

# IN THE ZONE: LESSONS IN INCLUSIONARY ZONING FROM WASHINGTON, DC

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Already brimming with museums and monuments, these days Washington DC is filling up with another kind of amenity: people. Sitting at nearly 660,000 residents, the District has experienced a population surge of 15% since 2000. “A big change in the city occurred,” notes Cheryl Cort, Policy Director for the Coalition for Smarter Growth, “the city—having declined in population for decades—turned around and started to grow, and grow rapidly.”

The population growth in the early 2000s resulted in increased demand for housing and caused a drop in housing affordability. In response, a coalition of community groups joined forces in 2003 to encourage the City to expand its affordable housing options and adopt a mandatory inclusionary zoning program. The coalition ultimately saw its goal fulfilled: in 2011 the inclusionary zoning program delivered its first affordable units, and by 2014 nearly five hundred affordable units were in the pipeline.

## WHAT IS INCLUSIONARY ZONING?

Inclusionary zoning is an affordable housing tool that requires developers of new housing to provide a portion of new dwelling units at an affordable rate, in return for compensation that offsets the cost of supplying the units. In the District of Columbia, the compensation is up to 20% additional density, but the compensation could also be variances to zoning requirements or expedited approvals—in short, anything that creates value for the developer equal to the incurred cost of supplying the affordable units.

## THE BENEFITS AND CHALLENGES OF INCLUSIONARY ZONING

Inclusionary zoning is a unique tool because it is meant to provide affordable housing through the private sector development process, without the use of direct subsidies (aside from the cost of administering the program). Inclusionary zoning also provides affordable units in the same building as new market rate units, so affordable housing gets built throughout the city in locations where development is already taking place, and where there are not necessarily a lot of other affordable housing options.

At the same time, inclusionary zoning is a complex regulatory tool, and designing and administering a viable program can be a challenge. The following are a few opportunities and challenges for inclusionary zoning advocates in Alberta to keep in mind.

### 1) Assess Reality

In Alberta, the Municipal Government Act limits the conditions that a municipality can impose on a developer in relation to planning approvals (such as subdivision or development approval). However, if there is a willing developer, a municipality may be able to negotiate voluntary support for an affordable housing program.

Consider the following approach. In Edmonton, for example, if a developer chooses to develop a housing project using a direct control district, the city can enter into an option to acquire a portion of the dwelling units at 85% of market value. Selling the dwelling units to the municipality at a rate below

market value functions as a de facto affordable housing contribution from the developer.

Under current legislation in Alberta, a municipality risks a legal challenge if it requires a developer to make a mandatory contribution to affordable housing as a condition of a planning approval. However, Alberta is set to pass amendments to the Municipal Government Act in 2015 and 2016. Whether the province chooses to more clearly expand a municipality's ability to require affordable housing through the upcoming legislation remains to be seen.

### 2) Gather Support

The inclusionary zoning program in the District of Columbia was passed after several years of advocacy by a coalition of community groups, including affordable housing advocates, faith communities, and organized labour. According to Cheryl Cort, one of the original advocates, working together was not always easy. “We actually broke up and came back together a couple of times,” she recalls. But in the end their hard work paid off.

The inclusionary zoning initiative also had support from Council and some developers. According to Cort, “affordable housing was seen as a good thing. The support from Council was just there. And basically we had a number of developers say, ‘we can live with this. And it’s the right thing to do.’”

### 3) Determine Affordability

The inclusionary zoning program in the District of Columbia requires a portion of dwelling units to be targeted

towards residents at 50% or 80% of the area median income (AMI). The exact breakdown depends on whether the building is stick-built or steel and concrete.

To date, the vast majority (85%) of dwelling units that have been supplied under the District's inclusionary zoning program have been at 80% AMI. However, some advocates believe 80% AMI is still too expensive—and too close to the price of market rate housing—to really make a difference for low income households. "The whole idea of splitting between high and low AMI was to get more low, but in the end we got mostly 80% AMI," says Cort. "Unfortunately, 80% AMI is higher than median family income in the District of Columbia." The AMI targets will likely need to be revisited in future.

Medium and long-term affordability in condominium housing can also be affected by an increase in condominium fees. As a result, the design of an inclusionary zoning program would also need to address how to respond to a potential rise in condominium fees.

#### 4) Be Responsive

Inclusionary zoning works best in a strong housing market when private developers are actively building new housing. When the housing market is weak, the inclusionary zoning compensation may not be enough to offset the cost to the developer of building the affordable units. This should be taken into consideration in the design phase of an inclusionary zoning program.

#### CONCLUSION

Inclusionary zoning is a tool to leverage activity in the private development sector to produce affordable housing. The extent to which this tool can be used in Alberta is currently limited. But changes to the Municipal Government Act— together with support for inclusionary zoning and a well-designed inclusionary zoning program—could have a significant impact on the affordable housing landscape in the province. Let's see what happens.

*Chelsey Jersak is a professional planner from Alberta who spent a year living in Washington DC. She wishes to acknowledge the support of Jeneane S. Grundberg (Partner, Brownlee LLP) for reviewing the legal issues in this article.*

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