

# Inclusionary Zoning



Creating Equity and Lasting Affordability  
in the City of Buffalo, New York

Prepared By The Buffalo Inclusionary Housing Coalition  
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## EXECUTIVE SUMMARY

The City of Buffalo is experiencing fast-rising rents and housing prices in the midst of severe and growing poverty. New housing is being built, with generous subsidies from the taxpayers, but most of it is luxury or market-rate apartments and condominiums. Far from aiding the affordability crisis, this new development is worsening it, particularly in neighborhood such as downtown, the West Side and Fruit Belt, where gentrification is underway and displacement of lower income tenants is on the rise. The real estate market is dividing Buffalo into neighborhoods of prosperity and neighborhoods of concentrated poverty, with relatively few mixed income areas. It is essential that city government takes action to prevent increased socio-economic segregation.

Inclusionary zoning is a proven tool to leverage new development for the creation of affordable housing. It helps to create or preserve mixed income neighborhoods where all are welcome. As part of its new land use policies, the City of Buffalo should enact an inclusionary zoning policy requiring developers of ten or more units to set aside 30 percent of the units for people with an income below 60 percent of the City's median income. In order to promote economic integration, the affordable units should be created on the same site as the market-rate units and should be of the same quality, with access to the same amenities.

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## FAST-RISING RENTS IN A HIGH-POVERTY CITY

Buffalo's housing market has heated up. As national trends show a "great inversion," with residents starting to prefer cities over suburbs, Buffalo has experienced a spate of new investments. Public spending in areas like the Buffalo Niagara Medical Campus, downtown, and the waterfront has spurred new development and created "hot spots" in various parts of the city.

With new growth come new challenges, however, particularly when it comes to affordable housing, gentrification, and displacement. Among metro areas nationwide, Buffalo experienced the seventh largest increase in rental affordability burden between 2015 and 2016, with the burden rising 2.8 percent, from 25.6 percent to 28.4 percent.<sup>1</sup> This means that a median income household in the Buffalo region is spending 2.8 percent more of its income on rent than it did a year ago. For a family with an income of \$50,000, that means \$1,400 more in rent per year. According to data published by HUD, the Fair Market Rent for Erie County has increased 48 percent between 2006 and 2016. In 2015, 5,665 people in Erie County experienced homelessness, of whom one third were children.<sup>2</sup>

Given the city's high poverty rate (33 percent according to the latest Census figures), city of Buffalo households face particular difficulties. Using the American Community Survey 2014 estimates, Buffalo renters' median household income is \$21,815. If affordability is measured as paying 30 percent of one's income towards rent, then Buffalo's median renters can afford \$545 in rent each month. Unfortunately, less than 35 percent of Buffalos rental housing is priced at \$600 or below. Put another way, in Buffalo, 61 percent of renters earn less than \$35,000, and 78 percent of these renters pay more than 30% of their income on rent.<sup>3</sup>

New construction of apartments is not helping to alleviate cost burdens, as most new developments are priced at more than double the rent of a would-be affordable unit. To give just two examples, two bedroom apartments at Hydraulics Lofts on 500 Seneca range in price from \$1,075 to \$2,000, while 301 Ohio Street Apartments has two bedroom apartments available for \$2,195 and \$2,495.

Percent of Income Paid Towards Rent by Income Bracket and Location  
Data from the Homeless Alliance of WNY, 2015 Annual Report

Renter Household Income/% of Income As Rent	Erie County		Buffalo	
	Estimate	Percent	Estimate	Percent
<b>Total Renter-occupied housing units:</b>	<b>133,059</b>		<b>65,108</b>	
<b>Less than \$20,000:</b>	<b>45,983</b>	<b>34.56%</b>	<b>27,695</b>	<b>42.54%</b>
<20% of income	1,155	2.51%	739	2.67%
20 to 29 % of income	4,007	8.71%	2,240	8.09%
≥ 30 % of income	40,821	88.77%	24,716	89.24%
<b>\$20,000 to \$34,999:</b>	<b>27,603</b>	<b>20.74%</b>	<b>12,969</b>	<b>19.92%</b>
< 20% of income	2,297	8.32%	1,331	10.26%
20 to 29 % of income	8,733	31.64%	4,528	34.91%
≥ 30 % of income	16,573	60.04%	7,110	54.82%
<b>\$35,000 to \$49,999:</b>	<b>18,193</b>	<b>13.67%</b>	<b>7,324</b>	<b>11.25%</b>
< 20% of income	4,681	25.73%	2,119	28.93%
20 to 29 % of income	10,043	55.20%	3,777	51.57%
≥ 30 % of income	3,469	19.07%	1,428	19.50%
<b>\$50,000 to \$74,999:</b>	<b>18,514</b>	<b>13.91%</b>	<b>7,607</b>	<b>11.68%</b>
< 20% of income	13,058	70.53%	5,982	78.64%
20 to 29 % of income	4,452	24.05%	1,260	16.56%
≥30 % of income	1,004	5.42%	365	4.80%
<b>\$75,000 or more:</b>	<b>14,458</b>	<b>10.87%</b>	<b>5,708</b>	<b>8.77%</b>
< 20% of income	13,142	90.90%	5,404	94.67%
20 to 29 % of income	1,084	7.50%	304	5.33%
≥30 % of income	232	1.60%	0	0.00%

First-time homebuyers are also facing difficulties. The city's real estate market exhibits a low supply of available units for sale. This is driving up prices as more people try to relocate into the city. As early as 2014 the Buffalo News began reporting on the mounting prices of homes in particular submarkets, notably Elmwood Village and Allentown. In 2014 the price per square foot increased by 50 percent in Elmwood Village and 100 percent in Allentown.<sup>4</sup> Recently the Buffalo



News reported on the growing frustration of first time homebuyers who cannot afford to buy homes in the neighborhoods where they once rented.<sup>5</sup> As a result, many buyers are edging into areas such as the West Side, University Heights, and the Fruit Belt.<sup>6</sup>

The Buffalo-Niagara Association of Realtors tracks housing sales across the region and has seen similar trends at a larger scale. Between July 2012 and July 2015, median sales prices increased 7.8 percent, bringing the median selling price to \$137,000. The days on the market between July 2012 and July 2015 decreased 29.2 percent, showing that

buyers must act quickly if they hope to own the properties they are interested in.

Those who are earning below the area median income are also facing a crisis of housing quality. In a city where the majority of the housing stock is approaching 80 years of age, those looking for affordable housing are being forced to forego quality in order to make monthly payments. Even when families and individuals find housing that fits their budgetary constraints, it is often concentrated in areas where properties have not seen adequate levels of upkeep and maintenance. An analysis of Impediments to Fair Housing conducted by Erie County found that Fair Choice voucher holders were overwhelmingly concentrated in racially segregated, high poverty neighborhoods.





## INCLUSIONARY ZONING

One highly successful strategy for maintaining affordability in a city is inclusionary zoning (IZ). Many jurisdictions around the country have adopted policies requiring that a certain number of units within a market-rate development be affordable. The percent of units that must be affordable differs across IZ programs. Some increase depending on the level or number of subsidies received by a developer.<sup>7</sup> Other policies allow the number to decrease if the developer provides a deeper level of affordability.

The pioneering IZ program in Montgomery County, Maryland produced over 11,000 units of affordable housing in its first 25 years.<sup>8</sup> Since then, IZ programs have proliferated around the country. In 2016 the Town of Hamburg passed a policy to create zoning ordinances that support an inclusionary zoning law providing a density bonus to developers, allowing them one additional market-rate unit for each affordable unit they build. City of Buffalo Council President Darius Pridgen submitted a resolution to the Common

Council stating that:

- *There has been an increase of new development in Buffalo*
- *Many of the new buildings do not serve low-moderate income residents*
- *The City of Buffalo should provide affordable housing to all residents so they can benefit from new residential development.*
- *The resolution asked the Corporation Counsel to research inclusionary zoning policies and report back to the Council.*

The case for inclusionary zoning is particularly strong in Buffalo because so much of the private, market-rate housing development is being aided with public dollars. When the public is providing so much support to the private market, it makes sense to ask that the development also serve a public purpose. It would be unwise for local and state government entities to spur gentrification and displacement, which will then cause additional public costs and hardships.

## EXAMPLES OF RECENT MARKET-RATE HOUSING SUPPORTED WITH PUBLIC DOLLARS

Property Name	Project Summary	Benefit
<b>Phoenix Brewery<sup>10</sup></b>	<ul style="list-style-type: none"> <li>▪ \$7.57 million conversion of the former Phoenix Brewery building</li> <li>▪ 30 one- and two-bedroom luxury apartments and 3,000 square feet of commercial space.</li> <li>▪ average rent of \$1,500 per month</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sales and mortgage recording tax break: \$316,000</li> <li>▪ City property tax break</li> <li>▪ Historic Tax Credits: \$ 1.74 million</li> </ul>
<b>Stanton Building<sup>11</sup></b>	<ul style="list-style-type: none"> <li>▪ 36 one- and two-bedroom apartments</li> <li>▪ new headquarters for Priam Enterprises</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sales and mortgage recording tax break: \$413,000</li> <li>▪ City property tax break: anticipated</li> <li>▪ Historic Tax Credits: anticipated \$2.3 million</li> </ul>
<b>141 Elm Street / The Planing Mill<sup>12</sup></b>	<ul style="list-style-type: none"> <li>▪ 22 one-and two-bedroom apartments</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tax abatements: \$259,000</li> </ul>
<b>295-305 Niagara<sup>13</sup></b>	<ul style="list-style-type: none"> <li>▪ 40 market rate apartments</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sales and mortgage recording tax break: \$420,000</li> <li>▪ Historic Tax Credits: application in process</li> </ul>
<b>31 Tamarack St. &amp; 1030 Parkside<sup>14</sup></b>	<ul style="list-style-type: none"> <li>▪ 53 market rate apartments</li> </ul>	<ul style="list-style-type: none"> <li>▪ \$173,000 in tax incentives</li> </ul>
<b>1807 Elmwood<sup>15</sup></b>	<ul style="list-style-type: none"> <li>▪ 43 market rate apartments</li> </ul>	<ul style="list-style-type: none"> <li>▪ \$416,000 sales and mortgage recording tax reductions</li> </ul>
<b>AM &amp; A's Warehouse Lofts<sup>16</sup></b>	<ul style="list-style-type: none"> <li>▪ 48 loft apartments and commercial space</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal Historic Tax Credits: \$2,144,255</li> <li>▪ NYS Historic Tax Credit: \$2,144,255</li> <li>▪ City Tax Abatement: 7 year graduated tax abatement</li> </ul>
<b>AC Lofts<sup>17</sup></b>	<ul style="list-style-type: none"> <li>▪ 91 apartments</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal Historic Tax Credits \$2.7 million</li> <li>▪ NYS Historic Tax Credit: \$2.7 million</li> </ul>
<b>Apartments at the HUB<sup>18</sup></b>	<ul style="list-style-type: none"> <li>▪ 18 one-bedroom 32- two bedrooms, commercial space</li> </ul>	<ul style="list-style-type: none"> <li>▪ Historic Tax credit: \$4.8 million</li> </ul>
<b>Webb Lofts<sup>19</sup></b>	<ul style="list-style-type: none"> <li>▪ 32 market rate lofts, first floor child care center</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal Historic Tax Credits</li> <li>▪ New Markets Tax Credits</li> <li>▪ New York State Housing Tax Credits</li> </ul>
<b>The White Building<sup>20</sup></b>	<ul style="list-style-type: none"> <li>▪ Renovated office space</li> <li>▪ Convert office space to 26 apartments – “24 upscale “live-work” loft apartments and two penthouse apartments”</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sales and mortgage recording tax break: \$302,000</li> <li>▪ Historic Tax Credits: unspecified amount</li> </ul>

## POLICY CHOICES IN INCLUSIONARY ZONING PROGRAMS

### Mandatory, Voluntary, or Hybrid

Inclusionary Zoning policies can be mandatory, voluntary, or a hybrid, which is often called strong-voluntary.

- *Mandatory* policies require that, in order to get site plan approval, any new market rate development must include a designated percentage of units that are affordable to low- or moderate-income households. Many but not all mandatory policies offer certain benefits to developers, such as density bonuses or relaxed parking requirements, to help absorb the cost of developing affordable units.
- *Voluntary* policies offer developers different types of incentives or benefits in exchange for voluntary participation.
- *Hybrid* policies mandate that whenever a developer receives any type of public subsidy or zoning variance that increases the value of the property the developer is required to include affordable units.

Mandatory policies are the most common and most successful at producing inclusionary units. Of the 507 Inclusionary Zoning programs scattered throughout the United States, 83 percent are mandatory.<sup>21</sup> Voluntary programs frequently fall short in terms of unit production unless non-cash

**Mandatory programs produce a greater quantity of affordable housing, provide units at a broad spectrum of affordability, and allow for “uniformity and predictability in implementation and enforcement.”**

incentives, such as density bonuses, are particularly valuable in that market. Mandatory programs produce a greater quantity of affordable housing, provide units at a broad spectrum of affordability, and allow for “uniformity and

predictability in implementation and enforcement.”<sup>22</sup> Cambridge, MA had a voluntary policy that produced no affordable units in ten years. After Cambridge changed the policy to be mandatory in 1999, 135 units were produced within 5 years.<sup>23</sup>

For Buffalo, we recommend a mandatory policy.

## Policy Triggers

Policy triggers are the minimum threshold at which inclusionary zoning policies become applicable to a development. Thresholds can be set based on the number of units being developed, the square footage of a project, or the receipt of a public benefit. Inclusionary programs have thresholds that range anywhere from 5 to 50 units.

A good threshold should reflect local real estate supply and demand.<sup>24</sup> An ideal threshold is not so

## Income Targeting

Policy makers must decide which income groups the policy will address. Income targets are often set as a percentage of the area median income (AMI) as published by HUD, and present policies have income targets that range from a low of 30 percent AMI to a high of 120 percent AMI.<sup>25</sup> In the case of Buffalo, where incomes in the city are dramatically lower than those of the metropolitan area, we recommend setting the income target at 60 percent of the City of Buffalo median income.

Strategies that municipalities can employ to achieve greater levels of subsidy include:

- Allow developers to create fewer affordable units but with greater affordability,
- Allow for additional incentives for developers who provide deep affordability,
- Set up an affordable housing trust fund to accept in-lieu fees and partner with non-profits to build housing at lower income targets, or

high that it captures only a few market rate developments and thus produces few affordable units, but also not so low that it stalls or stops small development projects by placing too much strain on developers with less capital. For the City of Buffalo, we recommend a trigger of ten or more units.

- Allow local housing authorities to purchase units so that they can combine the discounted housing with other public programs such as the Housing Choice Program. Montgomery County allows for units developed at 65 percent of AMI to be purchased by the local housing authority so that they can further subsidize units to meet the needs of the county's lower income population.

If a municipality wants to target populations at a range of incomes, it can adopt a tiered income targeting strategy. In Sacramento, California one-third of the set aside must be affordable to low income households (50 percent to 80 percent of the AMI) and two-thirds must be affordable to very low income households (below 50 percent of the area median income).

## Affordability Period

One of the primary goals of an inclusionary zoning policy is to expand the stock of affordable housing. IZ programs achieve this goal by mandating an extended period of affordability. In a national survey of 307 Inclusionary Zoning programs, the Lincoln Institute determined that 84 percent of homeownership and 80 percent of rental IZ programs had affordability periods of at least 30 years. Of those same programs, one-third of them mandated that rental and/or for sale units remained affordable in perpetuity.

Cities can adopt different strategies for achieving lasting affordability, such as setting control periods for 99 years or the life of the buildings, adopting 30-year affordability requirements that reset if homeowners change before affordability period expires, and allowing housing authorities or local land trusts to purchase units at below market rates. In addition to these policy features, having adequate oversight and enforcement of these features is central to maintaining extended periods of affordability. For Buffalo, we recommend the maximum affordability period allowed by law.





## Developer Incentives

Regardless of whether an IZ program is mandatory or voluntary, it can allow for developers to tap into certain benefits. The most common incentives (in order of most frequent to least frequent) are as follows:

- *Density Bonus* permits building at a higher density than is typically allowed so that developers can build additional market-rate units to offset the affordable units they are creating. This works well in places where there is high demand for new market-rate housing developments.<sup>26</sup>
- *Fast Track Processing* makes it simpler and quicker for projects to gain the necessary permits. Not only is this more efficient for developers, but it also shortens the timeframe for the interest they accrue on predevelopment loans and the taxes they must pay for their undeveloped land.<sup>27</sup>
- *Design Flexibility* can give developers additional options for site design so as to more effectively maximize developable space. These often include changing setbacks from the street or reducing the minimum lot size requirement. Reducing parking requirements is also a very popular form of this design flexibility.<sup>28</sup>
- *Fee Waivers and Fee Reductions* save developers money on impact and/or permit fees connected with new development.<sup>29</sup>
- *Fee Deferrals* let developers pay impact and/or permit fees at a later date – often once the project is fully occupied. Such a deferral would allow developers to pay those fees once they are receiving rental revenue.<sup>30</sup>
- *Subsidies* from the government can cover part of the cost of the development, especially since developers will have reduced rental revenue from the affordable housing units than from the market-rate units that they otherwise would have built.<sup>31</sup>
- *Tax Abatements* lower or eliminate property taxes on new constructions or major renovations.<sup>32</sup>

While incentives can be useful, their full impacts must be weighed.<sup>33</sup> Although attractive to developers, tax abatements and fee waivers, reductions, and deferrals result in less revenue for the local government. Meanwhile, some developers find the incentives are still not enough to offset the loss of profit incurred by including affordable housing units.<sup>34</sup> Therefore, it is important to weigh the impacts of incentives based on the municipality's particular characteristics.

## In-Lieu Fees and Off-Site Housing

Essentially, an in-lieu fee gives developers the choice of building affordable housing on-site or paying a fee so that affordable housing can be built elsewhere. Often, the fees are handled by a housing trust fund. For example, Denver set up an Inclusionary Housing Special Revenue Fund to receive fee-in-lieu payments.<sup>35</sup>



When designing an in-lieu fee program, a municipality must consider how great the need for economic integration is. If there is a strong need to make the municipality more economically integrated, a higher fee should be set to discourage developers from forgoing the construction of on-site affordable housing units.<sup>36</sup> However, if enough fees are collected, it could still be possible for a municipality to create affordable housing in the area instead of building in an area

that is mostly occupied by people earning low or medium incomes. For example, many developers in Seattle found that building affordable housing was too costly and instead paid the in-lieu fee.

Non-profit groups handling the fees were able to create affordable housing within the same areas where the fee-paying developments were—and they were able to produce 616 more affordable housing units than developers would have produced if they had built them on-site.<sup>37</sup>

Boulder, Colorado, wanted to insure that economic integration still took place even though they offered an in-lieu fee to developers. To do so, at least half the affordable housing units each development must produce have to be located on-site. Additionally, in-lieu payments can only be used for up to four affordable units. A more extreme example of regulating in-lieu payments is

when municipalities only accept in-lieu payments under “exceptional circumstances” that must be reviewed by the housing development agency and planning board.<sup>38</sup> At least three municipalities have adopted this approach.<sup>39</sup>

A closely related option is to allow the developer itself to build affordable offsite to meet the requirements of the policy. For example, Burlington, VT does not accept fee-in-lieu payments, but it does allow developers to build off-site so long as the off-site development meets 125 percent of the onsite obligation.<sup>40</sup> In Boston if a developer is going to build affordable units on the same site as the market rate units, the developer must fulfill a 10 percent set aside. If the developer chooses to develop the affordable units offsite, he or she must provide a 15 percent set aside.<sup>41</sup> Santa Monica permits off-site developments if they are

located within a quarter mile of a market rate development and include 25 percent more affordable units than the on-site requirement.<sup>42</sup>

On the surface, fee-in-lieu payments and off-site development appear as attractive alternatives to on-site development, but these options often undermine the goal of promoting social and economic integration, extend the time period that it takes to develop affordable housing, and place an additional administrative burden on those who administer and oversee the IZ program. In Buffalo, we do not recommend the inclusion of fee-in-lieu payments or offsite developments at this time.

**In-lieu fees often undermine the goal of promoting social and economic integration.**

## **Geographic and Housing Type Targeting**

In some municipalities, inclusionary housing is not applied uniformly across all areas or all construction types. Municipalities may choose to do this to increase the amount of affordable housing in areas with the least existing affordable housing or to increase the amount of affordable

housing in certain types of development such as single-family homes.<sup>43</sup> In areas with already low rates of development, this method may discourage new projects because the cost is too high in the most desirable areas to build.

For Buffalo, we recommend a city-wide policy.

## **Design Standards/ Outside Appearance**

The quality and appearance of Inclusionary Zoning can be a vital tool in breaking down stereotypes about who lives in low-income housing. To actively further the IZ mission of promoting social and economic inclusion, IZ policies set interior design standards along with requirements for the outside appearance of inclusionary units. IZ

policies require that the exteriors of inclusionary units are visually indistinguishable from those of market rate units.

For Buffalo, we recommend that affordable units be comparable in type, quality, and access to amenities as market-rate units.

## **Linkage Fees and Housing Impact Funds**

Although not explicitly tied to inclusionary zoning, commercial linkage fees and housing impact fees can also fund affordable housing projects. A commercial linkage fee collects money from new commercial developments to create enough affordable housing in the area to serve the workers who will be working at that business. Similarly, a housing impact fee collects money from each new market-rate housing unit based on its square footage. This money goes towards building

affordable housing in the area because the residents of the market-rate housing will create a new demand for services nearby and the workers in those positions will often earn less than the area's median income, thus creating a need for affordable housing in the area.<sup>44</sup>

We recommend that the City explore linkage fees and housing impact funds as possible revenue streams for affordable housing programs.

## RECOMMENDATIONS FOR BUFFALO

<i>Mandatory/ Voluntary</i>	<b>Mandatory</b>
<i>Policy Trigger</i>	<b>Residential development with ten or more units</b>
<i>Geographic Targeting</i>	<b>City-wide policy</b>
<i>Set Aside</i>	<b>30 percent of units</b>
<i>Income targets</i>	<b>60 percent of City of Buffalo Median Income</b>
<i>Affordability Period</i>	<b>Maximum allowable by law</b>
<i>Alternative Satisfaction/ Opt-Out Provision</i>	<b>Not at this time</b>
<i>Design Standards</i>	<p><b>Affordable units should not be over concentrated within a development project</b></p> <p><b>Comparable in unit type, number of bedrooms per unit, quality of exterior appearance, energy efficiency, quality of construction</b></p> <p><b>Interior finishes may differ from market rate units so long as they are durable, of good and new quality, and consistent with current standards for new housing</b></p> <p><b>Access to all on-site amenities available to market-rate units</b></p> <p><b>Functionally equivalent parking</b></p>
<i>Administration</i>	<b>The City of Buffalo will be responsible for enforcement during development and monitoring ongoing compliance. The City will not be the leasing agent and will not own any of the properties.</b>

## CASE STUDIES

Provided in this section are two case studies of inclusionary zoning programs in Chicago, Illinois and Boston, MA. In Boston, the IZ policy serves middle income families who are rapidly being priced out of the housing market as new construction lags far behind mounting demand. By contrast, Chicago's program serves low-income families, as well as very-low income families. The differences show the importance of tailoring IZ policies to local needs.

The case studies also show the importance of ongoing monitoring and adjustment. Both policies have seen numerous revisions since first being adopted: Boston's fee-in-lieu payment has increased nearly 6-fold since the program's establishment in 2000, and Chicago has created a refined geographic targeting strategy to help spur development in communities that are still being adversely affected by the housing collapse in 2008. Without consistent evaluation, policies can become outdated, leading to the production of fewer units of affordable housing and a failure to meet articulated program objectives.



## Chicago, Illinois

Chicago was one of the first large cities to adopt an inclusionary zoning policy.<sup>45</sup> Called the Affordable Requirements Ordinance (ARO), the program has seen marked success in producing affordable units for very low and moderate income households.

Since the program's inception in 2003 it has created 189 units of affordable housing within new market rate developments, and it has financed the creation of 1,600 affordable units through fee-in-lieu funds.<sup>46</sup>

The ordinance has been revised twice since its adoption. The most recent update occurred in 2015 as part of Mayor Rahm Emanuel's Five-Year Housing Plan. While the program had been largely successful in generating affordable units across the city, the Mayor had a three part goal of increasing the number of affordable units within market rate developments, bringing 1,000 affordable units on line in the next five years, and increasing funding for the Affordable Housing Opportunity Fund.<sup>47</sup> To meet these goals the Mayor appointed 26 city leaders to the ARO Advisory Task Force., which provided seven policy recommendations, all of which were incorporated in the 2015 ARO.



The seven recommendations were as follows:<sup>48</sup>

1. Create more affordable units in neighborhoods with strong housing markets.
2. Encourage investment in neighborhoods where housing markets have been slow to rebound and secure long-term affordability for low-income populations.
3. Continue to generate funds to build and subsidize housing facilities for very low-income families and individuals.
4. Encourage the development of greater density around transit facilities without changing the character of residential neighborhoods.
5. Ensure that the value of the private benefit reflects the public cost without slowing the pace of development.
6. Continue to require affordable units only for those developments that receive something of value from the City.
7. Provide a range of options for developers to meet affordability requirements.

These seven recommendations were well reflected in the major changes to the ARO adopted in 2015, which included:<sup>49</sup>

- Establishing three zones within the city so that submarket conditions are represented in the inclusionary requirements
- Adjusting the fee-in-lieu payments in each new zone
- Requiring ¼ of affordable requirements be developed on site (except for in the downtown zone)
- Providing a density bonus for affordable units near transit stops
- Reducing in-lieu-fees for developers who partner with the Chicago Housing Authority by either master leasing or selling property
- Increasing the number of households eligible for homeownership by increasing the maximum allowable income to 120 percent AMI
- Closing the downtown density program, which had caused the Affordable Housing Opportunity Fund to lose nearly \$20 million in fee-in-lieu payments

With these changes the ARO anticipates that 1,200 units of new affordable housing and \$90 million in funding for the Affordable Housing Trust Fund will be made available in the next five years.<sup>50</sup> In addition to the program's success in producing units and collecting funds, the ARO has excelled in creating affordable units for very low-income households. Policies across the nation tend to cater to low- and moderate-income households, however, Chicago has been able to provide deeper affordability by making the Chicago Low-Income Housing Trust Fund a recipient of 50 percent of the funds in the Affordable Housing Opportunity Trust, which collects all fee-in-lieu payments.<sup>51</sup>

This collaboration demonstrates that private developers often do not have the capacity to develop housing or deliver the necessary services for those who are living below the poverty line, but that does not mean that very low-income populations have to miss out on the benefits garnered from an IZ policy. In directing half of the funding to the Low Income Housing Trust Fund, the specialized developers they employ can leverage funds from the ARO to design programs that deliver the housing and supportive services that are necessary for high-need communities.

## 2015 Chicago Affordable Requirements Ordinance <sup>52</sup>

<i>Mandatory/ Voluntary</i>	Mandatory for residential developments that are: Requesting a zoning change Purchasing land from the City of Chicago Receiving financial assistance from the City of Chicago
<i>Policy Trigger</i>	Residential development with ten or more units
<i>Geographic Targeting</i>	City is divided into three areas: Low-moderate income areas Higher Income Areas Downtown
<i>Set Aside</i>	10 percent of all units in proposed project; 20 percent if the City provides financial assistance
<i>Income targets</i>	Rental: 50 percent of the units in the set-aside must be affordable to households earning 50 percent AMI 50 percent of the units in the set-aside must be affordable to households earning 60 percent AMI  Homeowners: 50 percent of the units in the set-aside must be affordable to households earning 80 percent AMI 50 percent of the units in the set-aside must be affordable to households earning 100 percent AMI
<i>Affordability Period</i>	Rental: 30 year minimum  Homeowner: 30 year minimum, affordability period resets if home is sold before 30 year affordability requirement expires
<i>Alternative Satisfaction/ Opt-Out Provision</i>	Alternative Satisfaction/Opt-Out Provisions differ across geographic areas.  Low-moderate income areas: 1/4 of units must be built on site Off-site development Pay a fee-in-lieu of \$50,000 per unit  Higher-income areas: 1/4 of units must be built on-site Off-site development – must be within 2 miles of residential project in high income or downtown area Pay a fee-in-lieu of \$125,000 per unit  Downtown: Rentals: Exempt from 1/4 on-site requirement Off-site development – must be within 2 miles of residential project in high income or downtown area Pay a fee-in-lieu of \$175,000 per unit  Owner-occupied units: Exempt from 1/4 on-site requirement Off-site development – anywhere in the city Pay a fee-in-lieu of \$225,000 per unit
<i>Design Standards</i>	Affordable units should not be over concentrated within a development project Comparable in unit type, number of bedrooms per unit, quality of exterior appearance, energy efficiency, quality of construction Interior finishes may differ from market rate units so long as they are durable, of good and new quality, and consistent with current standards for new housing Access to all on-site amenities available to market-rate units Functionally equivalent parking
<i>Administration</i>	The Chicago Community Land Trust (CLT) administers the ARO. The CLT is responsible for enforcement during development and monitoring ongoing compliance. Developers who do not provide the required number of affordable units or fail to meet another form of compliance are responsible for paying two times the payment of fee-in-lieu required and will have their real estate developer license revoked. If affordable units are rented at unaffordable rates or to ineligible households the property owner pays a fee of \$500.00 per day of non-compliance.
<i>Other notable features:</i>	All fee-in-lieu payments are paid into the Affordable Housing Opportunity Fund (AHOF). This money is used to administer the program. After deducting administrative fees 50 percent is used for the construction, rehabilitation, or preservation of affordable housing and 50 percent is contributed to the Chicago Low-Income Housing Trust Fund, an organization that serves residents in Chicago who earn less than 30 percent AMI. The Chicago Low-Income Housing Trust Fund also runs the Rental Subsidy program, which provides further subsidy to below market rate units.

## Boston, Massachusetts

Boston's Inclusionary Development Policy (IDP) is unique in that it was established through an executive order issued by Boston's late Mayor Thomas M. Menino. Adopted in 2000, the policy has since produced 2,000 units of affordable housing and \$74 million in affordable housing funds.<sup>53</sup> The IDP has seen five revisions since its implementation, with the most recent revision being adopted through an executive order issued by Mayor Martin Walsh in December 2015.

The 2000 IDP had the mission of preserving affordable housing in the city, as many middle income households were taking on increasing cost burdens as the city's housing market first began heating up in the late '90s. The policy has largely remained true to its roots as a program for middle income households, and compared to national IZ policies, it has one of the highest income targets for owner occupied units (upper limit of 120 percent AMI). Today Boston has an incredibly tight housing market. Homeownership vacancy is well below the nation average at 0.7 percent, and new construction starts consistently fall short of demand due to high land and construction costs in the city.<sup>54</sup>

The table below shows how the IDP has evolved to adapt to changing market conditions in the city. Overtime the policy has become more sophisticated, adding geographic targets, tiered income targets, and expanded options for alternative compliance. These strategic changes account for the increase in demand, land and construction costs, and the needs of those at a range of incomes in the City of Boston. As the policy evolved it becomes evident that they City has taken stronger measures to balance its need for affordable housing without being unrealistic about what private developers ought to provide.



# Boston Affordable Requirements

**Mayor Thomas M. Menino**  
**Executive Order 2000<sup>55</sup>**

**Mayor Marty Walsh**  
**Executive Order 2015<sup>56,57</sup>**

<i>Mandatory/ Voluntary</i>	Mandatory for residential developments that are:  Developed or financed by the City of Boston Developed on property owned by the City of Boston Requesting relief from Boston Zoning Code	Mandatory for residential developments that are:  Developed or financed by the City of Boston Developed on property owned by the City of Boston Requesting relief from Boston Zoning Code
<i>Policy Trigger</i>	Residential development with ten or more units	Residential development with ten or more units
<i>Geographic Targeting</i>	City-wide policy	City is divided into three zones:  Zone A: market values are substantially above other areas of the City  Zone B: market values are more comparable to City averages  Zone C: market values are substantially lower than other parts of the City  (See Appendix B for Zone Map)
<i>Set Aside</i>	15 percent of all units in proposed project	13 percent of all units in proposed project
<i>Income targets</i>	Two income tiers:  At least 50 percent of the units must be affordable to households earning 80 percent AMI  No more than 50 percent of the units can be affordable to households earning between 80 percent and 120 percent AMI (on average these units must be affordable to households at 100 percent AMI)	Rental: all units must be affordable to households earning at or below 70 percent AMI  Homeowners:  At least 1/2 of the units must be affordable to households earning 80 percent AMI  No more than 1/2 of the units can be affordable to households earning between 80 percent and 120 percent AMI
<i>Affordability Period</i>	Maximum allowable by law	Maximum allowable by law
<i>Alternative Satisfaction/ Opt-Out Provision</i>	Options include:  Off-site development of 15 percent of total units in a proposed project  Fee-in-lieu payment of \$52,000 per unit	Options include:  Purchase, rehabilitation, and restriction of existing units located in the vicinity of the proposed project  Off-site development must be in the vicinity of the proposed project, provide the same level of affordability as would be on the proposed project site, and a number of units equal to:  Zone A and B: 18 percent of total units in proposed project Zone C: 15 percent of total units in a proposed project  Developers can build off-site units outside the vicinity of the proposed projects only if offering deeper affordability than the program required  Payment of fee-in-lieu of development:  Zone A \$380,000 Zone B \$300,000 Zone C \$200,000
<i>Design</i>	Comparable in size and quality to average market rate units in the proposed project	Comparable in size, number of bedrooms, and quality of market rate units
<i>Administration</i>	The Boston Redevelopment Authority (BRA) is responsible for enforcement during development and monitoring ongoing compliance. The BRA is not the leasing agent and does not own any of the affordable properties.	The Boston Redevelopment Authority (BRA) is responsible for enforcement during development and monitoring ongoing compliance. The BRA is not the leasing agent and does not own any of the affordable properties.



## The Buffalo Inclusionary Housing Coalition

Partnership for the Public Good  
[www.ppgbuffalo.org](http://www.ppgbuffalo.org)  
617 Main Street, Buffalo NY 14203

People United for Sustainable Housing  
[www.pushbuffalo.org](http://www.pushbuffalo.org)  
Grant Street, Buffalo NY 14213

Housing Opportunities Made Equal  
[www.homeny.org](http://www.homeny.org)  
1542 Main Street, Buffalo NY 14209

Heart of the City Neighborhoods, Inc.  
[www.hocn.org](http://www.hocn.org)  
191 North Street, Suite 1, Buffalo NY 14201

Open Buffalo  
[www.openbuffalo.org](http://www.openbuffalo.org)

Local Initiatives Support Corporation (LISC) Buffalo  
[www.buffalolisc.org](http://www.buffalolisc.org)  
70 West Chippewa Street, Suite 604, Buffalo, NY 14202

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