



INCLUSIONARY ZONING

Getting Started

Why does your community want to adopt Inclusionary Zoning?

- Documented Community Need for Affordable Housing
- Housing Production Plan (HPP) or Master Plan Goal
- Socioeconomic Integration
- Add to Subsidized Housing Inventory (SHI)
- Workforce Retention
- Anti-Displacement/Gentrification

Whatever the reason, it is important to be realistic about possible outcomes. Inclusionary Zoning (IZ) is an important tool, but it cannot alone fully address a community’s need for affordable housing. For example, Massachusetts communities that are motivated by the desire to use IZ to reduce the threat of 40B developments should also consider adopting a Housing Production Plan, which allows a community to attain a 1-2 year “Safe Harbor” following the creation of a certain number of affordable units.

BACKGROUND RESEARCH

When exploring the need for Inclusionary Zoning, communities should make data-driven decisions. It is important to have a clear understanding of the existing housing landscape in your community. MHP’s DataTown is a tool that communities can use to look at demographic trends, housing production, stock in your municipality, and even compare that to neighboring or comparable communities.

Answers to the next several questions can be found at mhp.net/datatown

Inventory: what kind of housing currently exists?

Total Number of Housing Units _____

Approximate percentage (%) housing by building type

- Single Family _____%
- 2-Family _____%
- 3-4 Units _____%
- 5-9 Units _____%
- >10 Units _____%

Rate of development or production *(number of net new units built)*

2000-2009 _____

2010-2020 _____

Inclusionary zoning is most effective in communities where growth is occurring or projected, and housing is being built.

Tenure mix

Renter Households _____%

Homeowners _____%

Does the tenure mix address the housing needs of your community? Are there rental options available for those who might need or prefer that option?

Affordability

Cost Burdened Renter _____%

Cost Burdened Homeowner _____%

Severely Cost Burdened Renter _____%

Severely Cost Burdened Owner _____%

Who needs affordable housing in your community? Is the IZ intended to serve a certain income level? Is it feasible for private developer in this market to include units for low income households without some form of additional subsidy?



Massachusetts Housing Partnership

Moving affordable housing forward

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Crafting the By-Law

Type of Inclusionary Zoning

- Mandatory
- Incentive-based

“Mandatory” IZ requires market rate housing developments to include a certain percentage of affordable units. Voluntary IZ gives a developer the option of including affordable units in exchange for incentives intended to offset the loss of revenue.

Incentives

- No Incentives
- Density Bonus
- Parking Ratio Reduction
- Fee Reductions
- Expedited Permitting

The most common type of incentive is a density bonus, which allows for the construction of a small number of additional, market-rate units in exchange for the provision of affordable units. Reductions in parking, setback, and permitting fees are other effective incentives.

Compliance alternatives

- None Available
- Off-Site Development of Affordable Units
- Payment-in Lieu (PIL)
- Donation of Land or Housing

For an off-site option, the by-law should require units to be comparable in quality and size, and provisions put in place to ensure that they get built.

While there is no “rule of thumb” for determining the PIL amount, it should be roughly comparable to the amount that the developer would save by not building the affordable unit.

For a payment-in-lieu option, provisions should be put in place to ensure that funds be used to support the community’s affordable housing goals.

Municipalities with IZ that provides for a PIL option often take the step of creating a Municipal Affordable Housing Trust (MAHT), which allows them to segregate PIL payments out of the general budget and into a trust fund for use on local initiatives aimed at creating and preserving affordable housing.

For more information, see MHP’s guidebook on Municipal Affordable Housing Trusts: <https://www.mhp.net/writable/resources/documents/municipal-affordable-housing-trust-guidebook.pdf>

APPLICABILITY

Types of development

Check ALL that will be subject to inclusionary requirement

- Single Family Development
- Multi-Family Development (>3 Units)
- Mixed-use Development
- Accessory Dwelling Units
- Rehabilitation Projects (i.e. Motel Conversion)

In order to get the most “bang for your buck” from IZ, communities should consider requiring it for areas zoned for higher density.

Geographic coverage

- Entire Municipality
- One or More Zoning District
- Overlay District(s)

Have community planning documents identified areas where higher density development is preferred and would be most feasible? Things to consider include availability of water and sewer, and proximity to transit and a mix of commercial and service uses.

Minimum size threshold

- 4-6 Units
- 6-10 Units
- 10+ Units
- Varies depending on type of development (single family vs. multi-family for example)

Identify the minimum size project for which the inclusionary requirement would be applicable. What is the typical size development currently being proposed in your community? Is it feasible for a developer to build a small project if one or more affordable units are required? Keep in mind that if the threshold is set at, say, 7, it may be easier for a developers to limit the size of their development to 6.



Crafting the By-Law

AFFORDABILITY DESIGN

Percentage of units which must be affordable

- 5-10%
- 11-15%
- 15-20%
- Other

MHP generally advises that anything higher than 20% will make a project financially infeasible. Some IZ's require different percentages for different types or sizes of development

Affordability level

- 0-30% AMI (*Area Median Income*)
- 31-50% AMI
- 51-80% AMI
- 81-100% AMI (*Not eligible for SHI*)
- 101-120% AMI (*Not eligible for SHI*)
- Combination

The US Department of Housing and Urban Development (HUD) establishes income limits that determine eligibility for assisted housing programs. <https://www.huduser.gov/portal/datasets/il.html>

By-Laws can allow for different levels of affordability for different districts or type of housing. They can also allow for alternative affordability mixes (say, 15% @ 80% AMI or 7.5% @ 50% AMI.)

Keep in mind that it is extremely challenging to develop extremely low income housing (targeted at households earning less than 30% AMI) without additional federal, state or locally provided subsidy.

Duration of affordability requirements

- 5-15 years
- 16-30 years
- Perpetuity
- Other

DHCD generally requires that units be subject to an affordability restriction for at least 30 years in order to be eligible for inclusion on the SHI. Before adopting IZ, municipalities should develop a strategy and identify an individual (municipal staff person or outside agency or consultant) who will be responsible for tracking ongoing compliance with affordability and eligibility requirements.



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Best Practices

Get help from a consultant, or make sure the group working on the IZ has the right skill set

While it is important to look at the IZ requirements for neighboring communities to make sure that what you are proposing is competitive in the local market, do not simply duplicate a by-law from another community.

Conduct a feasibility study

In order to develop an IZ “formula” that results in the creation of affordable housing and is financially feasible for developers, it should be based on the factors influencing the cost of development in your specific community, including:

- Rate of development
- Land acquisition costs
- Availability of water and sewer
- Construction costs/square foot
- Average market rents/sales prices
- Typical unit sizes for your market
- Land acquisition costs
- Local zoning (lot sizes, parking ratios, dimensional requirements, open space requirements-all of which affect the cost of housing.)
- New construction vs. adaptive reuse? The numbers will be different!

Get legal review

Have municipal council or a consultant attorney review the proposed by-law for consistency with existing state and local laws and regulations.

Consult with DHCD

Affordable units created through IZ get onto the Subsidized Housing Inventory (SHI) as Local Action Units (LAUs) through DHCD’s Local Initiative Program (LIP). We recommend strongly that communities considering IZ consult with staff from the LIP program early in the process of developing an IZ by-law.

MHP’s “Local Action Units Guidance” can be found here:

<https://www.housingtoolbox.org/writable/files/resources/LAU-Guide-2018.pdf>

Plan ahead for monitoring and compliance

The municipality, in coordination with DHCD, plays an important role in the ongoing monitoring of affordable units created through IZ. Before proceeding with the development of IZ, therefore, communities should be up to speed on exactly what is required in terms of long term compliance, and identify who will be responsible!

Revisit your IZ By-Law every 2-5 years

The model on which IZ should be based is only good for a moment in time, and should be re-examined in light of changing market conditions, rate of development, an in response to effectiveness to date, and community planning goals. Some IZ by-laws include a provision requiring a mandatory “look back” provision.

