zoning. Its Designated Low-Price Housing Program was adopted in 1977. This was replaced by a new program established first as a policy in its 1987 general plan, and then fully implemented through its 1989 Affordable Housing Ordinance. This ordinance was amended in 1992 (see summary, page 16).

The city also introduced growth management policies in 1974. As some other smaller California communities, Davis adopted these measures along with inclusionary zoning in response to the severe problems resulting from the rapid growth of the 1960s and early 1970s. Under those initial policies, building permits for single-family and duplex units—but not units in multifamily projects—were rationed and issued after an annual competitive review. In an attempt to mitigate the possible effect of these policies on the price of housing, the city awarded points to projects with affordable units. The city continues to manage its growth, but the selection process has been simplified and points for affordable housing removed.

Main regulations

In new ownership projects, provision must be made for 25 per cent of the units on site to be affordable units. At least half of those must be affordable to households earning 90 per cent or less of the median income, and the remainder to those earning 100 per cent or less.

The prescribed, standard, way of meeting this requirement is 10 per cent in construction, 10 per cent through the dedication of land for other housing and five per cent through the dedication of lots for self-help housing. The purpose is to allow a mix of housing types and opportunities, including non-profit, in the various neighbourhoods. This mix is seldom achieved, but the city uses it as the basis for development agreements tailored to each project.

Summary

Name of Initiative:	***Affordable Housing Ordinance.***
Municipality:	City of Davis, California.
Population:	52,500.
Type of Initiative:	Inclusionary zoning—mandatory.
Start (Revisions):	1989 (1992).
Purpose:	To provide new homeownership housing affordable to households earning at or under 100 per cent of the area median income and new rental housing affordable to those at or under 80 per cent.
Regulations:	All homeownership developments are required to provide 25 per cent as inclusionary units. All rental developments of five to 19 units are required to provide 25 per cent as inclusionary units,and larger developments are required to provide 35 per cent. Fees-in-lieu are accepted only for projects of less than 30 units or 2.4 hectares, but only in limited circumstances. Density bonuses for lower-income units are provided according to the state density bonus provisions. Density bonuses are providedone-for-one for other units.
Achievements:	Provision of 500 to 600 units, with another 500 to 600 committed for construction, and the contribution of $100,000 in fee-in-lieu and land for about 160 non-profit units.
Contact:	Katherine Hess (530 757-5610) Development Project Manager Department of Community Development

The corresponding requirements for rental projects vary according the size of the project. In projects of five to 19 units, 15 per cent must be provided which are affordable to moderate-income households and 10 per cent to low-income households. In larger projects, the respective requirements are 25 per cent and 10 per cent. As a standard, all these units must be provided on site through construction. Smaller projects have no such obligation.

The density bonuses prescribed by state law (see information regarding California density bonus laws under Orange County) are available for the lower-income rental units. The city provides its own density bonus for the for-sale units because of the differing income thresholds. The city's bonus allows for an additional market-rate unit for each additional affordable ownership unit built. Other concessions include reduced standards and fee waivers.

The inclusionary units are subject to various design requirements. The inclusionary rental units must be dispersed throughout the development: no such controls are placed on the ownership units. The inclusionary rental units must contain an appropriate range of unit sizes, and the ownership units must have a mix of two- and three-bedroom units.

The city is open to considering compliance alternatives that provide an equivalent value in affordable housing. The compliance alternatives specifically endorsed include the purchase and dedication of existing units for affordable ownership or rental housing, and the dedication of land in the rental projects.

As indicated, the city also encourages the provision of self-help housing. This is housing constructed, at least in part, by the homebuyer under supervision of a state-funded non-profit agency. Although popular, the program has been in abeyance because the state funding has been curtailed.

Fees-in-lieu are accepted only for smaller projects up to 30 units or 10 acres (2.5 ha) in size, and then only in cases of hardship. The fee, initially set at $18,000 per unit, was based on the subsidy needed from the city to support the provision of a moderate-income unit. The current fee is $19,500, after being increased in relation to the Consumer Price Index (CPI).

The affordability of the rental housing must be maintained in perpetuity. The affordability of the ownership units is controlled only to the first resale. The resale price is limited to an increase of five and one-half per cent per year. To prevent speculation, the purchasers of the affordable units are required to live in them for at least two years.

The city provides assistance to purchasers of the affordable units through a "community equity mortgage." This is essentially a low-interest second mortgage funded by contributions from both the developers and the city.

Overall results

The current program has produced approximately 500 inclusionary units since 1987, of which slightly over half are multifamily rental units. A similar number of affordable units has been approved but remains unbuilt. Land also has been dedicated for approximately 160 non-profit units.

The program is notable for generating a wide variety of housing types. Included are single-family houses, condos, self-help units, seniors housing, a co-op for artists, a group home, various shared living or "co-housing" projects and others.

$100,000 in fees-in-lieu also has been collected since 1990. No figures are available for the earlier period, when the fees per unit were lower, but considerably more money was collected because of the greater building activity.

Below-Market-Rate Program and Housing Impact Fees
(Palo Alto, California)

Palo Alto is a wealthy and virtually built-out community in the heart of "Silicon Valley" south of San Francisco. For many years, this area added jobs at far faster rate than housing.

To redress the imbalance, the city was a pioneer in the combined use of inclusionary zoning and linkage fees. Its inclusionary—or below-market-rate (BMR)—program was adopted in 1974. It also started using housing impact fees informally in 1979 and adopted a formal program in 1984 (see summary, page 18).

Main regulations: inclusionary program

Residential projects are generally required to provide 10 per cent of the units as BMR units. This applies to for-sale projects with three or more units or rental projects of five or more units.

Summary

Name of Initiative:	***Below-Market-Rate Program.***
Municipality:	City of Palo Alto, California.
Population:	56,000.
Type of Initiative:	Inclusionary zoning—mandatory.
Start:	1974 (with many revisions).
Purpose:	To provide ownership housing affordable for households earning under 100 per cent of the area median income, and rental housing under 60 per cent.
Regulations:	Residential developments with three or more units when homeownership, or with five or more when rental, are required to provide 10 per cent as affordable units. One extra market-rate unit per each affordable unit is given up to 25 per cent density increase. The construction of the units off site, rehabilitation of existing units, and dedication of developable land accepted when on site is not feasible.
Achievements:	Construction of 177 affordable units and payment of $1 million in fees-in-lieu.
Name of Initiative:	***Housing Impact Fees.***
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1979 (1984).
Purpose:	To assist in the provision of rental housing affordable to households earning under 60 per cent of the area median income.
Regulations:	New commercial, retail and industrial projects adding more than 1,860 m^2 are required to pay $37.50 per m^2. Those already at 1,860 m^2 are required to pay this amount on additions over 230 m^2.
Achievements:	Payment of $14 million.
Contact:	Jim Gilliland (650 329-2679) Assistant Planning Official Planning Department

Projects on sites larger than five acres (2 ha) must provide 15 per cent.

This requirement initially was set at 20 per cent of the units for projects of 20 or more units but, over time, both the threshold and set-aside have been gradually lowered.

In exchange, the city offers a density bonus of one additional market-rate unit for each BMR unit, up to a maximum density increase of 25 per cent. No other concessions are given.

The density bonus is intended to offset the direct construction and financing costs of the BMR units, but not to cover the land, marketing, off-site improvement costs nor provide a profit for those units.

The city has frequently revised and adjusted its regulations. It is able to do this because the program has been established as policy in the housing plan and not set out in detail in the zoning ordinance. Under California planning law, the former is considered to have the same authority, but allows for changes to the regulations without having to be adopted formally by the municipal council.

The objective of the program has always been to produce inclusionary units within each development. When necessary, the city considers alternatives with matching costs and benefits. Among these, it will accept a lower set-aside for units serving households with lower incomes than required.

The city attempts to work with the developers in creating innovative solutions. In general, the BMR units are expected to look like the market-rate units on the outside and to have a matching number of bedrooms. Less expensive amenities and less space are permitted on the inside.

When on-site units are not feasible, the city's second preference is for the provision of off-site units—either in new construction or through rehabilitation—or even the donation of developable land. Some of these alternatives are becoming less realistic as the city becomes fully developed. When the BMR units are provided off site, the required set-aside increases from one in 10 to one in nine.

Fees-in-lieu are the least preferred alternative. Fees are generally accepted only for projects of less than 10 units, and sometimes for luxury housing when the resulting cash can produce more affordable housing elsewhere. These fees are paid to the city's housing trust fund.

In for-sale projects with 10 or more units, for each unit not provided, the in-lieu payment is based on five per cent of the greater of either the actual sales price or fair market value of the average market unit. For smaller projects, there is a sliding scale, starting at 3.25 per cent for three-unit projects and rising to five per cent for nine-unit projects.

The lowest priced new houses in the city currently sell for about $650,000. Therefore, these fees generate about $32,500 per unit or more.

For the rental units, the in-lieu payments can be made annually based on the difference between the initial affordable rent and the market-rate rent of the units, or as a one-time fee based on five per cent of the appraised value of the rental units.

The city also has started using a two-step fee payment when vacant land is subdivided into three or more lots and sold without development. They charge the subdivider on the basis of the land value and the builder, later, on the basis of the construction cost.

The city requires that for-sale BMR units when first sold be made affordable to households earning 80 to 100 per cent of the county's median income. Initially, the target was 80 to 120 per cent. To this end, the city annually establishes price guidelines for different unit sizes based on current household incomes by household size, interest rates and standard housing costs. For example, according to the latest price guidelines, last adjusted in mid-1997, it is looking for two-bedroom units priced

$120,000 to $200,000 and three-bedroom units $140,000 to $240,000.

The resale price of these BMR units is limited to one-third the increase in the CPI for the corresponding period, with adjustments made for substantial improvements. The intention is to maintain their affordability. Earlier, when the city used two-thirds of the CPI increase, it found that prices rose too much.

BMR rental units at the outset must be affordable to households earning between 50 and 60 per cent. This is a recent change from 50 to 80 per cent. After that, the rent can be adjusted annually based on one-third of the CPI, or some other comparable formula agreed on by the city.

The affordability of these units is controlled for 59 years, subject to renewal upon resale. To be eligible to occupy the units, households must have a member either living or working in the city.

Main regulations: linkage program

Commercial, retail and industrial projects above a specified size are required to pay linkage fees. The fees are applied to the entire area of the projects adding or converting space of more than 20,000 sq. ft. (1860 m^2). For additions to projects already larger than 20,000 sq. ft., the fees are applied to the total added area when the additions are larger than 2,500 sq. ft. (230 m^2).

The fees are currently $3.48 per sq. ft. ($37.50/m^2). They have been increased annually in relation to the CPI. When initially determined in 1984, using $50,000 as the estimated cost of an average BMR unit, the fees were set at $2.43 per sq. ft. ($26.00/m^2) of development.

The city's linkage program is seen as "environmental mitigation" for "projects with impacts on housing." Its stated purpose is to require developers of large job-generating projects, as a condition of the "privilege of developing land," to contribute toward reducing the shortage of lower-income housing.

The linkage obligation is intended to match that for inclusionary zoning. In others words, these developments are required to contribute toward 10 per cent of the demand for lower-income housing generated by the additional work space.

Overall results

The BMR program has produced, to date, 144 ownership units in about 35 projects and 33 rental units in four projects. There are another eight ownership and five rental units under construction or in the approval process.

The modest results of the program reflect the limited development activity in this community.

Most of the recent BMR units have been provided in two-storey townhouses in condominiums, which is the most typical form of development in the city.

Nearly all these rental units were produced by the mid-1980s. Only recently has there been a renewed interest in this housing.

To date, approximately $14 million in linkage fees and $1 million in fees-in-lieu have been collected. Most of the latter came from one major project.

The housing trust funds have been typically combined with federal and other funding to provide housing for low-income and special needs housing.

10-Per-Cent Zoning Ordinance
(Newton, Massachusetts)

Newton, a relatively affluent and nearly built-out community in the Boston urban area, has one of the longest-standing regulatory initiatives in the United States. It is also notable for having some of the most demanding design and regulatory standards of any similar program (see summary, page 21).

The program was started on an informal case-by-case basis around 1968. After being successfully

Summary

Name of Initiative:	***10-Per-Cent Zoning Ordinance.***
Municipality:	City of Newton, Massachusetts.
Population:	83,000.
Type of Initiative:	Inclusionary—mandatory.
Start:	1972 (with many revisions).
Purpose:	To provide rental housing for lower-income families and elderly households.
Regulations:	Residential developments requiring a special permit are required to provide either 10 per cent of the total units, or 20 per cent of the units provided over existing as-of-right density, as inclusionary units. In effect, all developments beyond construction of a single-family house are subject to this requirement. Density bonuses are given according to zoning category. Fees-in-lieu are accepted only from developments of 10 or less units. Construction on another site and the rehabilitation of existing units are accepted, but only if twice as many units are provided and other conditions met.
Achievements:	Construction of 145 units, representing about five per cent of new housing provided over that time.
Contact:	John Hickson (617 552-7135) Housing Development Co-ordinator Department of Planning and Development

challenged in the courts, it was formally adopted as part of the city's zoning ordinance in 1972. It has been revised many times since then.

The ordinance is a form of inclusionary zoning that is administered through a special permit process for residential developments applying for a change to the existing zoning. On the surface, it is a voluntary program consistent with the state's enabling legislation for zoning. That legislation only authorizes incentive-based inclusionary practices relying on density bonuses offered as an alternative to the existing zoning provisions.

In effect, the program is mandatory. Because the city is almost entirely developed at the permitted and relatively low density, all construction beyond single family houses—including even the addition of a unit to an existing house—are subject to its provisions.

Main regulations

As a condition of granting a special permit for a change to the existing residential zoning, the city at its discretion can require new residential developments to provide one of two inclusionary options. First, it can require that either 10 per cent of the total units in the development, or 20 per cent of the additional units permitted above the existing as-of-right density, be provided as rental units for lower-income households. Second, it can require that this housing be suitable either for families or elderly persons.

For small developments of 10 or fewer units, the city allows the payment of fees-in-lieu. The fees are charged on the basis of a formula that accounts for market value of the units built and the density bonuses provided, but generally amounts to about 10 per cent of the market value. It can also reduce the obligation for these small developments, especially when the units are needed to avoid economic hardship.

Density bonuses are given in exchange for the inclusionary housing. The maximum permitted density is specified in the zoning ordinance for each residential category. For example, in areas zoned for 50 ft. (15 m) lots—the most prevalent housing density—it allows an increase in density to townhouses. The city decides case by case what density increases are offered to each development within that maximum, after considering local planning issues and public concerns. It has on occasion exceeded those maximums to make the projects feasible.

The regulations have been frequently revised, generally with the purpose of preventing unwanted development practices. For example, cash payments are now allowed only in limited circumstances, because formerly when available to all, no housing was provided.

The on-site requirements also have been made more stringent over time. The inclusionary units now must be dispersed throughout the project, and they must be "equivalent in size, quality, and characteristics to the other units." Before these regulations, smaller inclusionary units with fewer amenities were typically produced, and they were concentrated in the least desirable part of the site.

The regulations have been revised to permit building the inclusionary units on another site away from the market-rate units, but only when additional conditions are met. Twice as many off-site inclusionary units must be provided, and they must contain at least one unit for a large family. The other site must be in the same ward as the market-rate units. Also, to control the standard and quality of these units, the off-site units must have a fair market value not less than that for the median single-family home within the city for that year.

Instead of new construction, existing units that have been vacant for two years also can be purchased and rehabilitated. In this case, most of the above off-site conditions also apply.

The city has the option of purchasing all the lower-income units at a price established during the permit approval process. It has generally purchased as many as possible, provided the funding was available from the state or federal government.

If the city does not purchase the units, they must be rented by the private owner to eligible tenants for 40 years. This period was originally 15 years. The owners also must pay the city the difference between the market sale price and the established purchase price. The city retains the option to buy these units at the fair market rate at the end of the period. The city uses federal rent supplements so that the private owners can obtain a fair market rent, while the tenant payments are limited to no more than 30 per cent of income.

Overall results

The program has produced about 145 rental lower-income units—about 40 per cent for elderly households and 60 per cent for families.

Most were provided in the 1980s. There are another five or so in the approvals process.

Most of these units are in multifamily condominiums and apartments, but some townhouse units also have been provided.

The city has acquired about half of them. None has been recently acquired because of the declining federal and state funding.

While these results do not appear to be large, the inclusionary units do represent about five per cent of the total new housing built in the community over that time.

The program has also generated about $325,000 in fees to be used for affordable housing.

Summary

Name of Initiative:	***Affordable Housing Program.***
Municipality:	City of Burlington, Vermont.
Population:	40,000.
Type of Initiative:	Inclusionary zoning—mandatory.
Start (Revisions):	1990.
Purpose:	To provide new housing affordable to lower-income households.
Regulations:	All sale residential developments of five or more units must provide 10 to 25 per cent as inclusionary units, depending on the average sales price of the market units. All rental residential developments of five or more units must provide 15 to 25 per cent as inclusionary units, depending on location. Fees-in-lieu are accepted, but only in limited circumstances. Construction on other sites permitted, provided 25 per cent more affordable units are constructed. Density bonuses of 15 to 25 per cent are given in return according to the base, permitted density.
Achievements:	Construction of about 70 to 90 units, representing about 10 per cent of new housing.
Contact:	Brian Pine (802 865-7232) Assistant Director of Housing Community and Economic Development Office

Affordable Housing Program
(Burlington, Vermont)

The city of Burlington, in northern, rural Vermont, has developed since the early 1980s a comprehensive affordable housing program in response to rapidly rising house prices. Inclusionary zoning, adopted in 1990, is only one of the remarkably wide spectrum of initiatives that it has undertaken (see summary, page 23).

Main regulations

Housing developments with five or more units completed in a calendar year, either in new construction or substantial rehabilitation, must provide a certain percentage of those units as affordable units.

For ownership units, the required percentage of affordable units is based on affordability of the market units. To be specific, the requirement is 10 per cent when the average sales price is affordable to households earning 80 to 100 per cent of the median income for the area, 15 per cent when the household income is 100 to 140 per cent, 20 per cent when it is 140 to 180 per cent and 25 per cent when it is over 180 per cent. There is no obligation when the market units are affordable to households earning 80 per cent and under.

For rental units, the required percentage of affordable units is 15 per cent in most areas of the city and 25 per cent in its lakefront area.

In exchange for the inclusionary units, the city offers a density bonus that varies according to the base density. The potential bonus is 15 per cent in areas zoned for a maximum density of 40 units per acre (16 units/ha); 20 per cent in areas zoned 25 and 20 units per acre (10 and 8 units/ha); and 25 per cent in areas at 4.4 units per acre (2 units/ha).

The city initially did not accept fees-in-lieu, because it had adequate funding from other sources and wanted production. It now accepts fees-in-lieu, but only as a last resort. A recent project provided fees of $10,000 per unit, which was the amount needed to write down the average price of its market-rate units to the required affordability.

In most areas, the affordable units can be built on another site, but on the condition that 25 per cent more affordable units are provided. The exception is the city's desirable lakefront area, where the city wishes to provide a mix of incomes.

The inclusionary units are subject to various design standards. They must be fully dispersed throughout the market-rate units. They also must have the same bedroom mix, general exterior appearance and energy-related installations—windows, insulation, furnaces and so on—but their interior amenities and gross floor area can be different.

The inclusionary units must be affordable to households earning no more than 75 per cent of the median area income when sold, and 65 per cent when rented. All the affordable units must remain affordable for at least 99 years, but this period can be reduced to 40 years when necessary to render the project feasible.

The city has first right of purchase for the inclusionary units. It has delegated this authority to various non-profit agencies, which have purchased about 60 per cent of the units.

Overall results

Since the start of the program, approximately 70 to 90 inclusionary units have been provided. This is out of a total of 700 or so new units built in Burlington during that time. All the units have been townhouses; few other unit types have been recently built in the city.

Related measures

The Burlington Community Land Trust, established in 1984, is one of the city's most important and innovative—and probably most widely known—initiatives. This private non-profit corporation mainly purchases and upgrades existing housing, and leases it at affordable rates to lower-income households and to non-profit organizations. More recently, the trust also has become active in establishing limited equity cooperatives. Its long-term goal is to own 25 per cent of the city's residential units and maintain it as permanently affordable to lower-income households.

In developing its comprehensive affordable housing program, the city has targeted various initiatives to the specific needs of these households.

- For the homeless, the city has supported emergency shelters, permanent single-room occupancy (SRO) housing, housing for mother-led families in need and a community health centre.
- For the "lifetime tenants" (incomes at 30 to 60 per cent), the city has supported rental housing provided and managed by private non-profit agencies, and provided low-interest loans for housing rehabilitation. It also has protected tenant rights and undertakes regular inspections of all rental units.
- For transitional tenants (incomes at 60 to 90 per cent), who are potential homeowners renting because they have been priced out of the homeownership market, the city has supported homeownership through inclusionary zoning and limited equity cooperative housing developed by the land trust.
- For elderly, lower-income homeowners (incomes under 80 per cent), the city provides low-interest loans for repairs and rehabilitation, and grants for improvements that make the units accessible for persons with disabilities. It has also developed a reverse equity program to help these owners pay taxes and insurance.

The city also established a Housing Trust Fund, in 1988, dedicated to providing for permanently affordable housing. The trust gets its money—usually about $150,000 annually—mainly from a property tax surcharge of one per cent, and also fees on the demolition or conversion of rental units, settlements of violation of the city housing code and fees-in-lieu from inclusionary zoning.

Affordable Housing Program
(Princeton, New Jersey)

Princeton Township, a small university-based town in rural southern New Jersey, was a pioneer in combining both inclusionary zoning and affordable housing fees. Both were implemented through its Affordable Housing Program, adopted as part of its zoning code in 1984 (see summary, page 26).

This program was adopted in response to the 1982 landmark Mount Laurel decision of the state's supreme court that obliged all growing municipalities in the state to provide for affordable housing. Those municipalities failing to comply risked intervention by the courts, which typically imposed a standard form of across-the-board inclusionary zoning. That mandate and this remedy subsequently formed the basis for the state's 1985 affordable housing legislation.

While consistent with that legislation, Princeton's program predates it and does not reflect the prevailing practices in other municipalities. The township, in addition to being one of the first in the state to use development fees for housing, has used inclusionary zoning in a more limited and selective way than most. Various changes and additions have been made to this program over the year, but the 1984 provisions still remain substantially in place.

Inclusionary zoning

In the 1984 program, the township applied mandatory inclusionary zoning to part of its residentially zoned lands, and in two different ways.

In its low-density inclusionary zones, developments are required to provide 20 per cent of the new housing units for lower-income housing. In exchange, the township grants

Summary

Name of Initiative:	***Affordable Housing Program.***
Municipality:	Township of Princeton, New Jersey.
Population:	23,000.
Type of Initiative:	Mandatory inclusionary zoning and housing fees.
Start (Revisions):	1984 (1992).
Purpose:	To provide housing affordable to lower-income households.
Regulations:	Residential developments in two zoning categories are required to provide inclusionary units: • 20 per cent in low-density areas for a density bonus of 25 per cent; • 50 per cent in high-density areas for a density bonus of 100 or 200 percent. Payment of fees-in-lieu and dedication of land accepted in low-density areas, provided 36 per cent more units are supported. The original fee structure until 1992 imposed these fees: • new residential developments with no inclusionary obligation at rates ranging from $250 on 93 m² house to $1,125 on 230 m² house; and • new non-residential development at rates ranging from $36.00 per m² for offices to $1.80 per m² for non-profit institutions. Under the new fee structure mandated by state, the required fees are these: • new residential developments at one per cent of their equalized assessed value; and • new non-residential developments at one-half per cent of their equalized assessed value.
Achievements:	Payment of $2.4 million in development fees and $2.2 million in fees-in-lieu, and construction of 200 lower-income inclusionary units.
Contact:	Lee Solow (619 924-5366) Director of Planning Regional Planning Board of Princeton

25 per cent density increases over the base densities of 0.5 and 0.67 units per acre (1.2 and 1.7 units/ha). It also offers certain reductions in its municipal servicing requirements and expedited approvals for the inclusionary projects.

This zoning has been applied to a number of large parcels, generally 80 to 100 acres (30 to 40 ha) in size and covering roughly 15 per cent of the potential residential lands of the municipality.

The parcels, which are located across the municipality, were selected mainly for their proximity to infrastructure and services.

In these areas, the township accepts fees and land in lieu of construction if they "better effectuate the purpose of this ordinance," but the contribution also must be increased by the equivalent of 36 per cent more units.

The township uses a second type of inclusionary zoning in its so-called high-density residential zones. This zoning is designed for mixed-income projects, in which the market-rate units are expected to subsidize the provision of an equal number of lower-income units. To achieve this housing, the existing base density of four units per acre (10 units/ha) can be doubled or tripled. Six tracts have been zoned this way.

Housing fees

Market developments of various types are required to pay fees to the township's housing trust fund dedicated to affordable housing. Under the original 1984 provisions, it collected two types of housing fees.

- Development fees on all residential development outside of the inclusionary zones: the fee was based on a graduated schedule according to the unit size. This translated, for example, into $250 for a 1,000 sq. ft. (93 m^2) house and $1,125 for a 2,500 sq. ft. (230 m^2) house.

- Affordable housing contributions on all new non-residential floor space, including additions and conversions: the graduated fee schedule ranged from a high of $3.40 per sq. ft. ($36.00/m^2) for offices and banks down to $0.17 per sq. ft. ($1.80/m^2) for non-profit institutions.

The latter were essentially impact fees, intended to address the increased need for lower-income housing resulting from the jobs generated by these developments. The fees were graduated to reflect the varying rates of job generation. In these fees, 25 per cent of the calculated new housing costs was assigned to the developments.

Princeton was one of a handful of municipalities in the state that first started using development fees for affordable housing. When challenged, these fees initially were ruled illegal by the lower courts. Upon appeal, however, they were subsequently validated by state's top court in 1990, subject to the development of a consistent and equitable state-wide fee structure.

The state released the development fee regulations in 1992. Development fees for affordable housing must be charged at a rate of one per cent of the equalized assessed value for new non-residential developments, and one-half per cent of the value for new residential developments not subject to inclusionary zoning. Although the township, among others, objected to this approach, it was put forward as the best compromise.

The township's fees have been charged on this basis essentially since 1994. As a consequence, they no longer reflect the earlier employment-housing linkage.

Overall results

The township collected and retained about $250,000 in housing fees from about 25 developments under its initial regulations, but had to return another $120,000 to comply with the new state regulations. Under the new regulations from 1994 to through 1997, it has collected over $2.1 million.

No inclusionary units have been built on its low-density inclusionary lands. The three ongoing developments on these lands, which are at various stages of building about 200 single-family homes, will contribute about $2.6 million in fees-in-lieu.

These contributions have gone to the township's housing trust fund. Of these funds, $460,000 has been used to assist in providing 23 affordable housing units in the city of Trenton.

Under the state's affordable housing mandate resulting from its 1985 Fair Housing Act, every growing municipality is obliged to provide for a prescribed amount of affordable housing. There are various ways of meeting this obligation, of which inclusionary zoning is the most common. Another is through a regional contribution agreement, which essentially allows suburban and rural municipalities to provide financially assistance for affordable housing in older urban areas.

Funds also have been recently committed to subsidize the rehabilitation of 50 privately owned lower-income units in the township at an expected cost of $20,000 to $25,000 per unit in loans or grants. Other funds may be used to repay the township's assistance to its high-density project and to continue to provide down-payment assistance loans for lower-income homebuyers of inclusionary units.

Its one high-density project undertaken to date has had a troubled history. This 280-unit project was initiated by a local non-profit organization in the late 1980s. Due in large part to the recession, the project went into default when three-quarters completed. The township took over the project and paid off the substantial outstanding loans. The last portion is now being finished by a private developer. Half of the units, in a mix of for-sale and rental units, will be for lower-income households—split evenly between low-income and moderate-income.

Inclusionary units also have been provided in a disputed mixed-income project completed in 1994. The developer's initial proposal in 1985 considerably exceeded the zoning for the site. After a four-year legal fight, it was finally approved by the township in an out-of-court settlement at a considerably reduced scale. In the township's view, the developer was trying to use inclusionary units as a lever to build far more market-rate housing than justified. The completed project contains 300 for-sale units in a mix of single-family homes, townhouses and three-storey condominiums. Out of these, 20 per cent were provided for lower-income household—again, split evenly between low-income and moderate-income.

Exaction programs essentially require developers of certain new uses—mainly, but not only, commercial—to contribute fees to support affordable housing as a condition of development approval. Unlike the other regulatory mechanisms reviewed in this report, no concessions such as density bonuses are given in exchange.

These fees are typically paid into housing trust funds and used in combination with funding from federal, state and other sources to supply non-profit, low-income rental and special-needs housing.

Types of programs

The best known of these exactions are linkage fees, which are also called impact fees in some places. There also is a variety of similar fees—variously called development fees, development levies, excise taxes and other names. They differ principally in the rationale used to defend them, and in uses that are affected.

Linkage fees are justified as mitigation measures needed to offset the adverse impact of new commercial and other job-generating developments on local housing conditions. These new developments rely on the services of low-paid workers, many of whom are attracted to the community by the jobs but cannot find affordable housing in the private market. Detailed studies typically are made to calculate the public subsidy needed to supply that housing. Some portion of that cost is charged to the developers through the fees. The term "linkage" refers to that causal connection between the new job-generating uses and the additional needed housing.

Linkage fees are most strongly identified with the two major pioneering programs in San Francisco and Boston, in this section. They impose fees mainly on new major downtown office developments and are the most successful examples of all the regulatory initiatives in terms of fees generated and housing produced.

In California, at least another 10 municipalities and two counties now also use linkage fees. Where these programs differ from the two downtown programs is in that the fees are imposed on a wide range of new non-residential developments. The charges also are considerably less than those in the downtown programs and, sometimes, graduated according to the job generation of the different uses.

One of these communities, Santa Monica, has recently broken new ground by charging linkage fees for the first time apparently on new residential developments.

In New Jersey, at least 85 municipalities charge development fees dedicated to affordable housing on both new residential and non-residential developments. All have started since early 1992, when state regulations were issued following a favourable court ruling. The fees must be charged according to fixed state-wide rates based on the assessed property value of these developments. Because they are not tied to job generation, these charges cannot be considered linkage fees. Indeed, about six earlier linkage-type programs in the state had to be revised to meet the new state regulations.

All of these examples, it is relevant to note, are in states where the legislatures have directed the municipalities to provide for affordable housing and the courts have been supportive of affirmative measures. As a consequence, most of these municipalities also use mandatory inclusionary zoning together with development exactions. This represents a hybrid approach in which complementary impositions are made on new residential as well as non-residential developments. Two of the municipalities—Palo Alto and Princeton—that use both are described earlier under Inclusionary zoning.

Cities elsewhere use other types of exactions. Boulder, Colorado, charges a housing excise tax on all new residential and non-residential developments, coupled with a property tax surcharge on existing residential uses, to support affordable housing. Alexandria, Virginia, expects to receive voluntary contributions at a fixed standard rate from most new development. Strictly speaking, both these municipalities rely on their taxing authority, rather than their land-use regulatory powers, to make these charges.

Examples in Canada

In Canada, three municipalities in British Columbia and one in Alberta currently collect fees of some type for lower-income housing. Those in Whistler and Banff could be considered as types of linkage fees. In Vancouver, they are essentially development levies for various physical improvements including low-rent housing. In Richmond, they have been secured through comprehensive development agreements associated with rezoning for large residential projects. A program in Surrey, similar to that in Richmond, has been recently curtailed.

Toronto examined, but did not implement, a housing–employment linkage fee on new commercial development in the early 1990s.

U.S. Examples Profiled

Office-Housing Production Program and Office-Affordable Housing Production Program

(San Francisco, California)

San Francisco pioneered the use of linkage fees on major downtown offices to provide for affordable housing. While its approach remains unique in many aspects, it did establish the precedent for Boston and many succeeding cities (see summary, page 31).

The city's first linkage program, the Office-Housing Production Program (OHPP), was initiated in 1981 as "interim policy guidelines" for its building permit review process. It was seen as an impact mitigation measure authorized by broad state-level environmental protection legislation.

The current linkage program, the Office-Affordable Housing Production Program (OAHPP), was adopted as part of the city's planning code, in 1985, and amended with tighter provisions in 1990. The new program was formally adopted to provide a firmer legal basis. It successfully withstood a comprehensive legal challenge to the state's highest appeal court in 1986.

The city also implemented separate linkage fees for transit improvements, and later also for public art, open spaces and day-care facilities.

Initial regulations: Office-Housing Production Program

Under OHPP, office developments adding 50,000 or more gross sq. ft. (4,600 m^2) in the city's downtown office core were required to "cause to be built" 0.88 housing units for every 1,000 sq. ft. of office space (0.95 units/100 m^2). The requirement could be met by building new units, rehabilitating vacant units or contributing financially to a housing development.

As indicated by the title, OHPP was directed toward increasing the housing supply generally in the city, and not specifically affordable housing.

The program did promote the building of affordable housing through incentives. Specifically, the provision of a moderate-income unit counted as two units when done with government assistance and as three without assistance, while a low-income unit provided without assistance counted as four.

The city defines moderate-income housing as housing affordable to households earning 80 to 120 per cent of the median income and low-income housing as 50 to 80 per cent. In 1990, the income eligibility for the lower-income units coming from OAHPP was tightened.

Summary

Name of Initiative:	***Office-Housing Production Program.***
Municipality:	City of San Francisco, California.
Population:	750,000.
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1981 (replaced in 1985).
Purpose:	To provide additional housing in the city, with preference for affordable housing.
Regulations:	New offices in the downtown core over 4,600 m^2 in size were required to provide for housing at 0.95 units per 100 m^2. Affordable housing given additional credits depending upon subsidy and income.
Achievements:	Provision of 3,870 units affordable to households earning at or below 120 per cent of area median income, through construction by office developers or contributon of $28 million in fees-in-lieu.
Name of Initiative:	***Office-Affordable Housing Production Program.***
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1985 (1990).
Purpose:	To provide housing affordable for households earning at or below 100 per cent of area median income.
Regulations:	New offices in the city over 2,300 m^2 in size are required to provide 0.41 units per 100 m^2, or pay equivalent fees-in-lieu of $75.86 per m^2.
Achievements:	Provision of 765 units affordable to the targeted households, through construction by the office developers or the contribution of $8.2 million in fees.
Contact:	Joe LaTorre (415 252-3188) Deputy Director Mayor's Office of Housing

Current regulations: Office-Affordable Housing Production Program

The new program addressed various criticisms and problems of the initial program. Principally, it added stricter affordable housing provisions, introduced a fixed fees-in-lieu option, extended the requirements across the city and eliminated the credit system.

The regulations were tightened again in 1990. Income eligibility was reduced from 80 per cent to 60 per cent of median income for rentals, and from 120 to 100 per cent for ownership units. The development threshold was lowered from 50,000 sq. ft. (4,600 m²) to 25,000 sq. ft. (2,300 m²). The required minimum period of affordability for privately developed units was extended from 20 to 50 years. The basis for adjusting the fee-in-lieu was changed from a building cost index to a housing price index.

OAHPP now requires that office developments adding 25,000 or more gross sq. ft. (2,300 m²) provide for 0.386 housing units per 1,000 sq. ft. (0.415 units/100 m²) of office space.

The corresponding fees-in-lieu were initially set at $5.34 per sq. ft. ($57.50/m²) of additional gross office space. This rate was based on a detailed study in 1984 of the public cost of providing housing affordable to the additional lower-income residents attracted by the new office developments. Half of this cost was charged to the developments through these fees.

The fees-in-lieu since 1994 have been $7.05 per sq. ft. ($75.86/m²). According to the regulations, the fees can be adjusted annually but this has not always been done. They reached their peak at $8.10 per sq. ft. ($87.20/m²) during the period 1992 to 1994.

The housing obligation can be met through construction, rehabilitation, conversion of non-residential uses to housing, or payment of the fees to the city's trust fund or an approved non-profit housing developer. Sixty-two per cent of the units created by the developer must be affordable to the eligible households for a minimum of 50 years. Fees paid to the trust fund are dedicated entirely to the provision of housing for these households.

The city is considering a new fee structure that could be applied to a wider range of uses and, perhaps, have a lower fee for major office developments. This reflects the differences in the city between the early 1980s when linkage was started and the late 1990s. At that time, major offices were the dominant development activity in the city, and the downtown was virtually the only location. Now, while the downtown remains the prime location, it must compete with suburban locations. Furthermore, many of the major development opportunities are now expected to come from other types of developments.

Overall results

Under OHPP, from 1981 to early 1984, 38 office developments were approved. The number that were completed and provided for housing is not available.

OHPP overall supported the development of 5,690 units. Of these units, 68 per cent were affordable to low- and moderate-income households under the city's definition and 69 per cent were rental. Although not targeting affordable housing, OHPP assisted more affordable housing units than any other single public initiative during the same period in the city.

OHPP contributions of $28 million were made and used in the development of 74 per cent of the units. The remainder were built by the developers of 10 office projects. Of these funds, $700,000 was carried over to OAHPP. Another OHPP project eventually contributed $660,000 to OAHPP.

Eighty-two per cent of the units—presumably all or most of the affordable units—were built using some other government funding.

Eight OHPP projects earned credits, which could be applied against other office projects, for providing more housing assistance than required. Most of these credits, representing close to 550,000 sq. ft. (50,000 m^2) of office space that can be built without a housing obligation, were eventually transferred to OAHPP.

Under OAHPP, from late 1985 through mid-1992, approval was given for 22 office projects with about 5.1 million sq. ft. (475,000 m^2) of gross floor space. Three of these projects were exempt from providing for housing; three are still active, while six appear to have been abandoned or changed to another use.

The OAHPP contributions have come from 10 office projects with a total obligation of about 1,020 units. All were approved, and nine were built in the late 1980s. Six projects contributed $4.2 million in fees to the trust fund, and one of these also built part of its obligation. Two projects made direct contributions of $4.0 million to housing developers. The two remaining projects apparently constructed units, while also using OHPP credits.

By early 1994, the trust fund had been loaned $4.2 million to assist six projects providing 421 units. Most were affordable rental units for families, and the remainder either SRO units or affordable condo units. Overall, 87 per cent was affordable to households earning under 80 per cent of the area median income, and 74 per cent to those under 60 per cent. The OAHPP funds were provided as 50-year loans and combined with private long-term financing as well as other local, state and federal funds that included block grants and tax credits. More recent information is not available, but this accounts for virtually all the money available to the trust fund to the present time.

Another 344 units were produced either through construction by the office developers or their direct contributions to non-profit developers.

After a lapse in office applications since the early 1990s, interest has revived in last year or so. As of mid-1998, there are seven approved and active projects under consideration—three approved in 1998, one in 1995 and three from the late 1980s—providing a total of 1.57 million sq. ft. (146,000 m^2). There are also seven other projects in the approvals process with a potential for 890,000 sq. ft. (85,000 m^2). These projects represent a future housing obligation under OAHPP of 560 and 330 units respectively.

Development Impact Project Contributions

(Boston, Massachusetts)

Boston's linkage program is the single most productive regulatory mechanism reviewed in this report. Although modelled on its predecessor in San Francisco, it has introduced a number of important features of its own (see summary, page 34).

The ordinance establishing this program was passed as part of the city's zoning code in late 1983. Except for some regulatory adjustments in 1986, the program remains unchanged today.

The ordinance was successfully challenged by a property owner opposed to the development approval given to a neighbouring linkage project. Specifically, it was invalidated by a county court in 1986 on the grounds that the city lacked the statutory authority. Nevertheless, later that year, a higher state court voided that decision on various procedural grounds, without addressing the validity of the ordinance. The state subsequently passed the necessary supporting legislation in 1987.

As drafted, Boston's linkage obligation is optional. Only those developments needing some form of relief from the existing zoning, "a variance, conditional use permit, exception or zoning map or text amendment," are subject to its requirements. Developments built as-of-right are not subject to the ordinance. In reality, building any large development in the city as-of-right is impossible because of Boston's outdated zoning code and, particularly, its economically unrealistic density limits. Therefore, in effect the ordinance is mandatory.

Summary

Name of Initiative:	***Development Impact Project Contributions.***
Municipality:	City of Boston, Massachusetts.
Population:	570,000.
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1983 (1986).
Purpose:	To provide housing affordable to lower-income households.
Regulations:	All major developments adding over 9300 m^2 are required to contribute \$54 per m^2 or provide equivalent value in housing units.
Achievements:	Payment of \$49.5 million (with another approximately \$25 million still committed) used to assist in development or rehabilitation of 4,150 non-profit units.
Contact:	John Avault (617 722-4412) Deputy Director for Research Boston Redevelopment Authority

Main regulations

Fees of \$5 per sq. ft. (\$54/m^2) are charged on "development impact projects." Specifically, these are projects adding 100,000 sq. ft. (9,300 m^2) or more of new space in the city, or other projects that "will directly result in a reduction in the supply of low and moderate income dwelling units." Included in the affected land uses are offices; retail, business and service uses; institutional and educational facilities; and hotels and motels.

The stated purpose of the program is to achieve a balance between new large-scale real estate developments that create new jobs and attract new workers to the city, and the supply of low- and moderate-income housing in the city.

A detailed study of the impact of these developments on the availability of affordable housing in the city was undertaken in 1986. At the established fee rate, less than half of the total housing costs borne by the city at that time were passed on to the developments.

The housing obligation can be met by paying the fees either into a housing trust fund dedicated to lower-income housing or directly to non-profit housing sponsors, or by building the lower-income housing to an equivalent value.

The payments are spread over seven years for downtown projects from the issuance of the building permit and 12 years from occupancy for projects elsewhere. Before 1987, when the regulations were changed, all projects were on the 12-year schedule.

The regulations allow for updating the fee rate every three years, but it has never been done.

Because of the phased payments, housing funds were slow to accumulate at the outset. To generate more money upfront, the city capitalized its committed linkage payments in 1989. Specifically, two local major insurance companies provided a loan of $10.8 million, to be repaid by future payments from 12 projects.

Overall results

The city has received $49.5 million in linkage fees from 54 projects to mid-1997. The first project with a linkage obligation was approved in mid-1984. Since then, a total of 73 projects have been approved with total housing obligations of $103.9 million.

Boston's commercial real estate boom ended in the late 1980s. Office projects in the approvals process continued to be approved until mid-1991. None have been approved since that time, but a number of new modestly sized projects have started the process since the beginning of 1998.

The above figure probably overstates what the city will receive because many of the older projects with linkage obligations may have been abandoned. For example, there were 10 undeveloped office projects approved before the recession. Nevertheless, if their obligation is removed from the total, there still remains about $25 million uncollected from later projects that have not proceeded or are making their scheduled payments.

Despite the downturn in office development, the linkage program has continued to generate fees from institutional projects, mainly health and university facilities. Eighteen such project have been approved through the 1990s.

Most of the fees were paid into the housing trust fund. Only a few office developers contributed directly to non-profit providers. None constructed the required housing.

The trust fund has awarded nearly $43 million to 70 projects between late 1986 and the end of 1997. These projects included a total of 4,900 units, in new construction or rehabilitation, of which 4,150 (85 per cent) were affordable units. They were funded by a combination of linkage fees as well as federal and state funding. In general, the projects were either two-thirds or entirely affordable. The subsidy per affordable unit, which ranged from $1,500 to $42,000, averaged $10,350.

The non-profit sector has been the major provider of affordable housing through the trust fund. Most of the projects have been on donated city-owned property and are mixed-income developments divided equally between low-income, moderate-income and market-rate units.

Related programs

The city implemented in 1986 a number of complementary programs.

- An inclusionary housing program that calls for private housing developers on a negotiated basis to set aside at least 10 per cent of the units for lower-income housing in projects of 10 or more units: according to unconfirmed figures, the inclusionary policy has generated about 230 lower-income units and more than $2 million in contributions.

- A job-training linkage fee that requires the same developments to pay an additional $1 per sq. ft. ($11/m^2) toward job training: this program is intended to assist lower-income city residents in benefitting from the construction and other jobs generated by the major downtown developments. In this way, it reduces the number of additional lower-income households that might need to find housing in the city.

- A minority business development component, or what has been called "parcel-to-parcel linkage," that uses the development of valuable publicly owned downtown properties to support the development of less-in-demand public sites in designated needy inner-city neighbourhoods: so far, one such project has been initiated.

In a separate development, a local hotel and restaurant employees union in 1990 collectively bargained for establishing its own housing trust fund. Employers are required to contribute $0.12 per hour per employee, initially $0.07, to the fund. The contributions now generate about $1 million per year and are used primarily to reduce mortgage rates for home purchase. It has assisted about 750 members to buy a home.

Community Housing Assistance Program
(Boulder, Colorado)

Boulder has been one of the most active communities in developing various, and relatively unique, ways of providing for affordable housing. The city introduced one of earliest inclusionary housing programs, called the Moderate Income Housing Program (MIHP), on an informal basis in 1973, and codified the regulations in 1978. When found to be ineffective, this program was replaced in its entirety in late 1990 by a fee-based program called the Community Housing Assistance Program (CHAP).

Summary

Name of Initiative:	***Community Housing Assistance Program.***
Municipality:	City of Boulder, Colorado.
Population:	100,000.
Type of Initiative:	Exaction program—excise tax with property tax surcharge.
Start:	1990.
Purpose:	To provide housing affordable to families earning 30 to 60 per cent of the area median income.
Regulations:	New non-residential developments are required to pay a housing excise tax of $3.44 per m², and new residential developments to pay $2.48 per m².
Achievements:	Contribution of $2.1 million in excise taxes and $5.7 million in dedicated property taxes from existing development used to assist in the provision of 444 units for targeted households and acquisition of land for about 425 units.
Contact:	Jann Oldham (303 441-3157) Acting Director of Housing Division Department of Housing and Human Services

These programs were developed in the context of the city's long-standing growth management policies. Located next to the Rocky Mountains, the city has been involved for many years in various efforts to protect its natural setting and control its servicing costs. The city first adopted growth management policies in 1976 but revised them many times, including most recently in 1995. Recognizing that these policies were likely to affect house prices, the city has also incorporated other measures in these policies to provide for affordable housing, including a version of inclusionary zoning recently.

Earlier regulations: Moderate Income Housing Program

The MIHP required all new residential projects in the city to set aside 15 per cent of the units for moderate-income housing or 7.5 per cent for low-income housing. No density bonuses were given in exchange for this obligation. Exemptions to the regulations were possible for cases of special hardship.

In general, the developers were required to provide the inclusionary units on site, but the city did approve various alternatives. These included paying cash in lieu of construction, constructing the affordable units off site, and purchasing and renting existing condominium units at affordable rates.

A supplementary, incentive, density bonus was introduced in 1978 to encourage the provision of additional housing beyond the MIHP requirement. In PUDs, the density increases were allowed through a reduction in the required open space. A one per cent reduction in open space was given for every one per cent increase in the affordable housing provided above the requirement, up to a maximum of 25 per cent.

The affordability of the moderate-income units had to be protected for 10 years and the low-income ones for five years.

This program was replaced because it was found to be incapable of providing the affordable housing that was needed. To achieve this, the city had to obtain more broadly-based assistance rather than to depend solely upon private building activity.

Current regulations: Community Housing Assistance Program

CHAP imposes a housing excise tax on all new development and a property tax surcharge on existing development. The excise tax is based on \$0.23 per sq. ft. (\$2.48/m^2) for new residential space and \$0.32 per sq. ft. (\$3.44/m^2) for non-residential space. These taxes were set at rates that together would annually raise about \$1 million in revenues.

The new program was designed to meet a new and specific target adopted by the city in 1990: that at least five per cent of the city's housing stock should be made available for families earning 30 to 60 per cent of the area median income. The target was initially expressed in terms of "assisted units," which were units made affordable through some form of government assistance. Because of the recent federal cutbacks in rental assistance, the affordability of many of these units could no longer be considered secure. The target was changed to "permanently affordable units," which leaves out the units dependent on rent supplements but includes privately provided units guaranteed as affordable through resale restrictions and rental covenants.

This new program focusses on helping what the city has called the "working poor." These are households supported by steady jobs that do not pay enough for them to afford market-rate rental housing. These households were identified as being most in need of support because those earning less were generally assisted by public and non-profit agencies, while those earning more were generally served by the private sector.

The CHAP proceeds go to a housing trust fund dedicated to low-income housing and are used to support new construction, rehabilitation, homeownership programs and land banking. Organizations eligible to receive funding include non-profit housing providers, churches, social service groups and private developers. All units secured through this funding must remain affordable to this income group in perpetuity, or at least for a significant period of time. These provisions were adopted under the broad powers of self-government, including the authority to enact excise taxes, that the city enjoys as a home-rule jurisdiction in its state. An excise tax in the United States is essentially a duty on a commodity made, sold or consumed in a jurisdiction. At the time, the city was already using various excise taxes, including a development excise tax on new commercial and residential development to fund capital improvements.

The housing excise tax is not a linkage fee in the accepted sense. The city explored using such a fee but, given its existing authority, found an excise tax to be more expedient and flexible. To ensure that a linkage fee could withstand legal challenge, the city would have had to undertake a detailed "nexus" study quantifying the relationship between the adverse impact and the mitigation fee. While there was no concern about determining that relationship, there was a concern that, once established, it might limit how the city could use the funds.

In response to the ongoing decline in housing affordability through the 1990s, the city continues to look at how the housing needs of other specific income groups might be met. Its goal is to create a continuum of appropriate housing choices at every income level.

In 1996, the city adopted a second target: an additional five per cent of the housing stock should be permanently affordable to moderate-income households earning 60 to 80 per cent of the area median income. These are principally first-time buyers attempting to move from rental accommodation to homeownership. So far, federal dollars are being used to assist them through homeownership and rehabilitation programs. Consideration had been given to offering below-market mortgages, but to do this, the city would need to increase its CHAP funding substantially or find other revenue sources.

Another possible target now under consideration are the first-time homebuyers in the 80 to 120 per cent income range, which are being priced out of the market. This group is unlikely to receive financial support. For the present, the city is relying on the "restricted units" coming out of the growth management system to provide for them.

Related provisions: residential growth management system

Under its growth management policies, the city limits the increase in new housing units to one per cent annually. To build housing, developers must obtain an allocation, which is awarded quarterly out of the total set annually. In 1997, there were 375 new units available for allocation.

Initially, the projects were chosen on the basis of a merit system. Points were given for providing moderate-income housing as well as energy-efficient units, downtown housing, and various amenities and features.

From the outset, the city recognized that these policies could adversely affect the affordability of housing. To mitigate that impact, the city awarded a significant number of points—20 per cent of the total—for moderate-income housing. Nevertheless, this process generated little affordable housing and might have added to housing costs by favouring more expensive features.

The current allocation process has been simplified but continues to promote the development of affordable housing in various ways. First of all, exemptions are made for various types of housing, including very-low-income units, group housing for special populations and accessory dwelling units.

Second, the system reserves a certain proportion for two categories of affordable housing. In 1997, for example, 16 per cent of the allocations was set aside for "permanently affordable units" for lower-income households, and 36 per cent for "restricted units" for households earning up to 120 per cent of the area's median income. The remainder was for market units that are not restricted in any way.

The restricted units are subject to various constraints to protect their affordability to a limited extent. Their size is controlled to check, apparently without much success, the potential for future price increases. The units must be made affordable for the specified income range only for the initial purchase, but permanent owner-occupancy is required to discourage speculative investments.

These proportions can be adjusted every year. Recently, the percentage reserved for affordable units has been increased.

Applications for the pool of market units generally have greatly exceeded the number available. When that happens, the allocations are prorated on the basis of the total number of units in the applications. The applications for the affordable units, on the other hand, have not reached the available allocation.

As a third way of promoting affordable housing, the city allows developers to secure an allocation by entering an agreement to build inclusionary projects for up to 40 units. Currently, these projects must provide a minimum of 20 per cent as permanently affordable units and 35 per cent as restricted units. No fees-in-lieu are now accepted.

Before late 1995, when the regulations were changed, 25 per cent of the units in these agreements were required as restricted units and fees-in-lieu at about $10,000 per unit were accepted.

A review of the city's growth control policies in the mid-1980s found that its development costs had increased in comparison to nearby comparable communities, but that its overall house prices had not. House prices remained competitive due to a significant shift in the city from detached housing to more attached units, condominiums and smaller units generally. This had been fostered by other regulatory measures, like zoning for higher densities.

Overall results

The MIHP produced about 1,200 moderate-income units, while the supplementary density bonuses were used to add another 200. Virtually no low-income housing was provided, nor was the cash-in-lieu option used much.

Through CHAP, the city has collected $2.1 million from the housing excise tax and $5.7 million from property taxes to the end of 1997. This represents an average annual intake of roughly $300,000 and $800,000 respectively.

Another $600,000 or so was collected in 1997-98, and small amounts before then, through fees-in-lieu from the inclusionary developments coming out the growth management system. These payments have temporarily peaked, before being curtailed, because of the change in regulations.

The CHAP funding has been used to assist in providing 444 permanently affordable units in 21 projects, and to create a landbank for over 400 units. Twenty-five per cent of these units was in nine new projects and the remainder in rehabilitated housing.

Eighty-nine per cent of these units was provided in 15 private non-profit projects and in one public non-profit project using mobile homes. Additional financial assistance for the non-profit housing, which varied from project to project, came from many sources, including low-income housing tax credits, tax-exempt bond financing, state loans and grants, federal rent supplements, federal loans, a private loan and private contributions.

The remainder was provided in five for-profit developments. Four were mixed-income projects, in which the affordable units represented about 15 per cent of the units. One of these depended upon financial assistance from private fund raising and another from low-income housing tax credits.

In addition to the CHAP units, the city is also beginning to secure permanently affordable units through the recent changes to its growth management system. Approximately 50 such units have been just completed or are under construction, and at least another 100 are in the approval process.

Over this time, for every CHAP dollar, the city has been able to attract about seven from various federal, state and private sources, including private foundations and local churches. Federal funding has generally been about $0.7 to $1.0 million annually. These additional funds are also used to assist a variety of other housing programs including CHAP housing.

Housing Impact Fees

(Sacramento, California)

Sacramento is a fast-growing city in northern California. It adopted housing impact fees as part of its zoning ordinance in early 1989 as a way of addressing the dwindling federal and state assistance for affordable housing. The surrounding County of Sacramento also established a similar program in 1990. Although not described as such, both of these are recognized as being linkage programs.

The ordinance was challenged by an association of commercial developers, but was eventually upheld by the senior state court in 1991 (see Appendix A). This was the first linkage program adopted after the Supreme Court's landmark Nollan decision dealing with development charges. As a consequence, it established an important model for following jurisdictions.

Main regulations

The ordinance created two separate sets of fees. The main set of citywide fees is dedicated to increasing the supply of housing affordable to lower-income working families across the city. The second is for area-specific fees dedicated to increasing the housing supply generally, without income restrictions, in a northern part of the city

Summary

Name of Initiative:	***Housing Impact Fees.***
Municipality:	City of Sacramento, California.
Population:	400,000.
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1989.
Purpose:	To provide housing affordable to lower-income households.
Regulations:	Non-residential developments are required to pay fees ranging from $10.65 per m^2 for offices to $2.90 per m^2 for warehouses.
Achievements:	Contribution of $6.9 million.
Contact:	Art Gee (916 264-5945) Principal Planner City Planning Division

dominated by a major concentration of job-generating uses.

The citywide fees are charged on all new non-residential construction, including additions and intensification of existing uses, according to these rates:

• offices	\$0.99/sq. ft.	(\$10.65/m²)
• hotels	\$0.94	(\$10.11)
• research and development use	\$0.84	(\$ 9.04)
• commercial use	\$0.79	(\$ 8.50)
• manufacturing use	\$0.62	(\$ 6.67)
• warehouse or office use	\$0.36	(\$ 3.87)
• warehouses	\$0.27	(\$ 2.90)

Some specific uses are exempt, and others are given their own rates. There are still others assessed on a project-by-project basis.

The regulations provide for three compliance alternatives:
- constructing lower-income housing to an equivalent value on or off site;
- dedicating developable land or air rights to an equivalent value in the central city area; and
- paying 20 per cent of the fee amount and constructing, or supporting the construction of, a certain number of infill housing units, as set by a formula in the ordinance, on vacant residential lands within designated declining neighbourhoods. There is no restriction on income or tenure for this housing.

The city undertook a detailed study that quantified the impact of the various types of commercial development on the increase in low-wage jobs, the need for lower-income housing and the cost to the city for providing that housing. The fees were designed initially at rates that would recover half the city's cost. The fees can be adjusted annually in relation to changes in building costs.

Both the city and county fees are deposited in separate housing trust accounts but administered by a joint housing and redevelopment agency. The funds generally are made available to other government agencies, as well as non-profit and for-profit developers. They are typically combined with other financial subsidies from the federal block grant programs, state and federal tax credits, state deferred loans, land write downs, federal rent subsidies and tax increment financing within designated redevelopment areas.

The use of the funds must comply with the requirements of the respective ordinances. The citywide funds are to be used for the construction, substantial rehabilitation or other subsidy for moderate-income housing "likely to be occupied by persons in the labour force." Within that, priority is to be given to low-income households. The corresponding county funds, on the other hand, are to be used entirely for low-income households.

Overall results

To early 1998, a total of \$6.9 million has been collected by the citywide program, and nearly \$370,000 by the area-specific program.

As of the end of 1995, \$4 million had been loaned or committed from the city trust fund for the provision of 334 lower-income units in five projects. Of these, 303 were rental and of that, 175 involved rehabilitation. The loans represented 22 per cent of the total development costs.

Priority recently has been given to the acquisition and rehabilitation of deteriorated multifamily properties because with the reduction in federal and state funding, this has become the most effective use of the funds.

Affordable Housing Production Program and Housing Impact Mitigation Program
(Santa Monica, California)

Santa Monica, a fully built-out and economically diverse city within the Los Angeles metropolitan

Summary

Name of Initiative: ***Affordable Housing Production Program.***

Municipality: City of Santa Monica, California.

Population: 90,000.

Type of Initiative: Inclusionary zoning—mandatory.

Start (Revisions): 1998 (previous programs: 1983 with many revisions and 1992).

Purpose: To provide housing affordable to households earning at or below 100 per cent of area median income, and half of that housing for those at or below 60 per cent.

Regulations: All new condominium and rental projects of two or more units must provide for affordable housing. The main compliance alternatives are:

- constructing 20 per cent for households at or below 60 per cent and 10 per cent at or below 50 per cent;
- constructing 100 per cent at or below 100 per cent;
- dedicating land to same value; and
- paying affordable housing fees based on \$66 per m^2 for rental and \$77 per m^2 for condo units.

Achievements: None to date.

Name of Initiative: ***Housing Impact Mitigation Program.***

Type of Initiative: Exaction program—linkage fees.

Start: 1986.

Purpose: To provide housing affordable to lower-income households.

Regulations: All general and medical offices adding more than 1,400 m^2 in new construction or 950 m^2 to existing must pay \$36.80 per m^2 for the first 1,400 m^2 and \$81.80 per m^2 thereafter.

45 per cent of these fees are committed to housing.

Achievements: Contribution of \$4.8 million.

Contact: Tad Read (310 458-8702)
Senior Development Analyst
Housing and Redevelopment Division

area, is one of the earliest cities to use both linkage and inclusionary programs to address its increasing affordable housing needs (see summary, page 42).

The city started using linkage fees on a negotiated basis in the late 1970s and enacted its current Housing Impact Mitigation Program in 1986. Except for inflationary adjustments to the fees, this program remains unchanged today.

The use of inclusionary programs in the city has gone through many revisions. The first program, which was adopted in 1983 through the city's housing plan, was adjusted many times. A new program, called the Inclusionary Housing Program, was implemented in 1992 through a zoning ordinance. This program was developed in response to a 1990 public referendum amending the city's charter to establish a new mandate for affordable housing.

This program was replaced by the Affordable Housing Production Program in mid-1998. This latest change was prompted by various concerns with the 1992 program, including that it might have been challenged as an illegal constraint upon development under state law. While not described as such, this program effectively has become an mitigation fee program rather than an inclusionary program.

Past regulations: Inclusionary Housing Program

According to the mandate incorporated in the city's charter in 1990, the city must use its regulatory powers to ensure that at least 30 per cent of all new multifamily housing built each year are made permanently affordable to, and occupied by, low- and moderate-income households, and at least half of that for low-income households.

In Santa Monica, the thresholds are 100 per cent of the median income for moderate-income households, 60 per cent for low and 50 per cent for very low. Unlike the rest of the report, this terminology is used in this section.

Through the 1992 inclusionary ordinance, this 30 per cent requirement was applied to all new condominium and rental projects of two or more units. As an alternative, 100 per cent of the units in the project could be provided for moderate-income households.

Projects providing the lower-income units were eligible for increased density under state law (see information on California's density laws under Orange County) and for relaxed parking, setback and coverage requirements. Certain city levies were also waived for the affordable units.

The inclusionary units were required to meet various design standards. In general, these units had to be reasonably consistent and concurrently built with the market-rate units. They also had to be evenly distributed throughout projects with 100 or more units. Their interior amenities and size could have been reduced, provided no significant differences were apparent from outside and the units were no smaller than the prescribed minimum floor sizes. They had to have at least two bedrooms, except in projects devoted predominantly to one bedroom or SRO units.

When built on site, the inclusionary units had to be rental in rental projects but could be either rental or ownership units in ownership projects.

The affordability of the units had to be controlled by deed restrictions for the life of the project.

Under the restrictive regulations of this ordinance, the payment of fees-in-lieu was permitted only in very limited circumstances. To be specific, fees were accepted only in place of construction in projects of less than 20 units, excluding density bonuses, and then only if the site had not been used for multifamily housing or even one lower-income unit.

The fees-in-lieu were set in 1992 at $51,000 for each inclusionary unit not provided. This figure had increased in 1998 to over $56,000 after monthly adjustments according to the CPI. The initial rate was described as recovering in full the average cost to the city of subsidizing the construction of a new low-income unit.

Upon review, a number of problems were found with the 1992 program. The requirements were both demanding and inflexible. Most developers—especially those wanting to build condominiums—opposed providing on-site inclusionary units as required, due to the lower revenues and perceived problems in marketing mixed-income projects. Of greatest concern, there was a danger that the program could have been challenged under state law as an illegal "governmental constraint" on the development of new housing in the city.

Current regulations: Affordable Housing Production Program

The 1998 ordinance still requires all new condominium and rental projects of two or more units to contribute toward affordable housing, but it provides a wider range of compliance alternatives:

- constructing on site at least 20 per cent of the units for low-income households, or 10 per cent of the total for very-low;
- constructing the same number of affordable housing units on another site within one-quarter mile (400 m) of the market-rate units;
- constructing on site 100 per cent of the units for moderate-income households;
- dedicating land to an equivalent value; and
- paying an affordable housing fee.

The basic inclusionary requirements were reduced and adjusted to match the thresholds qualifying for state-mandated density bonuses to enable the developers to use this option.

For both construction options, the same concessions as in the earlier program are provided but with some enhancements, and the same design standards still must be met. The affordability of the lower-income units provided under this program must be protected for at least 55 years.

The limit placed on the location of off-site developments was meant to ensure that lower-income housing was provided in all multifamily housing areas throughout the city.

The most significant changes in the regulations were made with regard to the fees. In the new program, the payment of fees is an option for all developments. The new fees have been initially set at $6.14 per sq. ft. ($66/m^2) for rental apartments and $7.13 per sq. ft. ($77/m^2) for condominium units. Unlike the previous fees, these fees are charged on the market-rate units when no inclusionary units are provided. On average, they will raise about $9,300 per apartment and $10,800 per condo. The fees will go into a reserve account dedicated to very-low- and low-income housing.

The fees are reduced for new projects not replacing existing multifamily projects—by 25 per cent for those on vacant residential sites and by 50 per cent for those on non-residential sites developed for housing. These reductions are intended to encourage residential development where it will not displace existing tenants nor disrupt existing multifamily neighbourhoods.

The fee rates were determined through a detailed study of the impact of the new market-rate multifamily development in the city on the need for additional low-income housing. This study found the average financial subsidy needed from the city in 1998 to be $155,000 for a new low-income unit and $135,000 for a very-low-income unit. Although the latter needs a higher overall subsidy, the city input is less because more federal money is available for these units.

These fees, it is recognized, will recover considerably less than the older fees. The revenue derived from a typical apartment unit will be only six to seven per cent, and a condo only five to nine per cent, of the city's subsidy for a new low-income unit. They were set at this lower rate so they could be challenged as a constraint on development.

The fees under the new program will be used to support non-profit production of lower-income housing. This was seen as making the best use of these private-market contributions, because they could leverage additional funding from other sources and could take advantage of the more efficient economies of scale provided by this sector.

The above revisions represent a fundamental shift in approach. When all is considered, the new program has effectively become an exaction program with construction options, rather than an inclusionary program with a limited fees-in-lieu option. There are several reasons for saying this.

- First, the new rate structure changes the fees essentially from fees-in-lieu to mitigation fees. The rationale given for them is based on the same as that typically used for linkage fees on commercial developments. Consistent with that, the new fees are based on the size of the market-rate units and no longer on the number of affordable units not provided.

- Second, the developers in the past were reluctant to build inclusionary units. Now, by lowering the fees and removing all restrictions, even fewer can be expected to undertake construction.

- Third, the 30 per cent figure in the charter is no longer being treated as a site-by-site objective. To meet this mandate, the city will be mainly relying on the non-profit sector, funded in part from fees from this program.

Current regulations: Housing Impact Mitigation Program

The mitigation fees are charged on general and medical offices creating more than 15,000 sq. ft. (1,400 m^2) in new construction, or adding more than 10,000 sq. ft. (950 m^2) to existing buildings.

The fees as of mid-1998 are $3.42 per sq. ft. ($36.80/m^2) for the first 15,000 sq. ft. of net rental area and $7.60 per sq. ft. ($81.80/m^2) for anything above that. The fees are adjusted monthly for inflation by the CPI. They were initially $2.25 and $5.00 per sq. ft. ($24.20 and $53.80/m^2) respectively.

Of the fees, 45 per cent goes to lower-income housing, 45 per cent to parks and the rest to a separate account that can be used for either purpose. Twenty-five per cent is payable before occupancy and the remainder in 25 per cent instalments for each of the following three years.

Under this program, the obligation can be met by the provision of lower-income housing to an equivalent value. These units must comply with many of the requirements affecting the inclusionary units.

Overall results

The mitigation program generated $4.8 million in fees through 1997.

The inclusionary program from 1992 to 1998 produced 110 lower-income units and $56,140 in fees-in-lieu out of 11 projects. All came after 1994, and most in the last two years, because there was little development in the early 1990s.

These projects fell into four categories:

- one rental project with 17 units that are 100 per cent moderate-income units;
- three rental projects with 84 units—25 per cent low-income and 75 per cent moderate-income—that were built using city loans;
- six rental mixed-income projects with seven low-income and two moderate units out of a total of 37 (the only inclusionary units in the conventional sense); and
- one condominium project providing $56,140 in fees-in-lieu for its single obligation.

There were also another eight recently approved inclusionary projects in mid-1998 in roughly the same categories. Five rental projects—two mixed income and three all lower income—could provide another 103 lower-income units. Two condominium projects could pay $530,000 in fees-in-lieu for their nine-unit obligation, while one small condominium could provide a moderate-income unit for its obligation.

When the non-profit production is added to these lower-income units, the 30 per cent mandate in the city's charter was being met when assessed in 1998.

Affordable Housing Policy

(Alexandria, Virginia)

The city is a virtually built-out and mixed-income community in the metropolitan area surrounding Washington, District of Columbia.

This policy is described as invoking the "voluntary contributions" of the development community to support affordable housing. It was established in 1993, but formalized an earlier practice in which these contributions were obtained from major projects on a negotiated basis. Through this policy, the city set a standard rate and various other rules that effectively made these contributions mandatory (see summary below).

The legal basis for this policy is somewhat unclear. In the supporting documentation, the statutory authority is said to rest in the city's charter, which states that the zoning code can be used to "preserve existing and facilitate the

Summary

Name of Initiative:	*Affordable Housing Policy.*
Municipality:	City of Alexandria, Virginia.
Population:	117,000.
Type of Initiative:	Exaction program—special permit.
Start:	1993.
Purpose:	To provide new and rehabilitated rental units for households earning less than 70 per cent of the area median income, and homeowner assistance for households earning up to approximately 100 per cent.
Regulations:	Most new commercial, industrial and residential developments are expected to contribute a standard rate of \$5.40 per m^2.
Achievements:	Contribution of \$1.6 million and provision of 37 moderate-income units from completed or partially completed projects, and the commitment of \$5.6 million and 76 affordable units from uncompleted projects. The contributions have used to assist in the provision of 176 lower-income units.
Contact:	Anne Heitlinger (703 838-4990) Housing Analyst Office of Housing

provision of new housing that is affordable to all segments of the community." Nevertheless, the city received a legal opinion doubting its authority to impose mandatory affordable housing charges under its zoning and land-use powers. On the other hand, this opinion stated that it did have the power to impose an affordable housing tax on all new construction under the wide-ranging taxing authority given by the state to Alexandria and many other cities.

Main regulations

Most new residential, commercial and industrial developments are expected to contribute $0.50 per sq. ft. gross ($5.40/m^2). Specifically, this includes new developments meeting two criteria:

- commercial and industrial uses adding more than 100 sq. ft. (9 m^2) and residential projects adding more than five units; and
- those that also need a special use permit for a variance to the zoning.

Because the existing zoning generally conforms closely to the existing building pattern, the latter criterion includes most new developments.

A pledge must be made to pay this amount before the building permit will be issued. Payment is due at occupancy by the commercial and industrial uses and the rental apartments, and at sale of the ownership units.

The program was portrayed in background documentation as a type of linkage program, since it was developed specifically to redress the adverse impact of new development on the local housing market. Nevertheless, unlike the linkage programs, the amount of contributions was not based on a quantified analysis of that impact.

The city decided to seek fees primarily, rather than housing, because they could be used in upgrading its existing housing stock. The purchase and rehabilitation of existing rental housing in the private market was considered to be the most cost-effective way for them to provide for affordable housing. Furthermore, there was a possibility that assistance from the city would be needed for existing subsidized housing in danger of being lost due to cutbacks in federal rental subsidies.

In lieu of all or some of the fees, proposals can be made through an "affordable housing plan" to meet the obligations by other means. Each plan is considered on a case-by-case basis. The provision of below-market "discount" housing units, both on or off the site, are identified as options. The affordability of these units must be controlled for the first sale or for 15 years, depending on which comes first.

Various incentives are available for the affordable housing provided through these plans. Residential density bonuses up to 20 per cent are given in return for providing 12 and one-half per cent of the total number of units as affordable units. The foregoing is based on state regulations for cities using density bonusing. Reduced parking standards, relaxed setback and height restrictions, and fast-tracked approvals are also potentially available. Finally, when appropriate, the housing also could be eligible for financial assistance from the city's housing trust fund.

Projects providing affordable housing within 1000 ft. (300 m) of a subway stop are eligible for special height variances and density bonuses.

The fees are deposited in the city's trust fund for affordable housing. They are combined with other federal, state and local funds when available, and used mainly for the following stated purposes:

- the preservation of existing publicly assisted housing affordable to household earning below 50 per cent of the area median income—this refers to the units considered vulnerable to being lost due to the cutbacks in federal rent subsidies;
- the development of new below-market rental housing for households earning between 50 and 70 per cent, and the new assisted rental housing for those earning below 50 per cent in conjunction with federal funding when available; and

- the provision of purchase subsidies for households earning from 70 per cent up to nearly 100 per cent, according to limits prescribed by state regulations—these subsidies, it was expected, would be used mainly for condominium and cooperative units because the other forms of for-sale housing in the city are likely to be too expensive.

Overall results

Under the formal policy, as of early 1998, nearly $1.6 million had been received in contributions from 27 completed or partially completed projects. These contributions ranged from approximately $1,000 up to $300,000. Nine of these projects still had outstanding pledges totalling about $850,000 due when entirely completed.

Two other completed projects had provided 37 discount units to meet their obligation of nearly $800,000. All these units are below-market for-sale units for households earning 50 to 70 per cent of the area median income.

There also were 54 approved projects—many under construction—with pledges totalling nearly $4.8 million. Six other approved projects had committed to provide 76 discount units for their obligation. Some of these pledges might not be collected if the projects do not proceed.

The above figures do not include three completed or nearly completed projects that had made voluntary commitments before adoption of the formal program. These projects had contributed nearly $4.2 million, with almost all of that coming from one large mixed-used project. They also still had outstanding pledges of over $600,000.

The housing trust fund has provided about $3.3 million through grants, forgivable loans and long-term loans to support 12 lower-income housing projects providing a total of 176 units. In these projects, the money has been used to assist in the purchase, rehabilitation and partial construction of the housing; to provide rental subsidies and relocation assistance for households displaced by rehabilitation; and to pay pre-development costs, outstanding real estate taxes and marketing costs.

Through its homeownership program, the fund has also provided about $500,000 in long-term loans of up to $15,000 to assist in down-payment and closing costs.

Canadian Examples Profiled

Development Cost Levies
(Vancouver, British Columbia)

The city collects levies in its downtown to pay for certain capital improvements (see summary, page 49). Under provincial enabling legislation specific to the city, it can collect levies for "replacement housing," parks, day-care facilities, piped services and highway facilities. The levies must be charged on all new developments that create the need for the improvements, with the exception of churches, social housing, small residential buildings and alterations without area increases.

Replacement housing is essentially defined by the legislation as housing for persons displaced by development and unable to find affordable accommodation. The city will be using the housing funds to provide replacements for the SRO units lost through redevelopment.

Main regulations

The first levy was implemented in early 1992 in the approximately 30-block older core of the downtown. The levy on all uses, initially set at $64.50 per m² ($6/sq. ft.) buildable, is now $65.52 per m² ($6.18/sq. ft.). In this particular area, the city expects to collect $43 million over 25 years from the additional development permitted under the new zoning provisions. This will cover 37 per cent of projected improvement costs; 42 per cent will go to replacement housing and the remainder for parks and day care.

Since 1992, development cost levies have been established in six more areas, but only two of these will allocate money to replacement housing.

Summary

Name of Initiative:	***Development Cost Levies.***
Municipality:	City of Vancouver, British Columbia.
Population:	515,000.
Type of Initiative:	Exaction program—development charges.
Start (Revisions):	1992 (1994 and 1996).
Purpose:	To provide funds for various planned capital improvements, including replacement housing for low-income SRO-type rental units lost through redevelopment.
Regulations:	All new commercial and large residential developments in certain areas are required to pay levies for planned capital improvements in those areas. The levies and improvements vary from area to area. The first levy, which is applied to the older downtown core, charges 65.52 per m^2. Of that, 42 per cent goes to replacement housing. The other levies are lower, and less is devoted to housing.
Achievements:	Contribution of \$5.2 million for housing, with \$4.5 million coming from the first area.
Contact:	Jill Davidson (604 873-7670) Senior Housing Planner Department of Housing and Properties

The current rates are \$34.98 per m^2 (\$3.32/sq. ft.) for all uses in one area, and range from \$21.53 to \$53.82 per m^2 (\$2 to \$5/sq. ft.) for various uses in the other.

The levies are being systematically implemented across the entire downtown, following new zoning by-laws based on new community plans for each area. The amount of the levy and the proportion going to replacement housing vary area by area. In setting the respective rates, the city looks at the projected new development in each area, the costs of the associated public improvements and the potential for the new development to pay for the needed improvements. Levies collected within each area will be spent entirely within that area.

Overall results

As of mid-1998, \$5.2 million has been collected for replacement housing in the three areas and 86 per cent of that has come from the first levy for the older downtown core.

So far, the funds have been used to buy and upgrade an existing SRO hotel and to purchase a site for non-profit housing.

Summary

Name of Initiative:	***Employee Housing Service Charge.***
Municipality:	Resort Municipality of Whistler, British Columbia.
Population:	7,000.
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1991 (annual revision of fees 1992-1996).
Purpose:	To provide new housing affordable to employees of new commercial, industrial and tourist developments.
Regulations:	New commercial, industrial and tourist developments are required to contribute $5,578 per employee or the equivalent in "employee bed units." When converted, this amounts to $112 per m^2 for commercial uses, $22 per m^2 for industrial uses and $1116 per guest room in tourist accommodation.
Achievements:	Contribution of $6.6 million.
Contact:	Mike Purcell (604 688-6018) Acting Director Department of Planning and Development

Employee Housing Service Charge
(Whistler, British Columbia)

Whistler, a major ski resort north of Vancouver, has experienced tourist-related development pressures for many years. This has led to a severe shortage of affordable housing.

In response, the town has developed various policies specifically addressing employee accommodation. These were first comprehensively presented in the 1988 Resident Employee Accommodation Policy, but has gone through many elaborations, including its most recent 1996 Affordable Employee Housing Strategy (see summary above).

Within that policy framework, the town initiated its Employee Housing Service Charge in 1991, which was regularly updated to early 1996. These provisions were enacted under special powers available to resort communities in the province. Under these powers, Whistler is able to levy "charges ... on land and improvements for municipal works and services."

The town has been engaged in the provision of employee housing in other ways. Most notably, in 1983 along with five major employers in the town, it established a non-profit organization to provide housing for employees that otherwise were unable to find affordable accommodation in the community. As a consequence of this and other efforts, the town has a large stock of "employee-occupied units" that are restricted by agreements to occupancy by employees and, sometimes, also to specific rent or resale price levels.

Main regulations

Under this program, all new commercial, industrial and tourist development is required to contribute toward the provision of employee housing. It applies to all new construction, extensions of existing structures and changes of use that will generate more employees. Tourist-related accommodation in private residences is exempt.

In 1991, the required contribution was based on $5,000 per employee, which was the amount needed to recover 20 per cent of the estimated public cost of providing the additional housing generated.

The current rate is $5,578 per employee. When translated according to the employees generated by the various uses, it amounts to approximately $112 per m² of gross floor area in commercial developments, $22 per m² in industrial developments and $1,116 per guest room in tourist accommodation.

The contribution can be made as a cash payment to the municipality's reserve account for employee housing, by providing "employee bed units" in new construction or in existing accommodation, or by paying 10 years of rent in advance for accommodation provided by the municipality's non-profit housing arm. The arrangement involving prepayment of rent is subject to renewal at 10-year intervals for 100 years.

Other contributions to an equivalent value might be considered, such as the dedication of serviced land or even the provision of housing for seasonal workers where appropriate.

Under the construction option, a self-contained bachelor suite or a bedroom under 10 m² in size in a conventional dwelling unit counts as an employee bed unit. Larger bedrooms count as two such units. These units must be controlled by agreement limiting their occupation to employees working in the town.

The cash payments going into the reserve account will be dedicated specifically to affordable housing for employees. Through the town's housing agency, established in 1997, the intent is to use the funds to leverage as much private investment as possible in new rental housing.

The development model presently being followed will involve the purchase of development sites, which will be sold to private developers at a below-market value on the condition that they build and permanently maintain affordable housing. The specific affordable housing target will be identified project by project. The developers will be selected through competitive proposal calls. The rent or price of the units will be controlled through housing agreements.

Overall, this program and its associated policy framework are directed at increasing the supply of conventional housing affordable to all permanent employees. The housing is not tied specifically to the contributing employers. This represents a change from earlier policies directed more at accommodation provided by employers for their employees. Often this was housing with shared facilities suitable for short-term and seasonal resort workers. Little housing was built for permanent employees, although they were often given rent or purchase assistance by their employers.

Overall results

To the end of 1997, over $5.7 million had been collected from charges. Another $4 million or so can be expected within the currently approved development limits.

So far, no housing has been built. Land has been purchased and initial work is under way for one project. Other properties are in the process of being purchased.

Summary

Name of Initiative:	***Housing Requirement for Commercial Development.***
Municipality:	Town of Banff, Alberta.
Population:	6,800.
Type of Initiative:	Exaction program—linkage fees.
Start (Revisions):	1990.
Purpose:	To provide housing affordable for employees of new commercial development.
Regulations:	New commercial developments are required to provide additional housing at a rate of one-half bedroom per employee. This is converted to an area-based requirement for various types of commercial use depending on their average employee generation. Small developments with an obligation up to three bedrooms are allowed to pay fees-in-lieu of $15,000 per bedroom.
Achievements:	Contribution of $400,000 in fees and construction of 150 to 200 units.
Contact:	Trent Harder (403 762-1215) Development Planner

Housing Requirements for Commercial Development
(Banff, Alberta)

Banff is a popular resort community located in Banff National Park. Strong tourist pressures, coupled with a limited land base, have led to a shortage of affordable housing for new employees in the tourist industry as well as for long-time residents.

The town has required new commercial development to provide for housing through its zoning by-laws since its incorporation in 1990 (see summary above). This continues a similar requirement started by Parks Canada, which tied the housing provision specifically to the new employees generated by the commercial development. The municipality has shifted the purpose to increasing the inventory of suitable housing generally because the former approach was too difficult to administer.

Main regulations

Development of new commercial floor space, or a change in use of existing commercial floor space, is required to construct new housing within the town's boundaries.

The requirement, which is based generally on the provision of one-half bedroom per new employee, varies by commercial use according to the average employment generation (see Table 2).

Any housing demolished by the commercial development also must be replaced by the equivalent number of bedrooms on top of the above requirements.

**Table 2:
Housing requirements for commercial uses in Banff**

The provision of one bedroom is required for the following:

Eating and drinking establishments	20m² gross
Retail stores	100m² gross
Professional, financial and office support services	50m² gross
Other commercial and commercial services	133m² gross
Government and institutional uses	200m² gross
Warehousing	200m² gross
Hotels of fewer than 60 rooms	10 rooms*
of 60-100 rooms	8 rooms*
over 100 units	6 rooms*
Hostels	10 units* of accommodation

* plus any additional requirements for eating, drinking, retail and other accessory uses.

Contributions of $15,000 per bedroom to the town's housing reserve fund are accepted for small projects with an obligation up to three bedrooms. This alternative has been available since 1992.

The provision generally must be in the form of conventional housing for permanent-resident employees, but in some cases the city will accept accommodation suitable for seasonal staff. Specifically, new housing without private kitchens may be accepted, provided other facilities are available on site to serve the temporary staff.

The new housing must be completed before the commercial development can be occupied.

Overall results

The requirement has generated over $400,000 in contributions from 1992 to the end of 1997.

Many of the developers produce the housing rather than pay fees. As many as 50 units per year have been provided. One accepted way is to buy and demolish an older property on a large lot, build a four-to-six unit condominium, and sell the units on the open market.

Occupancy of this housing is not tied to income. By virtue of the way it is developed, it tends to be smaller units that are expected to remain reasonably priced.

All funds collected to date, except for a small amount being held in trust, have been forwarded to the town's housing corporation, which was established in 1993 with a mandate to enhance housing affordability in the community. Its activities have been also supported by municipal appropriations and the proceeds from its development activities.

The housing corporation has focussed its earlier efforts on making conventional single-family owner-occupied housing more affordable for long-time resident families with modest income. The corporation develops housing that it sells below market value while holding a second mortgage to secure the public subsidy. It has completed and sold about 80 such units.

Affordable Housing Statutory Reserve
(Richmond, British Columbia)

The city of Richmond, a nearly built-out suburban community within the Vancouver urban area, authorized establishing this housing reserve fund through the adoption of its Affordable Housing Policy in 1989 (see summary, page 54). The stated purpose of the reserve was to provide money for the purchase of land that could be leased for non-profit housing constructed through federal–provincial funding.

Main regulations

Under this policy, developers of large market housing projects that need rezoning are encouraged to contribute to the housing reserve. The policy remains flexible in application. There are no guidelines on the size or type of project affected, nor the value of the contribution. No density bonuses or other concessions are explicitly offered in return. The contribution is negotiated on a case-by-case basis.

Summary

Name of Initiative:	***Affordable Housing Statutory Reserve.***
Municipality:	City of Richmond, British Columbia.
Population:	140,000.
Type of Initiative:	Exaction program.
Start:	1989.
Target:	To provide funding for the purchase of land for non-profit housing projects.
Regulations:	Large residential developments seeking rezoning approvals are encouraged to contribute fees.
Achievements:	Contribution of $2 million.
Contact:	Carolyn Morrison (604 276-4220) Social Housing Planner Planning Department

Overall results

As of mid-1998, approximately $1.8 million had been collected from four developments. All this was collected before 1992. Since then, development activity has slowed and no contributions have been made.

All these projects involved negotiated development agreements, in which additional development rights were given by the city in exchange for the housing contributions and amenities. This approach depends on a buoyant market to give the city a strong bargaining position.

The funds in part have been used to purchase several undeveloped lots and one site that was subsequently leased and developed for a 48-unit non-profit housing project.

Density bonusing—also known as incentive zoning in some places—encourages developers of new commercial and residential projects to provide for affordable housing and various public amenities on a voluntary basis in exchange for increased developable floor space.

Reviewed in this section are ongoing municipal programs that use density bonusing in a structured and sustained effort to provide for affordable housing. In these programs, the density bonuses are typically made available on an as-of-right basis for many sites across large areas under some established and standard limits and rules.

Many municipalities also use density bonusing in an ad hoc way in the development of one or more sites. Although the use of density bonusing in this way is far more common than through ongoing programs, it is outside the scope of this study.

Density bonus programs are generally associated with major downtown areas or similar intensively developed areas. Only in these areas can valuable revenue-generating space be offered in sufficient quantity to invite participation. Furthermore, only in these areas will the increased building size generally not adversely affect the surrounding environment or infrastructure.

Types of programs

Density bonusing is used in different ways. The key distinctions revolve around what uses get bonuses—commercial or residential—and how the bonuses are given—on an as-of-right or negotiated basis.

Commercial bonuses

Commercial bonuses are given mainly for major office projects, but sometimes retail and hotel projects also can take advantage of them.

Many jurisdictions in the United States use commercial bonusing to obtain various public amenities, but only a few appear to use it for lower-income housing. Known programs include those in Seattle, Miami, Orlando and Tampa. A similar program in Hartford targets market-rate housing. Out of these, only Seattle has been productive, and then only to a limited extent (in this section).

These programs typically are directed at securing the payment of fees. The production of either on-site or off-site housing is sometimes an option, but is generally not used unless the commercial space is part of a mixed-used project.

Commercial bonus programs are sometimes confused with linkage programs because both involve the contribution of fees from office projects. Linkage programs are different in two fundamental ways: they are mandatory and offer no density bonuses as cost offsets.

At least two of the above-mentioned cities—Seattle and Hartford—first considered enacting linkage programs, but were dissuaded by the opposition from developers and the potential for legal challenges.

In Canada, only Toronto appears to have used commercial bonusing on a sustained basis, as noted shortly.

Residential bonuses

Unlike the commercial programs, residential bonus programs generally are directed as a first priority at securing affordable housing units in the United States, or developable land for that housing in Canada. Fees-in-lieu are sometimes accepted, but generally only when those first priorities are not feasible.

Residential density bonusing, as generally described, also could also encompass incentive-based inclusionary programs. The mechanics in each are the same: both trade increased density for the housing provision. What mainly distinguishes them is the type and scale of development with which they are associated. Inclusionary zoning is conventionally identified with low-density suburban development, and density bonusing (or incentive zoning) with high-rise urban development.

Only one productive residential bonusing program in the United States—New York City—has been identified. The lack of residential bonus programs can probably be explained by the conditions in most American urban areas. Because few are attracting new market housing, offering the right to build more housing generally would have no value.

Some Canadian cities—Vancouver, Burnaby and Toronto—have used residential bonuses on a regular basis, but in a somewhat different way.

As-of-right versus negotiated bonusing

Density bonuses can be given in two different ways: as-of-right according to established limits and rules typically set out in the zoning by-laws, or through negotiated agreements determined site by site. The former approach is used predominantly in the American programs, while the latter has been used to date in the most comparable programs in Canada.

The prescribed rules as used in as-of-right programs in the United States can cover many aspects. They typically identify what amenities are eligible for bonuses, how much density can be given for each amenity, and how much density can be given at a maximum for various categories of sites. They might also include design standards to be used for each of the amenities. In the case of Seattle's bonus system, probably the most elaborate example, these rules take 100 pages to present.

There are admittedly many planning and procedural issues that influence why one or the other of these approaches is used. These are beyond the scope of this report to review.

The experience presented in this report does point to an important finding that also should be considered. The use of bonuses through site-specific negotiations has been very successful. This approach apparently works because the bonuses can be tailored to the opportunities arising on a particular site and in particular market conditions.

In marked comparison, the structured as-of-right programs have not yet proven capable of producing affordable housing to any notable extent. None of the handful of examples to date has achieved very much. This remains true even when the sample is expanded to include the incentive-based inclusionary programs.

Various reasons can be offered for this lack of production. The success of incentive-based programs depends on the additional density offered. Setting appropriate density limits that will be permanently available as-of-right for a wide range of sites over a long period of time is difficult to do. Under the circumstances, municipalities can be rightfully expected to be cautious in what they will give, especially when the increased density might have an impact on the surrounding development and infrastructure.

Most of these program also offer bonuses for amenities other than affordable housing. These other amenities are often more attractive to private developers because they are easier to provide and also serve to enhance their projects. As a consequence, these amenities siphon off any potential interest in the density bonuses.

Examples in Canada

As noted earlier, a small number of Canadian municipalities have successfully used density bonusing on a regular basis. Unlike their American counterparts, the municipalities here have relied much more on negotiated forms of bonus.

Toronto appears to be the only Canadian city to have made sustained use of commercial bonusing. This example, strictly speaking, was not a formal program because the density bonuses were negotiated without pre-established limits or other rules. It is included in this report because some of these rules did evolve over time in the course of various negotiations. Furthermore, it stands out as apparently the single most successful example of sustained density bonusing in both countries.

Toronto's experience is also instructive from another viewpoint. Its negotiated approach raised various concerns, including the perception that the resulting development was too large and that developers were taking advantage of the system to gain at the public's expense. These concerns eventually contributed to the curtailment of these bonus practices.

Various Canadian municipalities—including Toronto, Vancouver and Burnaby—also have regularly given additional residential development rights on a negotiated basis to get land for non-profit housing in major residential developments. These particular efforts do not fit readily into any of three conventional categories used in this report. As noted earlier, they share some similarities with incentive-based inclusionary programs—particularly, a fundamental objective to incorporate below-market housing in new market-rate developments—but they are quite different in many other ways (see Table 1, in section, Inclusionary zoning).

Although they been included in this section, it must be noted that they have used density bonusing in the conventional sense of the term. In these cases, the density was determined as part of a comprehensive agreement covering many planning considerations, and in which no explicit relationship was made between the increase in density and the provision for non-profit housing. Furthermore, whereas density bonuses are usually determined in relation to a known base density, there was no such base in these cases because they generally involved changes of use from industrial to residential.

Both Toronto and Vancouver in the past also have adopted various as-of-right density bonus programs aimed at encouraging private developers to incorporate government-assisted units within their projects. While non-profit providers often took advantage of the bonuses, few private developers have ever used them.

Two municipalities in the Vancouver area—Burnaby and North Vancouver—have also recently adopted formal bonus policies, but only Burnaby has proceeded so far to establish the implementing regulations. Many other municipalities in British Columbia are now studying the potential for using density bonusing in similar structured programs. This is a result of 1993 provincial legislation giving local governments the clear authority for the first time to offer increased densities in return for affordable and other public amenities.

U.S. Examples Profiled

Downtown Housing Bonus Program and Transfer of Development Rights Program

(Seattle, Washington)

The city of Seattle has implemented an elaborate density bonusing program for downtown office projects, together with a closely associated transfer of development rights (TDR) system (see summary, page 58). The two represent the most comprehensive incentive-based initiative for promoting and preserving downtown affordable housing in the United States.

Both of these programs were implemented in 1985 as part of the city's zoning code in a package of measures associated with its new downtown plan. These measures were directed at creating an active and diverse urban core, particularly by promoting and maintaining a residential mix downtown.

The city originally proposed a mandatory linkage program like San Francisco's, but after objections from the business and development community, devised this incentive-based approach.

Summary

Name of Initiative:	***Downtown Housing Bonus Program.***
Municipality:	City of Seattle, Washington.
Population:	550,000.
Type of Initiative:	Incentive zoning—commercial/as-of-right.
Start (Revisions):	1985 (1987 and 1989).
Purpose:	To provide housing affordable to lower-income households in the downtown. (Originally, to provide middle-income housing downtown.)
Regulations:	New downtown office projects can obtain additional density, as-of-right within certain prescribed limits and rules, by providing for lower-income housing. The additional density can be earned by constructing new housing, rehabilitating existing units, converting non-residential uses and contributing cash. The cash contributions are set at \$215 and \$140 per m^2 for the two downtown areas.
Achievements:	Contribution of \$2.8 million used in provision of 159 lower-income units.
Name of Initiative:	***Transfer of Development Rights Program.***
Type of Initiative:	Transfer of development rights.
Start (Revisions):	1985 (1988 and 1993).
Purpose:	To maintain existing low-rent housing in the downtown.
Regulations:	New downtown office projects also can obtain additional density by purchasing the unused development rights of existing low-rent housing and landmark structures.
Achievements:	Rehabilitation and preservation of 422 low-income units.
Contact:	Jane Voget (206 684-0343) Project Manager Department of Housing and Human Services

While the programs remain substantially unchanged since being enacted, various adjustments have been made over the years. When introduced, the TDR program was intended for existing low-rent housing and landmark buildings. In 1993, special provisions were added for landmark performing arts theatres.

The bonus program initially was intended to promote middle-income housing downtown, because government funding was available at that time for lower-income units. In response to the ensuing funding cutbacks, the regulations were changed in 1987 and 1989 to target, specifically, lower-income housing. These changes also reflected the emerging view that public resources should not be used on housing that could be built by the private sector without it.

Main regulations: bonus program

Under the bonus provisions, commercial developments in certain downtown areas can obtain additional developable floor space in exchange for providing a long list of public benefits. In addition to affordable housing, the list includes cultural facilities (theatres and museums), pedestrian provisions (sidewalk widening, weather protection, and transit station access), urban features (urban plazas, public atriums, rooftop gardens, and sculptured building tops), short-term parking and space for child care and human services. The provisions are mainly for office developments, but in certain areas, hotel and retail uses also can take advantage of the bonuses.

Each of these benefits has its own rules—set out in a 100-page manual—that govern the bonus calculation and design requirements regarding location, size, access, furnishing or landscaping and other aspects as appropriate.

The provision of lower-income housing is promoted mainly by a tiered system of bonuses. The relevant downtown areas have a tiered series of permitted floor to area ratios (FARs) on top of the base permitted FAR. Density bonuses up to the first tier can be earned by providing non-housing public amenities, to the second tier by providing housing and purchasing TDRs, and to the top tier by purchasing only landmark theatre and housing TDRs. For example, in the main office core area that has the highest permitted densities, the base is a FAR of five while the maximum at each tier is seven, 10 and 14. Other areas have other values, and some do not allow for use of TDRs.

Under the bonus program, the additional commercial floor space can be earned in a number of ways: by constructing new housing, rehabilitating vacant units, converting commercial buildings to residential use, or contributing cash to an approved housing fund or non-profit housing development. Separately, under the TDR system, it also can be obtained by purchasing development rights from elsewhere.

In the case of cash contributions, the additional developable space is based on the payment of \$20 and \$13 per gross sq. ft.(\$215 and \$140/m^2), depending on the downtown area. The earlier figures up to 1994 were \$15.30 and \$10 per sq. ft. (\$165 and \$107/m^2).

In the case of housing production, the additional developable floor space is determined by a matrix of fixed ratios that vary according to the affordability of the units, the type of construction and location of the commercial project. These ratios are adjusted only when the housing is supported by some form of public subsidy. Construction and rehabilitation are encouraged by giving them approximately 30 per cent more value than the cash contributions for the same space. Similarly, the provision of housing for households with lower incomes is supported by giving such housing incrementally higher bonuses.

The housing built, rehabilitated or otherwise assisted must be located in the downtown area. The housing must be provided only for lower-income households and at least half of that for households with low incomes. Its affordability must be guaranteed for 20 years.

Main regulations: TDR system

The TDR program is used to preserve existing low-rent housing in the city's downtown by removing the pressures for redevelopment and also by encouraging the provision of private-sector resources for rehabilitation. The unused development rights of existing low-rent housing can be sold and transferred for use in new commercial projects in certain downtown areas. The development rights that can be so transferred equal the difference between the existing built floor space on the site and the potential floor space if the site is developed to its maximum permitted floor space.

The TDRs can be used by the commercial projects up to the maximum FARs permitted under the zoning code. The development rights can be purchased directly from the low-income housing or from the city's TDR bank. Excess TDRs can be used in other projects.

The value of the transferred rights is set by the market through negotiation. In the most recent transactions, the price has been around $11 to $13 per sq. ft. ($120 to $150/m²). The city has prepared guidelines on how to evaluate the price.

Out of the money for the sale of the development rights, the existing housing must be rehabilitated and maintained for 20 years entirely as low-income housing. The initial rules allowed a 50:50 mix of low-income and moderate-income units.

Vacant or occupied housing projects located anywhere in the downtown are eligible, including new housing and residential uses in converted commercial buildings, provided they contain at least one FAR of low-income units. The sale of partial development rights is permitted. The projects can also take advantage of other forms of government funding assistance. In the case of non-profit providers, any surplus proceeds must be used in another low-income project in the downtown.

The city created a TDR bank in 1988. Through this, it purchases the development rights of low-rent and landmark buildings, and sells them later to downtown office developments seeking additional space. This process allows the city to protect and upgrade these buildings during recessionary periods when the demand for additional downtown commercial space is weak, and recover the money when the demand is strong.

Overall results

The housing bonus program has been used four times, once in the late 1980s and the rest in the 1990s. Together, these projects received bonuses amounting to 272,000 sq. ft. (25,000 m²) more of office space in exchange for payments of over $2.8 million, which were used to assist in the provision of 159 lower-income units.
Two additional projects have been recently approved, and another recently proposed, with a combined potential of 75,000 sq. ft. (7,000 m²) for $852,000 assisting 76 units.

This relatively small output has been attributed to two reasons: the backlog of approved office developments when the program was started, and the effect of the intervening building recession.

The main beneficiary of the bonus program to date has been a 55-storey downtown office tower approved in 1988. This tower, through the use of various density bonuses, doubled its permitted floor space from 540,000 sq. ft. (50,000 m²) to 1.1 million sq. ft. (100,000 m²). The largest bonus, amounting to 250,000 sq. ft. (23,200 m²) or 13 extra office storeys, was given in exchange for $2.5 million paid to a non-profit agency toward the construction of 93 new lower-income units. The other bonuses were for transit access, day-care facilities, retail space, an outdoor public escalator, an urban plaza, a public atrium, a rooftop garden terrace and a sculptured building top.

The TDR program to date has been used to support the rehabilitation and preservation of 422 low-income units on nine downtown properties.

The above-mentioned tower has been responsible for only three private TDR transactions, all again in the late 1980s. In total, it purchased another 41,500 sq. ft. (3850 m²) of commercial space for nearly $400,000, which was used in the rehabilitation of 156 low-income housing units.

The TDR bank has been involved in all of the other transactions. During the 1990s, it purchased about 147,000 sq. ft. (13,700 m²) in development rights for about $1.75 million from six properties with 266 existing low-income units. Purchases from three more properties with 350 units are now being considered. In late 1996, it sold 130,000 sq. ft. (12,100 m²) of the accumulated development rights for $1.47 million to a major hotel project.

Related measures

Seattle uses property taxes extensively to provide for lower-income housing. Through its Housing Levy, a dedicated surcharge on its property taxes, the city will be setting aside $59.2 million over seven years starting in 1996. This levy was the result a recent public referendum approved by a majority of the voters. Seventy per cent of the funds is committed to producing low-income rental housing. The remainder will go to assisting very-low-income households with house repairs and low-income households with home purchase, and to operating and maintaining rental projects for extremely-low-income households.

This is the third such levy. The earlier levies targeted seniors housing, assisted housing, supportive services for people with special needs and housing for working families.

Through its Growth Related Housing Program, started in 1985, the city has dedicated part of the additional property tax revenues from new downtown construction to low-income housing. Under the formula used initially, in the first year of a completed project, the full amount of its increase in property taxes went to the housing program. Then, in each of the following five years, the amount going to the program dropped by 20 per cent, until the dedication for that project was phased out. In this way, $6.8 mil was raised to the end of 1994, roughly at a rate of $900,000 over the last few years.

Because of problems associated with getting the assessment data, the funding since 1995 has been changed to an estimate of that increase. In effect, the funding is now an outright allocation from the city budget, and another $3.5 million has been allocated over four years to the end of 1998.

The funds since 1986 have been used to assist in the production of 348 units in 16 projects through new construction and rehabilitation; 87 per cent of the units are downtown. The units are for very-low-income households—the majority earning under 30 per cent of the area median income and the remainder under 40 per cent.

The city has enacted two other related, but less successful, regulatory measures. Its Inclusionary Zoning Ordinance for the downtown core, enacted in 1985, requires that at least 10 per cent of the units in new downtown structures containing 20 or more dwelling units be provided and maintained as affordable for middle-income households for 20 years. The city continues to obtain inclusionary units through this ordinance, but because of the possibility of a legal challenge, it has been reluctant to lower the income eligibility and enforce the long-term affordability requirements.

It passed the Housing Preservation Ordinance in 1981, requiring property owners that demolish low-income housing to replace a specified percentage and provide relocation assistance for the tenants, or to pay an impact fee to a housing replacement fund. After various challenges, the ordinance was invalidated in 1992 on the grounds that it imposed an unduly oppressive obligation on a particular group of property owners. The decision, on the other hand, also seemed to indicate that a less onerous and more broadly based imposition might have been accepted.

Summary

Name of Initiative:	***Inclusionary Housing Program.***
Municipality:	City of New York, New York.
Population:	7,500,000.
Type of Initiative:	Incentive zoning—as-of-right/residential.
Start (Revisions):	1987.
Purpose:	To provide housing affordable to lower-income households.
Regulations:	20 per cent residential density increase in certain high-density areas exchanged for the construction of two to four times that space as lower-income housing, depending on whether housing is new or rehabilitated, on or off site, and on public or private lands.
Achievements:	Construction of 315 units.
Contact:	Jamie Smarr (212 863-5000) Director of Tax Incentive Programs Department of Housing, Preservation and Development

Inclusionary Housing Program
(New York, New York)

New York City was a pioneer in the use of incentive zoning. Its zoning code was amended in 1961 to allow for the use of density bonuses in exchange for a variety of public amenities, including lower-income housing. Since then, density bonuses have been used in many areas across the city.

This program represents the city's only incentive program dedicated to affordable housing. It has been included in the city's zoning code without amendment since 1987 and, despite its title, is actually a form of incentive bonus. The program's stated objective is to preserve and promote a mixture of housing by assisting lower-income housing in mixed-income areas experiencing a shift to upper-income housing.

Main regulations

The program provides a density increase of up to 20 per cent for new market-rate housing projects in exchange for the provision of new or rehabilitated lower-income housing.

The increased density can be used only on sites with the city's highest residential zoning in certain residential districts in Manhattan. Those districts do include some of the most dense, diverse and attractive residential neighbourhoods in the city, such as those east and west of Central Park. Under this program, the density on those sites can be increased from a floor to area ratio of 10 up to a maximum of 12.

The additional floor area can be used for additional market-rate housing on the same site or a different site from the lower-income housing, or it can be sold to other eligible projects. The bonus cannot be used until the lower-income housing is completed. If the bonus is used on another site, that site must be within one-half mile of the district containing the lower-income housing. The city does not monitor or control the sale of the density bonuses. Their current value has been estimated to be about $40 to $60 per sq. ft. ($430 to $650/m²).

The density increase that is provided depends on various conditions: whether the lower-income housing is in new construction or rehabilitation, on private or public land, and on site or off site. For example, the area of the market-rate housing can be increased by 2.2 times the area of the lower-income housing when it involves substantial rehabilitation on another site provided by a public agency at nominal cost. The maximum is four times if new lower-income housing is constructed on private lands.

The program is designed to achieve the production of affordable housing by the private sector with the minimum of municipal involvement. The construction or rehabilitation of the lower-income housing must be entirely financed out of the enhanced value created by the increased density. The use of real estate tax abatements, government operating assistance and federal low-income tax credits is permitted, but government assistance in the form of loans or grants is not.

The lower-income units created through this process are not burdened by a long-term debt. As a result, the rents can be kept low because they must cover only the ongoing maintenance and operating costs.

Fees-in-lieu are not accepted in this program. The city now discourages fees collected this way, because in the past it was unable to use them effectively.

The lower-income housing is targeted to households at or below 80 per cent of the median income. It must be maintained and leased as such for the life of the "bonused" floor area. Generally, the lower-income housing must be managed by a qualified not-for-profit organization.

Overall results

Under this program, 162 lower-income units have been provided in seven projects, the first in 1989 and the most recent in 1997. The construction of another 153 units in four projects has started during the last year.

One of the lower-income projects under construction is for SRO units. All the remainder, both completed and under construction, are for conventional apartments.

The program had been expected to produce 200 to 300 lower-income units annually. The poor market conditions over the last few years have affected the output. The relatively few sites eligible for the density bonus, coupled with the geographical limits on the off-site development, might also be constraining production more than expected.

Related programs

The city provides temporary exemptions to many types of new development from the additional real estate taxes on the new floor space, but not from the existing taxes on the land. Since 1987 through its 421-A Negotiable Certificate Program (also called 421-An Affordable Housing Program), it has also used these exemptions to promote affordable housing in an area covering roughly the lower half of Manhattan. More specifically, tax exemptions for new residential construction within this area are limited to only two possibilities: a 20-year exemption for constructing, on site, 20 per cent of the total units as affordable units, and a 10-year exemption for purchasing "negotiable certificates" for all of the units in the building.

The negotiable certificates are generated by the construction or complete rehabilitation of low-income rental apartment units anywhere in the city. The units must be restricted to low-income rentals for the life of the building.

Five certificates are given for each low-income unit so provided, and one more when dedicated to homeless referrals.

The low-income housing must be financed from the proceeds of the sale of the negotiable certificates. No government loans or grants can be used, except for federal, low-income tax credits. The city does not control or monitor the sale of negotiable certificates. Their recent selling price has been estimated to be about $14,000 to $18,000 per certificate. As in the inclusionary program, this process is designed to secure low-rent units by providing them without a permanent debt burden.

Since its inception, 1,115 low-income units have been provided, nearly all in the early 1990s. After a brief hiatus due to an overall slowdown in residential construction in the city, 642 units will be provided in 1998, and another 250 units are projected for 1999.

Incentive Zoning Impact Fees
(Cambridge, Massachusetts)

The city of Cambridge is a built-out and mixed-income inner-city community within the Boston urban area. It adopted this formal incentive program in 1988, after having unsuccessfully used negotiated fees in exchange for density bonusing since 1985 (see summary below).

Although this program is often identified as a linkage program, it is more akin to incentive zoning in purpose and administration. It is tailored to the state's enabling legislation, which prohibits mandatory exactions, but does allow for contributions for affordable housing through an incentive-based special permit.

Summary

Name of Initiative:	***Incentive Zoning Impact Fees.***
Municipality:	City of Cambridge, Massachusetts.
Population:	100,000.
Type of Initiative:	Incentive zoning—special permit.
Start (Revisions):	1988 (1997).
Purpose:	To provide housing affordable to lower-income households.
Regulations:	Commercial and mixed-use projects, mainly in four business areas, adding over 2,800 m^2 and needing rezoning approval for certain variances are required to pay $32.25 per m^2 for additions over 230 m^2.
Achievements:	Contribution of $500,000 in fees.
Contact:	Roger Herzog (617 349-4645) Director of Housing Community Development Department

The city also passed a mandatory inclusionary housing program in early 1998.

Main regulations

Certain projects of 30,000 gross sq. ft. (2,800 m^2) or more needing a special permit are required to pay \$3.00 per sq. ft. (\$32.25/m^2), except on the first 2,500 sq. ft. (230 m^2) added.

A special permit is required when a project needs additional density beyond that permitted as-of-right in the zoning ordinance, or relief from height and setback limits, parking requirements and certain other zoning provisions. These provisions are applied, mainly, but not exclusively, to commercial and mixed projects in the city's four business areas.

The fees go to its trust fund for lower-income housing. As alternative to fees, a contribution also can be made through the construction of housing, donation of land or other ways that provide a corresponding value in affordable housing.

The amount of the fees is subject to revision every three years, but has been changed only once. Before 1997, the fees were \$2.00 per sq. ft. (\$21.50/m^2) starting after the first 30,000 sq. ft. added.

Overall results

This program to date has received about \$500,000 from three projects. No other in-lieu contributions have been made.

The main reason for lack of success is that the provision was passed at the end of the development boom in Boston. No major development has been undertaken in the city since 1989. Also, as it is a predominantly residential community, the potential for major development is limited to a few areas only.

With renewed interest in development starting about a year ago, there are various projects in the pipeline that could each generate \$200,000 to \$300,000 in fees.

Related programs

The city's Affordable Housing Trust, established in 1989, provides loans to support the development and rehabilitation of lower-income housing. It places priority on projects that maximize the duration of long-term affordability, the proportion of low-income units and the amount of outside funding, while minimizing the adverse impact on the neighbourhoods and the displacement of existing tenants.

In the past, in addition to the impact fees, the trust fund has received appropriations from the city, and small amounts of revenue from rent control settlements and a voluntary contribution. In turn, it has leveraged approximately \$10 more from other funding sources for every dollar of city money.

Since its inception, the trust fund has loaned more than \$4 million to provide some 750 affordable units. A substantial portion has been provided through the rehabilitation of distressed properties by non-profit organizations.

A public referendum in the city in 1996 eliminated rent control. This placed additional pressure on the city because it removed the controls on about 15,000 affordable units at a time when housing costs were again starting to rise dramatically, and federal and state assistance was limited.

In response, the city in 1997 committed \$20 million over 10 years from its property tax revenue to the trust fund. The rationale behind this appropriation is that it allocates the money to affordable housing that the city expected to receive from the increased taxes from the de-controlled units.

Also in 1997, the city adopted an increase in its real estate transfer tax to provide additional revenues for the trust. The measure, which still must be approved by the state legislature, would generate about \$600,000 annually from an additional fee of one per cent on the transfer of residential real estate, excluding the first

$300,000 of the purchase price and certain other transactions.

Under the city's new Inclusionary Housing Program, all residential or mixed-used developments containing 10 or more new or converted dwelling units, or 10,000 sq. ft. (9300 m^2) or more in gross floor area, must provide 15 per cent as lower-income units. In return, the city provides a density increase of 30 per cent, but at least half of that must be allocated for the affordable units.

The inclusionary units must be provided on site, except under certain exceptional circumstances. They must be generally comparable in size and materials with the other units in the overall project, and have exteriors closely resembling the others. They also must be reasonably distributed throughout the project.

The inclusionary units must be affordable to households earning 65 per cent or less of the area median income, or lower if rent subsidies are available. A mix of units at different affordability levels may also be approved, but the average must approximate the 65 per cent. Their affordability must be guaranteed by deed restrictions for 50 years.

Canadian Examples Profiled

Section 36 Agreements

(Toronto, Ontario)

The City of Toronto used density bonusing extensively through negotiated development agreements with major downtown office projects to assist affordable housing from 1982 to 1988.

Summary

Name of Initiative:	***Section 36 Agreements.***
Municipality:	City of Toronto, Ontario.
Population:	650,000
Type of Initiative:	Density bonusing—negotiated/commercial.
Start (Revisions):	1982 (suspended in 1988).
Purpose:	To secure land, and later fees, to assist the development of non-profit housing.
Regulations:	Downtown commercial projects seeking rezoning applications are encouraged to contribute assistance for non-profit housing in exchange for negotiated density bonuses.
Achievements:	Contribution of land capable of accommodating 2,000 non-profit units, fees-in-lieu of $17.8 million and 67 units at a price within the government cost ceiling for non-profit housing.
Contact:	John Gladki (416 392-7186) Director of Planning Department of Planning and Development

This process, hence the name given to the agreements, was authorized by section 36 of the *Ontario Planning Act* of 1983. It essentially allows the voluntary exchange of height and density increases from the municipality in return for "facilities, services and matters" from developers. Later, these provisions were shifted to section 37 of the 1989 revisions to the legislation.

Main regulations

The vehicle for securing the assistance was the use of development agreements negotiated in response to applications from office developments for changes to the approved zoning. Through this process, the city granted permission to build additional revenue-generating space beyond that allowed in the existing zoning, in exchange for various public amenities, including assistance for non-profit housing.

This process, strictly speaking, was not a formal program as are the others in this report. It was initiated without an adopted mandate, or prescribed rules and regulations. Nevertheless, the process did evolve toward such a program as the city began to establish standard procedures as more agreements were negotiated.

The agreements initially were used to secure land suitable for non-profit developments. While federal–provincial funding was available at the time for non-profit construction, it was based on capital cost ceilings that did not reflect the high land costs in downtown Toronto. The provision of land at no cost was important for making the downtown projects feasible.

The city started accepting cash-in-lieu in early 1986, when suitable sites became more difficult to find. Following this, cash payments became the main form of assistance given for affordable housing. All of these payments were deposited in the city's Social Housing Reserve Fund, established in 1986 and dedicated to the provision of non-profit housing.

In the early agreements, the city was not explicit about how the increased density was determined. The increased density was negotiated for each development and given in exchange for a package of public amenities, planning and design features, and various other considerations.

The city first used an explicit method for determining the density bonus in a major 1986 agreement and then followed the same method in all succeeding agreements. The value of the additional commercial space was based on its net present value, while the amount was tied to the cost of providing each of the public amenities. In the case of all the public amenities but non-profit housing, the additional space was given at a value roughly matching the cost of the amenity. In the case of non-profit housing, the additional space was given at about twice the value of the housing contribution. To be specific, 56 m^2 of commercial space was given in exchange for $45,000 in land or fees, which was determined to be the value of the land needed for a non-profit unit. The reason for the difference was that extra value was needed for housing to get the voluntary assistance of the developers, but not for the other amenities because they were generally a benefit to the development.

Overall results

Development agreements were negotiated for 21 downtown commercial projects mainly between 1982 and 1988. The single exception was one project approved in 1991. Through this process, increased density was used to obtain sites capable of accommodating approximately 2,000 non-profit units, cash-in-lieu of nearly $19 million and 49 units conveyed at prices within the government cost ceilings for non-profit housing.

The use of negotiated density bonuses for commercial projects came to halt in 1989 for two reasons. The economic downturn stopped nearly all major commercial building activity in the city. Also early in 1989, the city temporarily suspended the use of density bonuses in development agreements when it started a review of its bonus practices. That review subsequently became enmeshed in the city's fundamental rethinking of its planning policies for a new Official Plan (OP).

The review of density bonuses was triggered in large part by the public reaction to the resulting development, especially that occurring during the overheated economy of the late 1980s. Many felt that the development was too massive and uncontrolled, and that density bonusing reflected a "let's make a deal" approach to development that disregarded approved policies and procedures.

The review of bonus practices examined various options, ranging from the city's existing unfettered and negotiated approach to a structured and as-of-right approach like that used in most U.S. cities. It concluded with a compromise: guidelines for the negotiations that were intended to protect the public interest through some clear and basic rules, but still leave enough flexibility to strike the best deal for the particular site and market conditions. These guidelines eventually were largely adopted as OP policies, but in a somewhat different format (see Table 3).

The OP leaves open the possibility that the city will authorize the use of density bonusing, either in specific areas or more generally, within these policies. Taken by themselves, these policies would not significantly change how bonusing was used in the city, as they largely came from the city's past and successful experience.

What is more likely to limit the future use of density bonusing are other OP policies. The new OP policies emphasize following clear and consistent principles for the city's development policies and regulations. These principles are to be directed especially at achieving predictable building forms and heights, providing equitable treatment for all developers and simplifying the approval process.

Recent programs

The city in mid-1992 adopted two new policies directed specifically at securing private involvement in the production of lower-income housing. Both these initiatives came from the OP review process and were subsequently incorporated in the city's new OP.

Density bonusing is now authorized in only a limited form initially called the Commercial Density Conversion Bonus. This bonus is

Table 3:
Synopsis of Toronto's official plan policies for density bonuses

Density increases will be given only for social housing; non-profit community, cultural and institutional facilities; heritage preservation; and public parks.

The density increases will be allotted only when they are:
- consistent with, and not adversely affecting, the objectives and policies of the OP, particularly those regarding built form and the physical environment;
- used to promote the private provision of land and structures, but not ongoing operating funding that is a government responsibility; and
- not used to secure a provision that can be required under some other powers.

The density increases will be provided only on the basis of a quantified relationship that ties the value of the density increase to the cost of the public benefit and is applied in a consistent and equitable manner.
- In the case of social housing, the value of density increases should generally not exceed approximately twice the estimated cost of providing the non-profit housing.
- In the case of the other benefits, a smaller incentive than that provided for non-profit housing generally will be considered appropriate.

The density increases for non-profit housing will be given in exchange for the conveyance of land, either on or off the site, and the payment of cash-in-lieu.

The density increases will be given for provisions that, where possible and appropriate, will be located on the same site. If not, the provision should at least benefit the general area experiencing the density increase.

available in the city's main office core. It is consistent with the other new OP policies because, under the previous high-density and mixed-used zoning in this area, increased commercial density could be given without increasing the permitted bulk of the building. To be more specific, that zoning allowed a FAR of eight for commercial uses alone, but a FAR of 12 for commercial and residential uses when combined. Under the new rules introduced by this policy, the extra FAR of four can be used solely for commercial purposes in exchange for land for social housing, or sufficient funds to acquire the land within the city at market value. Following the earlier precedent, the exchange is based on 56 m^2 of additional commercial space for the land needed for one housing unit.

Through the second of its new policies, once called the Inclusionary Zoning Policy, the city will use "all means available" to obtain a minimum component of lower-income housing in all major private residential and mixed-use developments. The policy will be applied when negotiating rezoning approvals that involve an increase of density or a change in use to residential from industrial and other non-residential uses. It will affect only developments on sites of one hectare or more that can reasonably accommodate a separate building for the affordable housing.

As a first priority, the city will seek a minimum of 25 per cent of the total units in such developments as "affordable housing" and "low-end-of-market housing," and also a minimum of 25 per cent of the units resulting from any density increase as "affordable housing." It recognizes that achieving those objectives will depend on funding from government programs. When the funding is not available or this contribution is not otherwise feasible, the city will accept an equivalent value in units elsewhere, land and cash or both, or alternatively, the provision of 30 per cent if the units are "low-end-of-market housing."

According to a definition adopted by the city in 1991, "affordable housing" is housing specifically affordable to households with incomes in the lowest 60 per cent of the income distributions for tenant households in the Toronto metropolitan area. It encompasses social housing, other government-assisted and non-profit housing as well as "low-end-of-market housing." The latter means small, private market units that, without being monitored or controlled, could be expected by virtue of their modest size to remain affordable to the targeted households.

The commercial bonus has not been used because of the slack in the office market remaining after the recession.

Under its so-called inclusionary housing policy, the city has recently negotiated agreements with at least six projects that are now under or close to construction. All of these will provide 25 per cent of the housing as small low-end-of market units. Because of the cutoff of public funding, no non-profit or other below-market housing has been secured in these developments.

Related programs

Toronto also has used residential density increases on both a negotiated and an as-of-right basis to provide for affordable housing.

Negotiated agreements were used to provide for affordable housing through a comprehensive planning process in three major residential redevelopments in the 1980s. As a general objective, not always achieved, the city attempted to obtain land sufficient to accommodate approximately 30 per cent of the housing units for non-profit housing. In these areas, it secured $2 million and land for 1,640 non-profit units, of which 650 have been built.

Under the city's Assisted Housing Density Bonus, started in 1976, 25 per cent more dwelling units were given as-of-right on top of the zoned density in certain commercial-residential areas, provided the additional units were used for government-assisted housing. The bonus was intended for private developers to be used with a new provincial rent supplement program. Together they were seen as enabling developers to build and operate below-market housing in otherwise market-rate rental projects.

The program was widely used by the non-profit sector, but not by the private sector. Up to 1988, only five private projects used the bonus to provide a total of 420 assisted units. Only one of these combined assisted units with market-rate units in one building, but without protections that guaranteed the long-term affordability of the units. In the other four, the buildings were either leased on a long-term basis or sold on a turnkey basis for non-profit housing exclusively.

Private developers did not participate for various reasons. They had difficulties in securing the rent supplements and, generally, were reluctant to mix assisted units with market housing. In any case, due to changes in the market and tax conditions, they were mostly no longer building rental apartments but had turned their attention instead to condominiums. Finally, in retrospect, the program clearly did not offer them any real incentive to participate.

The Social Housing Density Bonus, adopted in 1988, reserved the 25 per cent as-of-right density bonus for government-assisted housing built by non-profit providers. The density bonuses were potentially valuable to these providers because the extra units enabled them to secure additional funding, which in turn also allowed them to compete more effectively for sites.

From 1988 to mid-1992, this bonus was used to provide only about 70 out of the 6,200 non-profit units built in the downtown. For projects in the approvals process in mid-1992, another 255 units out of 8,800 units were expected to use it.

Few non-profit developers were able to take advantage of the as-of-right bonus for two related reasons. Government funding failed to keep up with the rapidly inflating land prices in the over-heated economy of the late 1980s. As a consequence, the non-profit providers had to obtain even higher densities, only available through the rezoning process, to provide feasible projects.

The city eliminated this 25 per cent density bonus in mid-1992 as part of rethinking its OP policies. Like the negotiated commercial bonuses, it was considered contrary to providing a predictable building form and to treating private and non-profit developers equitably.

Income Mix Housing Policy
(Vancouver, British Columbia)

The city introduced this policy in 1988 when faced with proposals for a number of large private redevelopment projects in its downtown that would have potentially provided only upper-income housing (see summary, page 71). This would have been contrary to its goal of maintaining and creating a social mix in its inner-city neighbourhoods.

Main regulations

The policy essentially states that large private residential projects in its downtown must allocate sites capable of accommodating a minimum of 20 per cent of the units as non-profit housing. That housing is to be specifically for "core-need households," and half of that for households with young children. "Core-need households" are defined as households that would have to spend more than 30 per cent of their gross income when renting suitable housing in the private market.

The policy was designed to provide sites that could be developed for non-profit housing through the existing federal–provincial funding program. As implemented, the city purchased the sites from the private developers at below-market value using the government funding supplemented by its own money. Then it leased them for long terms to non-profit providers at this reduced value so that the projects could be built within the government cost limits for that funding.

The policy has been implemented through site-specific comprehensive development agreements negotiated as part of the rezoning process for these lands. The agreements are used to identify and secure specific development sites for the

Summary

Name of Initiative:	***Income Mix Housing Policy.***
Municipality:	City of Vancouver, British Columbia.
Population:	515,000.
Type of Initiative:	Inclusionary zoning—negotiated through rezoning process.
Start:	1988.
Purpose:	To provide sites for the development of non-profit housing for "core-need" households, and half of that specifically for families.
Regulations:	New large downtown residential projects needing rezoning are required to provide sites so that 20 per cent of the units will be available for the targeted housing.
Achievements:	Contribution of sites for 2,500 units, of which 800 have been built or committed to be built.
Contact:	Jill Davidson (604 873-7670) Senior Housing Planner Department of Housing and Properties

non-profit housing as well as other public amenities such as parks and day-care facilities. Generally, the policy has been applied only to projects larger than 200 to 300 units that are capable of filling a separate reasonably-sized non-profit building.

In the initial agreements, the city secured 80-year options to purchase the designated development sites. The sites were either vacant land, or sometimes air rights over a parking structure, or other non-residential space. Acquisition was contingent on a non-profit provider receiving a government funding allocation for a particular site. When that occurred, the city paid 25 per cent of the previously agreed price, with the remaining 75 per cent coming from the government funding. The agreed price was typically about 60 per cent of the market value, but adjusted by CPI to the actual purchase date. The sites were leased for 60-year terms, at this adjusted below-market value, to the non-profit provider.

The process involved an indirect subsidy on top of the government financial support. The development sites were conveyed at a below-market value by the private developers in exchange for increased development density. The reduced purchase price, in addition to the city's 25 per cent contribution toward the purchase, was needed to meet the development cost ceilings set by the government funding. Those cost ceilings, which were based on province-wide figures, did not reflect the high land prices and other construction costs in the downtown.

This approach was used in the early 1990s on three large inner-city redevelopments of four to 80 hectares (nine to 200 acres) in size. All were mainly industrial or otherwise non-residential lands being rezoned for residential.

Since then, the city has had to revise this approach because of the reduced government funding and the smaller size of the developments coming forward. In addition to securing land in these developments, the city recently has accepted fees-in-lieu from at least one small project, and small market units in another. Also, to obtain an allocation from the reduced funding now available, the city now has to lease the land at no cost to the non-profit developers.

Overall results

Through this process, the city has acquired sites capable of accommodating approximately 2,500 units. Of these, nearly 2,200 are in the three initial major projects. On these sites, about 800 non-market housing units have been completed or committed for development. Most are non-profit, with the only exception an unsubsidized "life-lease" project for seniors. The rest of the sites remain undeveloped because of the reduced funding now available for non-profit construction.

The city has been exploring, without much success so far, other ways of developing these sites. While family-oriented non-profit housing remains its first preference, the city will now consider other non-market alternatives adding to the diversity of the affordable housing stock. As a last option, it will also consider cash-in-lieu payments. For two sites, the city has sold its option back to the initial developer at the current market value less the agreed purchase price. The proceeds will be used to support non-market housing elsewhere.

Related programs

The city introduced in 1995 a policy of Density Bonuses for Low-Cost Housing in its downtown area. The additional density can be obtained for the provision of low-cost housing, defined essentially as housing for people receiving social assistance. The provisions are directed mainly at preserving and renovating existing single room occupancy (SRO) hotels, and at constructing similar units—typically, 200 sq. ft. (18.5 m^2) with minimal kitchen facilities—as part of larger market developments.

The density increases will be negotiated case by case. The amount of the additional floor space will depend on the cost of the low-cost housing, the value of the increased space and the impact on the neighbourhood environment. Increases of more than 10 per cent will require special approval. The long-term affordability of the units will be protected by housing agreements registered on title.

No low-cost housing has been achieved under these provisions.

The city also has used Social Housing Density Bonuses in two areas. These bonuses were introduced in the mid-1980s in a relatively small and older residential part of its downtown. On the condition that 20 per cent of the additional space is used for social housing, density increases of 50 to 300 per cent on top of the permitted floor to area ratio (FAR) of one are given, depending on the location and amount of non-residential space.

No market developments have used the provisions. One possible reason was that government funding has not been available generally to assist small numbers of units in mixed-income projects. On the other hand, approximately a dozen non-profit housing projects, providing over 800 units in total, have taken advantage of these bonuses.

Similar bonuses were also introduced in 1980, but then dropped in 1985, in certain low-rise apartment zones in an inner-city residential area. In this case, a density increase of 30 per cent over the existing FAR of 1.45 was allowed when part of the additional space was used for non-profit housing. The bonus was intended to promote the inclusion of rent-controlled units in the market rental buildings.

Only one small market project used the bonus. The limited uptake by market developers was attributed to their reluctance to mix market and non-market housing in the same building. In any case, the city found that it could not effectively control the affordability of these units.

A number of non-profit developments took advantage of the bonuses, but often to create projects that were considered too large by the neighbours.

Inclusionary Zoning Policy
(Burnaby, British Columbia)

Burnaby, a nearly built-out community in the Vancouver metropolitan area, initiated this policy in 1987 (see summary below).

Main regulations

Under this policy, the city has required that 20 per cent of the units on major redevelopment lands be designated for non-market housing. The policy is implemented through development plans prepared by the city for sites that are subject to its "comprehensive redevelopment rezoning" process. Specific sites are identified through this process and restrictive covenants registered against title that limit their use to non-market housing.

Overall results

The policy was applied in the late 1980s to four large government-owned lands and assemblies. It produced sites for 415 multifamily non-profit or equity cooperative units, which have been developed or committed for development using government funding.

The policy also was used on a privately owned site in 1997. It achieved 16 small rental units in a separate building within a 300-unit condominium project. The units are not subject to income

Summary

Name of Initiative:	***Inclusionary Zoning Policy.***
Municipality:	City of Burnaby, British Columbia.
Population:	180,000.
Type of Initiative:	Inclusionary zoning—negotiated through rezoning process.
Start (Revisions):	1987.
Purpose:	To provide sites for non-market housing in major residential redevelopments.
Regulations:	Major residential redevelopment needing rezoning is required to provide lands capable of accommodating 20 per cent of units as non-market units.
Achievements:	Contribution of land for 415 non-market housing units.
Contact:	Beverley Grieve (604 294-7430) Social Housing Planner Planning and Building Department

controls, but in view of their size, are considered likely to remain affordable.

The further use of this policy seems to be limited by the lack of suitable sites and the inadequacy of current government funding.

Related programs

The city adopted a density bonusing policy, called its Community Benefit Bonus Policy, in mid-1997. Within its four town centres, increased residential densities of 11 to 18 per cent above the existing base density will be available in various multifamily residential areas in return for the contribution of amenities and of affordable and special needs housing.

Affordable and special needs housing is defined in the policy as "housing that the private market cannot or does not provide, including housing that is affordable to low or moderate income households or has features that the private market generally does not provide."

The city is in the process of amending the community plans and the zoning by-laws for the four areas. Through that process, various additional criteria and conditions will be identified, including the bonusable amenities and housing options which are considered appropriate for each area.

The city expects to examine the potential for fees-in-lieu option at a later date.

One small project is under consideration, and interest has been expressed by a number of others.

Appendix A:

Legal Context in the United States

A municipality's authority to impose mandatory inclusionary requirements or development fees on new development for affordable housing must be valid from both a statutory and a constitutional viewpoint. (This appendix only looks at the mandatory initiatives because they raise the most serious legal questions.)

The statutory issue is whether the municipality has been granted the authority to impose such requirements, either expressly or implicitly, by state legislation under the zoning and land development provisions of the state codes or other charters.

The constitutional issue is whether these practices violate any provision of the U.S. constitution and, possibly, even the individual state constitutions. The key U.S. constitutional provision is contained in the Fifth Amendment, which prohibits government taking private property for public use without the payment of just compensation. This "takings" provision has been basis for the recent challenges to these measures to the Supreme Court.

The courts generally continue to provide local governments with a great deal of discretion in their land-use regulations. The land-use regulations typically include zoning by-laws, subdivision regulations and building codes. All have been long held to be valid exercises of the municipality's police powers, namely, its right to interfere with private activity for the protection of the public health, safety and general welfare. The courts recognize and countenance that these restrictions, when used in a valid public interest, might limit both the use and value of private property.

The states of California and New Jersey feature prominently in this review. In California, under the pressures of high growth and rapidly rising house prices, both the state and municipalities have been pioneers in the use of many regulations and procedures for providing affordable housing. In New Jersey, which is most urbanized state in the United States, the state supreme court has been the driving force in obliging the municipalities to plan for affordable housing.

Inclusionary zoning and development fees in the United States have distinctly different legal roots and histories that continue to influence how they are used. For that reason, the following material is divided into two sections.

Development fees

Development fees, including linkage fees, are viewed in the United States as extensions of the legal principle of "exactions." Exactions are contributions by developers in the form of land or money made to local governments as a condition of development approval toward the supply or financing of public facilities or amenities made necessary by those developments.

Most American jurisdictions facing substantial growth have used some form of exactions. Exactions have long been seen as a legitimate way of offsetting the costs of growth and one of the few methods available to municipalities outside of raising taxes and floating bond issues. More municipalities have had to turn to these measures in response to cutbacks in state and federal infrastructure aid and also in face of imposed restrictions on their taxing ability, such as California's Proposition 13 in 1978.

The purpose of these exactions has evolved considerably over the years. Early on, most exactions were used only for on-site infrastructure such as roads and sewers. During the suburban expansion of the 1950s and 1960s, exactions were extended to dedications of land for on-site facilities such as parks and schools. Later, in the 1970s, some jurisdictions also started using them for such major off-site facilities as highway improvements.

The emergence of environmental mitigation laws has further widened the potential use of exactions. These laws have enabled local governments to demand that developers offset the adverse effects of their projects. For example, "impact fees" and similar mitigation measures have been used to support the provision of public amenities, environmental improvements, transit facilities, job training programs and affordable housing.

California led the way in authorizing the use of impact or mitigation fees. Its *Environmental Quality Act* passed in 1972, gave municipalities wide latitude to impose fees on new development as a means of mitigating significant physical and environmental impacts as well as socioeconomic and fiscal impacts until the legislation was amended and rules tightened in 1981. San Francisco's pioneering linkage program was enacted under the statutory authority granted by this legislation.

This state's *Mitigation Fee Act* placed new statutory requirements on the adoption of these fees in 1987. In brief, the local governments are now obliged to demonstrate that the fees are "reasonably related" to the impacts caused by the affected developments.

In New Jersey in 1990, the state's supreme court determined that mandatory development fees for affordable housing were statutorily and constitutionally permissible provided they were collected according to appropriate regulations. This decision was made on appeal of a lower court ruling that had invalidated the development fee ordinances of half a dozen municipalities. It also must be viewed in the context of the court's earlier landmark rulings regarding affordable housing (see section on Inclusionary zoning in this appendix).

The U.S. Supreme Court has made two important decisions regarding the constitutional propriety of development exactions in general. In its 1987 decision on *Nollan v. California Coastal Commission*, the court ruled that a development exaction could be constitutionally valid, provided there was a "rational nexus" between the mitigation measures and the projected impact of the proposed development. Later, in its 1994 *Dolan v. City of Tigard* ruling, the court addressed the extent of the nexus, and established that there must be a "rough proportionality" between the two.

The highest court ruling to date specifically on mandatory development fees for affordable housing was made by the California appeals court in 1991 in *Commercial Builders of Northern California v. City of Sacramento*. Sacramento's fee ordinance was challenged by the commercial builders on the grounds that it represented an unconstitutional "taking." In a two-to-one vote, the court affirmed the fee ordinance. It concluded that the purpose of the ordinance, that is, the provision of lower-income housing, was a legitimate governmental interest that the city could pursue. It also concluded that the means adopted, the imposition of development fees, was a constitutionally permitted way of advancing the interest. This decision was appealed to the U.S. Supreme Court, which declined to hear the case.

The court based its conclusions in large part on the detailed nexus study completed by the city. The court accepted the evidence that the development fees would be used to ameliorate a harmful impact of the assessed development projects, and that the amount of the fees was reasonable because it was substantially less than the additional costs to the city caused by the assessed projects.

The dissenting opinion is relevant to note because it encapsulated some of the main legal arguments made against these measures. In that opinion, the city's study was described as demonstrating "at best a tenuous and theoretical connection between the commercial development and housing needs." The development fees were characterized as a "transparent attempt to force commercial developers to underwrite social policy." In conclusion, the need for low-income housing was said to represent a public problem that should be borne by the public as a whole through an increase in general taxation, rather than by fee exaction on a limited segment of the development community.

These rulings have served to sanction the use of these mitigation measures, while also establishing two overarching constitutional standards—"rational nexus" and "rough proportionality"—for the entire country. They are not expected to limit the use of these measures significantly. Similar tests had been already imposed in many states, either by the courts or legislation.

The most significant consequence of these rulings, and particularly *Dolan*, is that municipalities are now obliged to define in advance the connection between the exaction, the purpose to which it is dedicated and the impact of the proposed development. Mathematical precision is not required, but there must be some determination that they are related "both in nature and extent." Based on nexus studies prepared to date, such as those in Sacramento and Santa Monica, this task appears to be a demanding but not unduly difficult.

The major obstacle to the wider adoption of these measures appears to be the lack of enabling legislation in many states. As in the case of inclusionary zoning, it is the diversity in the state legislation that causes the variation in use across the country.

Inclusionary zoning

Inclusionary regulations typically are enacted by municipalities through their zoning powers. Those zoning powers are defined by the enabling legislation of their respective states and also are influenced by the provisions of their state constitutions as well as the decisions of their state courts. As a consequence, the authority of municipalities to use inclusionary zoning varies state-by-state across the United States.

These differences are reflected in two early and noted court decisions from the 1970s dealing with inclusionary zoning. Fairfax County in Virginia implemented one of the country's earliest mandatory inclusionary ordinances. The state's highest court struck down that ordinance on two fundamental grounds in 1973: the state's zoning enabling legislation did not authorize local governments to pursue what it called socioeconomic goals, and the ordinance represented a taking of private property without just compensation.

This rationale was expressly rejected a short time later by New Jersey's highest court in its landmark Mount Laurel rulings. Those rulings evolved over a series of court cases, starting with a challenge by a civil rights group of the exclusionary zoning practices of a small but rapidly growing suburban community of Mount Laurel. In the initial decision in 1972, a lower court invalidated the community's zoning ordinance because it was being used to frustrate the building of lower-income housing.

On appeal, the state's supreme court, in 1975, not only confirmed that decision but also broadened its impact considerably in two key ways. The court ruled that all growing municipalities in the state, not just Mount Laurel, were affected by the decision. Furthermore, unlike in the past when the courts had typically removed just the prohibitive regulations, the court this time ruled that they all had an affirmative obligation under the state constitution to provide for affordable housing.

When the case came back to the court years later, without having had any effect in Mount Laurel or elsewhere, the court proceeded to enforce its will. In a follow-up 100-page ruling in 1982, it identified various proactive measures—including mandatory set-asides, density bonuses and tax abatements—available to the municipalities to meet that obligation. Of more immediate impact, under its direction, it also had the lower courts impose settlements whenever municipalities were challenged for not providing appropriately for affordable housing. Those settlements typically relied upon what was called a builder's remedy—a form of mandatory inclusionary zoning imposed in a standard way on all new residential developments.

The court founded its ruling on a provision in the state's constitution which essentially stated that the municipal zoning powers can be exercised to protect the general welfare. Its ruling represented a major reinterpretation of that provision. It determined that growing municipalities, meaning suburban communities, when using their zoning powers had an affirmative obligation to protect the general welfare by taking a fair share of the affordable housing needs of their respective regions, meaning the neighbouring cities.

The Mount Laurel rulings have been important in establishing both the legal foundation and the persuasive arguments in support of proactive measures such as inclusionary zoning as well as related doctrines like "fair share." Since many state constitutions contain the same general welfare provisions, these rulings have been considered and referenced by the courts in many other jurisdictions.

In a decision separate from the Mount Laurel cases, the state's highest court also specifically validated the use of inclusionary zoning in 1980.

The court's Mount Laurel mandate was subsequently incorporated in state legislation, its *Fair Housing Act* of 1985. Inclusionary zoning remains the basic way most municipalities in the state provide for affordable housing. However, more recently, other complementary mechanisms, such as development fees and intra-regional housing transfers, also have become widely used.

California, which has the most comprehensive state laws dealing with affordable housing, does not expressly authorize the use of inclusionary zoning. Ample indirect authority appears to have been conferred through its various laws directing the municipalities to provide for affordable housing, and still others enabling them to use density bonuses and affirmative measures in the support of that housing. As a consequence, the practice of inclusionary zoning has apparently never been challenged in the courts.

It is relevant to note a change in the state's attitude toward inclusionary zoning. Through its housing and community development department, the state was an early and strong advocate of inclusionary zoning to provide for affordable housing. More recently, reflecting a different political environment and probably recent court rulings, the state has expressed the concern that some municipalities are using inclusionary zoning illegally to restrain development, either by setting standards that are too high or not offering appropriate cost offsets.

Massachusetts takes a another approach, which is used in some fashion by other states. The state's enabling legislation for zoning, its *Zoning Act of 1975*, indirectly authorizes municipalities to use inclusionary zoning but only as part of a voluntary incentive-based process involving the exchange of density bonuses for lower-income housing. Specifically, it must be conducted through a special permit available to developers as an alternative to the development rights conferred under the basic zoning by-law. Although these provisions appear to rule out mandatory inclusionary zoning, at least one municipality in that state has been able to establish what in effect is a mandatory system (see earlier discussion on Newton).

Whether the recent Supreme Court rulings, and particularly, the "rational nexus" and "rough proportionality" standards, apply to inclusionary requirements as well as development fees has not been tested. The prevalent school of legal thought appears to be that inclusionary programs do not represent takings because the practice is not significantly different from conventional zoning practices, such as those restricting the types and densities of housing on certain parcels of land. Nevertheless, some municipalities are being advised to undertake nexus studies for their inclusionary ordinances to protect themselves from potential challenges.

Appendix B:

Selected References

Subjects

Inclusionary zoning

Bauman, Gus, et al. "Inclusionary Housing Programs in Practice." *Urban Land* (November 1983).

Calavita, Nico, and Kenneth Grimes. "Inclusionary Housing in California—The Experience of Two Decades." *APA Journal* (Spring 1998).

Calavita, Nico, Kenneth Grimes and Alan Mallach. "Inclusionary Housing In California and New Jersey; A Comparative Analysis." *Housing Policy Debate* (1997).

"Including Housing for the Excluded." *Zoning News APA* (April 1985).

"Local Progress in Meeting the Local Income Housing Challenge." *A Survey of California Communities' Low Income Housing Production.* Report for California Coalition for Rural Housing, 1989.

Mallach, Alan. *Inclusionary Housing Programs: Policies and Programs.* NJ: Centre for Urban Policy Research, Rutgers University, 1984.

McDougall, Harold A. "From Litigation to Legislation in Exclusionary Zoning Law." *Harvard Civil Rights—Civil Liberties Law Review* (Spring 1987).

National Association of Home Builders (NAHB). "Inclusionary Housing Programs." Internal Report, Land Development Services, August 1983.

———. "Inclusionary Zoning." Internal Report, Land Development Services, 1990.

Schwartz, Seymour I. "Inclusionary Housing Programs." *APA Journal* (Winter 1983).

"Zoning and Affordable Housing: Ne'er The Twain Shall Meet?" *Affordable Housing Bulletin* (1990).

Development fees

Alterman, Rachelle. "Evaluating Linkage, and Beyond—The New Method for Supply of Affordable Housing and Its Impacts." Lincoln Institute of Land Policy, 1989.

Brooks, Mary E. "A Summary of Revenue Sources Committed to Existing Trust Funds." March 1994.

———. "A Status Report on Housing Trust Funds in the United States." Housing Trust Fund Project of the Center for Community Change, September 1997.

Fulton, W. "Exactions Put to the Test." *Planning* (Dec 1987).

Herrero, Teresa. "Affordable Housing in the 1990s: Will Housing Linkage Play a Role?" *Environmental & Urban Issues* (Spring 1990).

———"Housing Linkage: Will It Play a Role in the 1990s?" *Journal of Urban Affairs* Vol 13, No 1 (1991).

———. Keating, W. Dennis. "Linking Downtown Development to Broader Community Goals—An Analysis of Linkage Policy in Three Cities." *American Planning Association Journal* (Spring 1986).

Porter, Douglas R. "The Latest on Linkage." *Urban Land* (December 1988).

Rosen, Steven. "Linkage Programs Still Only for a Chosen Few." *Planning* (September 1988).

Incentive zoning

Lassar, Terry Jill. *Carrots & Sticks: New Zoning Downtown.* The Urban Land Institute, 1990.

———. "The Limits of Incentive Zoning." *Urban Land* (May 1990).

Ministry of Municipal Affairs and Housing, Province of British Columbia. "Density Bonusing Provisions of the Municipal Act: A Guide and Model Bylaw." Victoria: March 1997.

Non-profit housing

Abt Associates, Inc. "Non-Profit Housing; Costs and Funding; Final Report." Vols I and II, Report for HUD Office of Policy Development and Research, November 1993.

———. "The Development and Analysis of the National Low-Income Housing Tax Credit Database." Report for HUD, July 1996.

Center for Public Finance and Housing and others. "Status and Prospects of the Nonprofit Housing Sector." Report for HUD Office of Policy Development and Research, June 1995.
Community Information Exchange. "Deals from Hell." *Strategy Alert, A Quarterly Report of the Community Information Exchange* (Spring/Summer 1994).
DeParle, Jason. "Slamming the Door." *The New York Times Magazine* (20 October 1996).
Schill, Michael H. "The Role of the Nonprofit Sector in Low-Income Housing Production." *Urban Affairs Quarterly* (September 1994).
Stegman, Michael A. "The Excessive Costs of Creative Finance: Growing Inefficiencies in the Production of Low-Income Housing." *Housing Policy Debate.* Vol 2, Issue 2, Fannie Mae, 1991.
von Hoffman, Alexander. "Good News! From Boston to San Francisco the community-based housing movement is transforming bad neighborhoods." *Atlantic Monthly* (December 1996).
Walker, Christopher. "Nonprofit Housing Development: Status, Trends, and Prospects." *Housing Policy Debate.* Vol 4, Issue 3, Fannie Mae, 1993.
Wallace, James E. "Financing Affordable Housing in the United States." *Housing Policy Debate.* Vol 6, Issue 4, Fannie Mae, 1995.

General and other

Goetz, Edward. "Promoting Low Income Housing Through Innovations in Land Use Regulations." *Journal of Urban Affairs* . Vol 13, No 3 (1991).
Ministry of Municipal Affairs. "Planning for Housing: An Overview of Municipal Initiatives in British Columbia." October 1997.
New Jersey Council on Affordable Housing. "People, Places & Progress: The COAH Story 1996-1997." *1997 Annual Report.* September 1997.
———. "Looking to the Future." *1998 Annual Report.* September 1998.
Stegman, Michael A. and J. David Holden. *Nonfederal Housing Programs: How States and Localities are Responding to Federal Cutbacks in Low-Income Housing.* Urban Land Institute, June 1987.
White, S. Mark. "Affordable Housing—Proactive and Reactive Strategies." APA Planning Advisory Service, Report Number 441, 1992.

Jurisdictions

Banff, Alberta

Housing Policy. 1991.
Land Use By-Law. "Required Housing."

Boston, Massachusetts

"Boston's 'Linkage Partnership' for Affordable Housing." *Urban Land* (February 1990).
Dreier, P., and B. Ehrlich. "Downtown Redevelopment and Urban Reform—The Politics of Boston's Linkage Policy." *Urban Affairs Quarterly* (March 1991).
Dreier, P., and Dennis Keating. "The Limits of Localism; Progressive Housing Policies in Boston, 1984-1989." *Urban Affairs Quarterly* (December 1990).
Porter, Douglas. "Boston's Linkage Program: Still Alive, Still Housing." *Urban Land* (October 1993).
Zoning Code. Article 26: Development Impact Projects, December 1983.
———. Article 26A: Development Impact Projects—Housing, February 1986.

Boulder, Colorado

Affordable Housing Task Force and Department of Housing and Human Services. "Report to Boulder City Council on Affordable Housing." 13 February 1990.
"Boulder's Residential Growth Management Ordinances 1976-1995." 1996.
Brooks, Mary E. *A Status Report on Housing Trust Funds in the United States*. Housing Trust Fund Project of the Centre for Community Change, September 1997.
Department of Housing and Human Services. "Proposed Ten Year Community Housing Plan." Summer 1992.
———. "Ten Year Community Housing Plan", August 1992.
Freilich, Leitner, Carlisle and Shortlidge. "Report on the Effectiveness of the Moderate Income Housing Program and the Application of Affordable Housing Land Use Controls to Commercial Developers." Report for City of Boulder, 1 August 1989.
Honey, Tim, Susan Purdy and Kathy McCormick. "Housing Strategy for Low and Middle Income Households." Discussion Paper to City Council, 4 March 1995.
Miller, Thomas I. "Must Growth Restrictions Eliminate Moderate-Priced Housing?" *APA Journal* (Summer 1986).
Rozaklis, Mary W. "Affordable Housing: Concepts and Options." 1992.
"Summary of Residential Growth Management System." 7 May 1997.

Burlington, Vermont

Davis, John E. "Rebuilding the Housing Tenure Ladder." Summary of Burlington's Affordable Housing Program, March 1991.
———. "Building the Progressive City: Third Sector Housing in Burlington." *The Affordable City—Toward a Third Sector Housing Policy*. Temple University Press, 1994.
Inclusionary Zoning Ordinance.
Mallach, Alan. "Inclusionary Zoning in Burlington Vermont; Laying the Groundwork for an Inclusionary Zoning Ordinance." Report for the Community and Economic Development Office, August 1988.
Silverstein, R. *Housing Opportunities: Land Use and Housing Strategies for Promoting Affordable Housing*. Connecticut Department of Housing, June 1991.
Soifer, Steven D. "The Burlington Community Land Trust." *Journal of Urban Affairs*. Vol 12, No 3 (1990).

Burnaby, British Columbia

Director of Planning and Building. "Community Benefit Bonus for Affordable Housing and Amenities in Town Centre Areas." Report to Council, 3 March 1997.

Cambridge, Massachusetts

Amendments to the Zoning Ordinances. Section 11.200—Incentive Zoning Provisions, 2 March 1998.
Cassidy, Tina. "Cambridge Council to vote ... to preserve affordable housing." *The Boston Globe* (3 March 1997).
———. "Affordable Housing Pushed in Cambridge." *The Boston Globe* (9 March 1997).
News from The Housing Trust Fund Project. "Rent Control End Spurs Cambridge, Massachusetts to Expand its Housing Trust Fund." Center for Community Change, Spring 1997.

Davis, California

Dwyer-Voss, Ron and Shoshana Zatz. "Inclusionary Zoning—Local Zoning Works to Include Low-Income Households." *Pacific Mountain Review* (1997).
Municipal Code. Section 12A-50—Affordable Housing.
Schwartz, Seymour I. "Inclusionary Housing Programs." *APA Journal* (Winter 1983).

Montgomery County, Maryland

Hamblen, Matt. "Montgomery County at the Crossroads." *Planning* (June 1991).
"Moderately Priced Housing Law." Montgomery County Code, chapter 25A, as amended through 1988.
Office of the County Executive, Department of Housing and Community Development (OCE). "Executive Regulation—Requirements for the Moderately Priced Housing Program." April 1986.
———. "Executive Regulation—Sales Prices for Moderately Priced Dwelling Units." January 1992.
Tetreault, Bernard. "Inclusionary Mechanisms for Affordable Housing." *Access to Housing*. Proceedings of the 21st Annual Symposium of the Canadian Housing and Renewal Association '89, 1990.

Newton, Massachusetts

Metropolitan Area Planning Council (MAPC). "Inclusionary Housing and Linkage Programs in Metropolitan Boston." May 1986.

New York, New York

Smarr, Jamie A. Memorandum on Inclusionary Housing Program. 19 July 1998.
Zoning Ordinance. Section 23-90 Inclusionary Housing, May 1987.

Orange County, California

Schwartz, Seymour I. "Inclusionary Housing Programs." *APA Journal* (Winter 1983).

Princeton, New Jersey

Article XII. Affordable Housing, Land Use Ordinance. 1984.
Chapter IV. Housing Policies, Princeton Community Master Plan 1996.

Richmond, British Columbia

Director of Planning. "An Affordable Housing Strategy." Report to the Planning and Development Committee, 23 August 1994.

Sacramento, California

"Housing Requirements for Non-Residential Development Projects." Session 33 of Zoning Ordinance of the City of Sacramento, March 1989 (revised March 1992).
"1996 Housing Trust Fund Annual Plan." Sacramento Housing and Redevelopment Agency, February 1996.
Willcox, Lucinda. Sacramento's Housing Trust Fund. Fax Memorandum, 30 July 1998.

San Francisco, California

Department of City Planning. "Office Affordable Housing Production Program Annual Report." June 1998.
Goetz, Edward. "Office-Housing Linkage in San Francisco." *APA Journal* (Winter 1989).
Hasruth, Linda. "Economic Basis for Linking Jobs and Housing in San Francisco." *APA Journal* (Summer 1988).
Keyser Marston Associates, Inc. "Economic Nexus Analysis for San Francisco OAHPP." 1998.
Mayor's Office of Housing. "Annual Evaluation of the Office/Affordable Housing Production Program (OAHPP)." April 1994.

Santa Monica, California

City Staff. "Status Report on the City's Affordable Housing Program." Report to Council, 1998.

———. "Recommendation to Introduce ... an Affordable Housing Program." Report to Council, 14 July 1998.

Draft Zoning Ordinance. Chapter 9.56—Affordable Housing Production Program, 14 July 1998.

Hamilton, Rabinovitz and Alshuler, Inc. "The Nexus between New Market Rate Multi-Family Developments in the City of Santa Monica and the Need for Affordable Housing." Draft Report to Council, 7 July 1998.

Housing Division Staff. "Information Concerning Proposition R and Inclusionary Housing Program." Report to the Housing Commission, January 1996.

Municipal Code. Part 9.04.10.12—Project Mitigation Measures.

Section 630 of the City Charter—Inclusionary Housing.

Zoning Ordinance. Chapter 9.28—Inclusionary Housing Program, Ordinance 1615, 1992.

Seattle, Washington

Department of Construction and Land Use. "Public Benefit Features: Guidelines for Evaluating Bonus and TDR Projects." Director's Rule 20-93, November 1993.

Department of Housing and Human Services. "Growth-Related Housing Program." 8 May 1997.

Toronto, Ontario

City of Toronto. Official Plan. November 1996 (revised April 1996).

Commissioner of Planning and Development. "Policy Context for Arrangements to Implement Assisted Housing Proposals of the World Trade Centre Part II Official Plan." Land Use Committee Report, 28 November 1986.

———. "Assisted Housing: Options for Private Sector Involvement." Report to Land Use Committee, 27 Nov 1987.

———. "Section 36 Guidelines: Further Report on Guidelines for Bonusing Pursuant to Section 36 of the Planning Act." Land Use Committee Report, 6 June 1988.

———. "Sub-committee to Examine Guidelines for Bonusing Pursuant to Section 36 of the Planning Act." Report of Land Use Committee to Council, September 1988.

———. "Cityplan '91 Proposals Report." City of Toronto, June 1991.

———. "Social Housing Density Incentives Policy." Land Use Committee Report, 12 March 1992.

———. "Alternatives to the Social Housing Density Bonus for Helping to Achieve Affordable Housing Targets." Land Use Committee Report, 4 June 1992.

Commissioner of Housing. "The Social Housing Density Bonus, and Proposed Changes to the Housing Policy for Cityplan." 3 June 1992.

Vancouver, British Columbia

Community Services Group. "Information Bulletin No 1: Development Cost Levies." City of Vancouver, 25 September 1996.

Director of Housing and Properties. "Density Relaxations for Low Cost Housing in the DODP." Policy Report to Council, 22 Nov 1994.

Directors of Planning, Finance, Housing and Properties, Social Planning, Legal Services, City Engineer, and the General Manager of Parks. "Development Levies in Downtown South." Report to Standing Committee on Planning and Environment, 16 May 1991.

Joint Report of Planning, Finance, Social Planning, Legal Services, Engineering, Housing and Properties, and Parks. "Summary Report—Implementation of Development Levies in Downtown." Report to the City Manager, 20 February 1991.

Whistler, British Columbia

CitySpaces Consulting Ltd. "Whistler Housing—Discussion Paper No. 1: Housing Functions and Organizational Approaches." April 1997.

Director of Planning and Development. "Affordable Employee Housing Strategy." Report to the Committee of the Whole, February 1996.

"Employee Housing Service Charge Bylaw No. 1114." 1995.

"Employee Housing Service Charge Bylaw No. 1186." 1996.

Visit our home page at www.cmhc.ca

61594