GRAND COUNTY COUNCIL
SPECIAL MEETING
ADMINISTRATIVE WORKSHOP

Grand County Council Chambers
125 East Center Street, Moab, Utah

AGENDA
Tuesday, March 29, 2016

9:00 a.m.

- **Call to Order**

- **Joint County Council-Planning Commission Workshop**
  A. Housing workshop (Zacharia Levine, Community Development Director)

- **Closed Session(s) if necessary**
- **Adjourn**

NOTICE OF SPECIAL ACCOMMODATION DURING PUBLIC MEETINGS. In compliance with the Americans with Disabilities Act, individuals with special needs requests wishing to attend County Council meetings are encouraged to contact the County two (2) business days in advance of these events. Specific accommodations necessary to allow participation of disabled persons will be provided to the maximum extent possible. T.D.D. (Telecommunication Device for the Deaf) calls can be answered at: (435) 259-1346. Individuals with speech and/or hearing impairments may also call the Relay Utah by dialing 711. Spanish Relay Utah: 1 (888) 346-3162

It is hereby the policy of Grand County that elected and appointed representatives, staff and members of Grand County Council may participate in meetings through electronic means. Any form of telecommunication may be used, as long as it allows for real time interaction in the way of discussions, questions and answers, and voting.

At the Grand County Council meetings/hearings any citizen, property owner, or public official may be heard on any agenda subject. The number of persons heard and the time allowed for each individual may be limited at the sole discretion of the Chair. On matters set for public hearings there is a three-minute time limit per person to allow maximum public participation. Upon being recognized by the Chair, please advance to the microphone, state your full name and address, whom you represent, and the subject matter. No person shall interrupt legislative proceedings.

Requests for inclusion on an agenda and supporting documentation must be received by 5:00 PM on the Wednesday prior to a regular Council Meeting and forty-eight (48) hours prior to any Special Council Meeting. Information relative to these meetings/hearings may be obtained at the Grand County Council's Office**,** 125 East Center Street, Moab, Utah**; (**435**)** 259-1346**.**

A Council agenda packet is available at the local Library, 257 East Center St., Moab, Utah, (435) 259-1111 at least 24 hours in advance of the meeting.

AGENDA SUMMARY GRAND COUNTY COUNCIL MEETING **March 29, 2016** 9:00 am *Workshop*	
TITLE:	Housing Workshop
FISCAL IMPACT:	N/A
PRESENTER(S):	Zacharia Levine, Community Development Director

Prepared By:
ZACHARIA LEVINE
GRAND COUNTY COMMUNITY DEVELOPMENT DIRECTOR

FOR OFFICE USE ONLY:

Attorney Review:

N/A

BACKGROUND:

The Grand County Council will address housing affordability in a series of workshops beginning at 2:00 pm ahead of each regular scheduled public meeting.

During the February 16, 2016, the top two priorities identified were code enforcement and assured housing. Code enforcement will be covered first, then assured housing policies. If time allows, additional topics may be covered.

Common code violations:

- Trash/Debris/Junk
- Unpermitted structures used for housing (RVs, sheds, etc.)
- Illegal overnight rentals
- Unpermitted land use development, including construction

Assured housing:

- Commercial regulations
- Residential regulations

ATTACHMENT(S):

1. Understanding housing needs by income levels (Zacharia Levine, Community Development Director)
2. Interdepartmental Code Enforcement Meeting Minutes, October 15, 2015 (Zacharia Levine, Community Development Director)
3. Code enforcement recommendations for small towns (Rural Planning Group)
4. DRAFT: Grand County Code Enforcement Procedure, with comments (Zacharia Levine, Community Development Director)
5. Code Violation Complaint Form, DRAFT: Code violation letter, DRAFT: Thank you letter (Zacharia Levine, Community Development Director), DRAFT: Code Enforcement Officer Job Description
6. Background reading: Inclusionary Housing (Lincoln Institute of Land Policy)

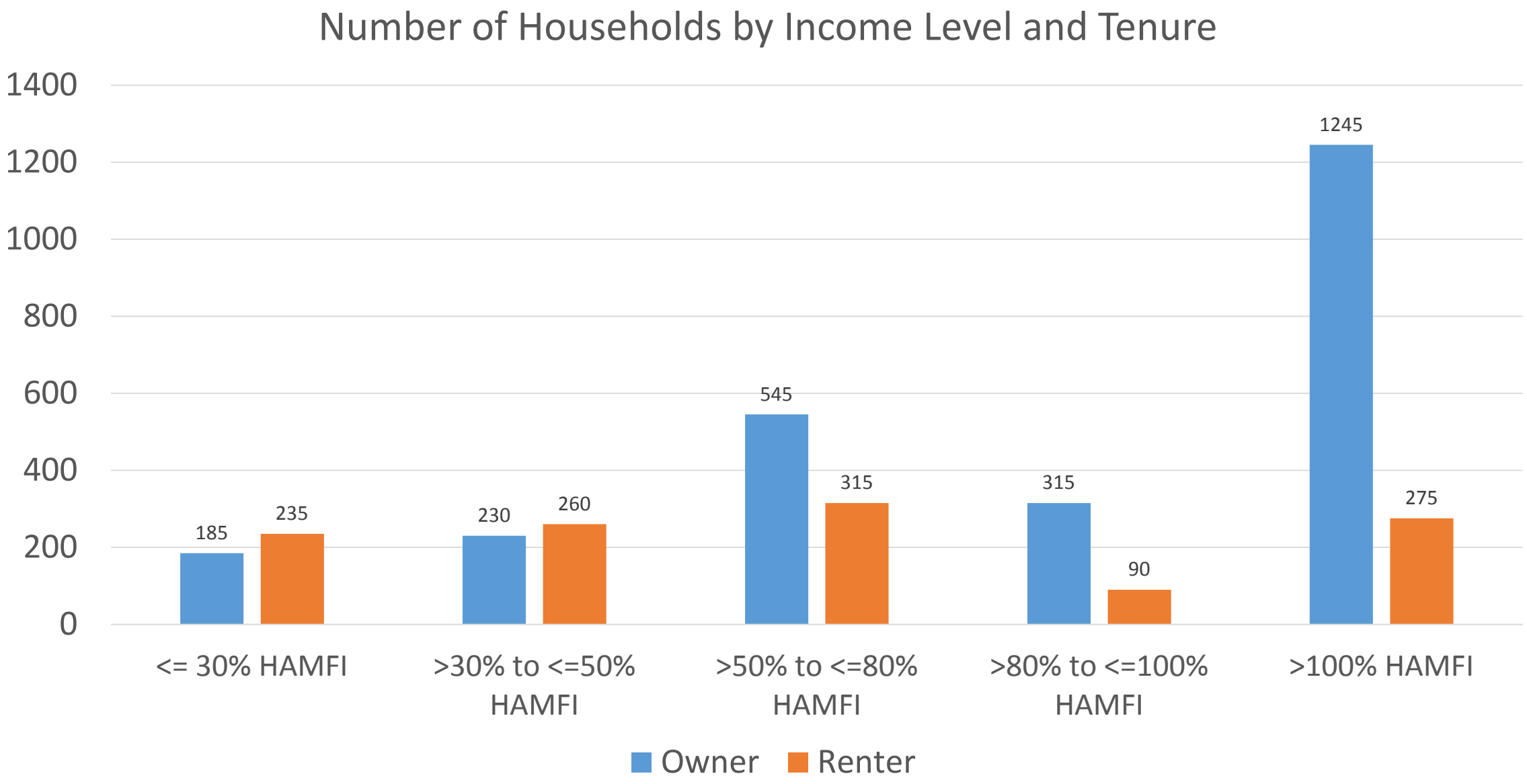
Grand County: Housing Needs & Income

February 16, 2016

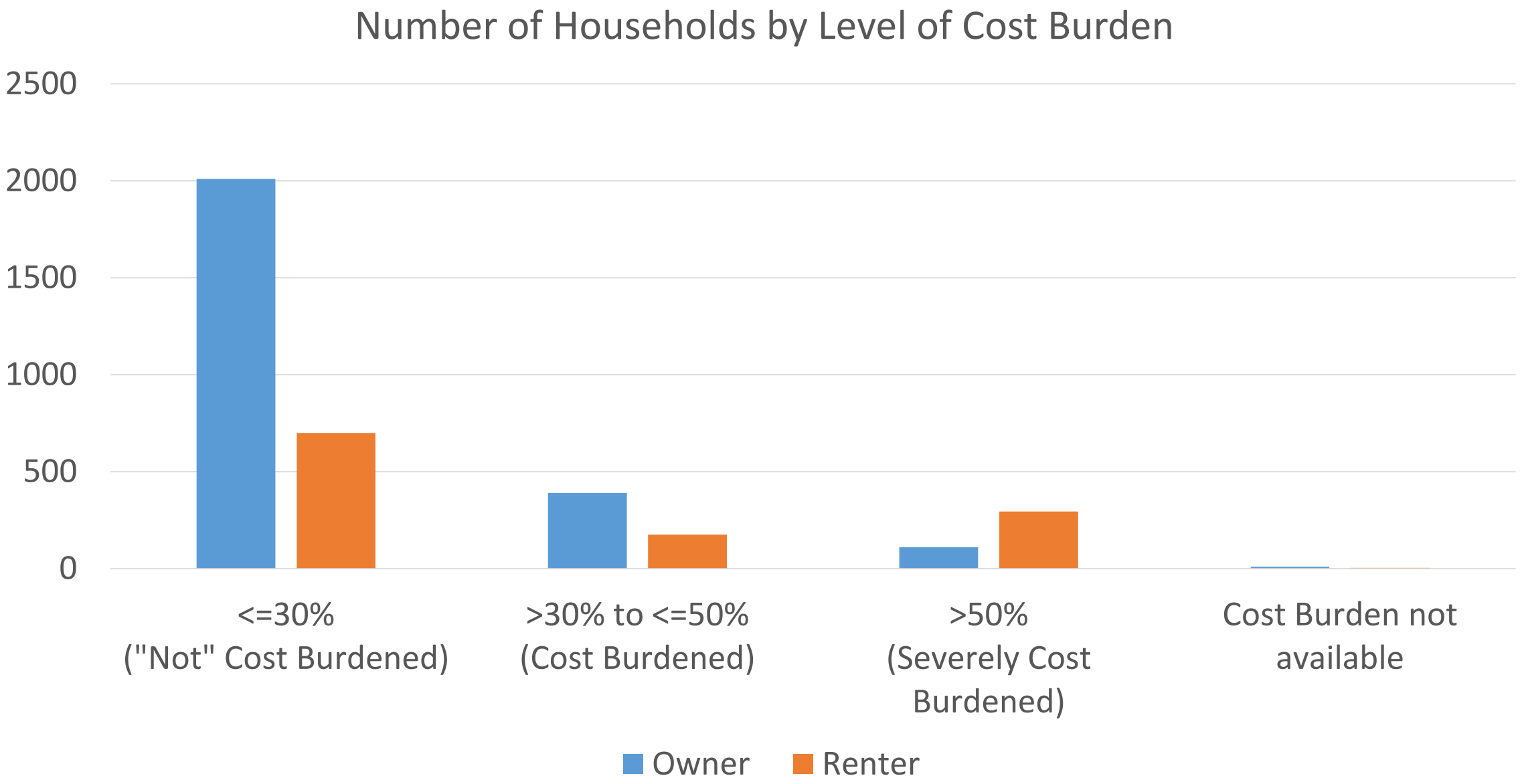
Zacharia Levine, MCMP

Grand County Community Development Director

Interlocal Housing Task Force Chair



Sources: US Census, American Community Survey 2008 – 2012;
Department of Housing and Urban Development 2015



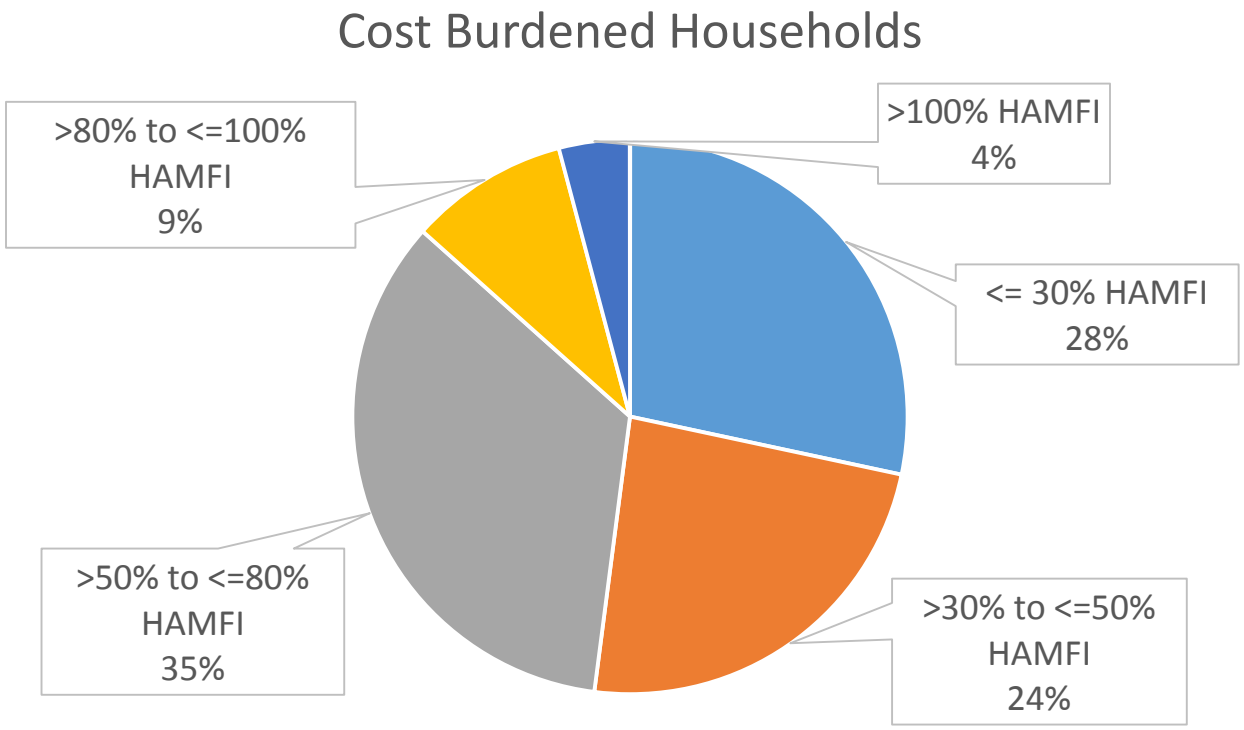
Sources: US Census, American Community Survey 2008 – 2012;
Department of Housing and Urban Development 2015

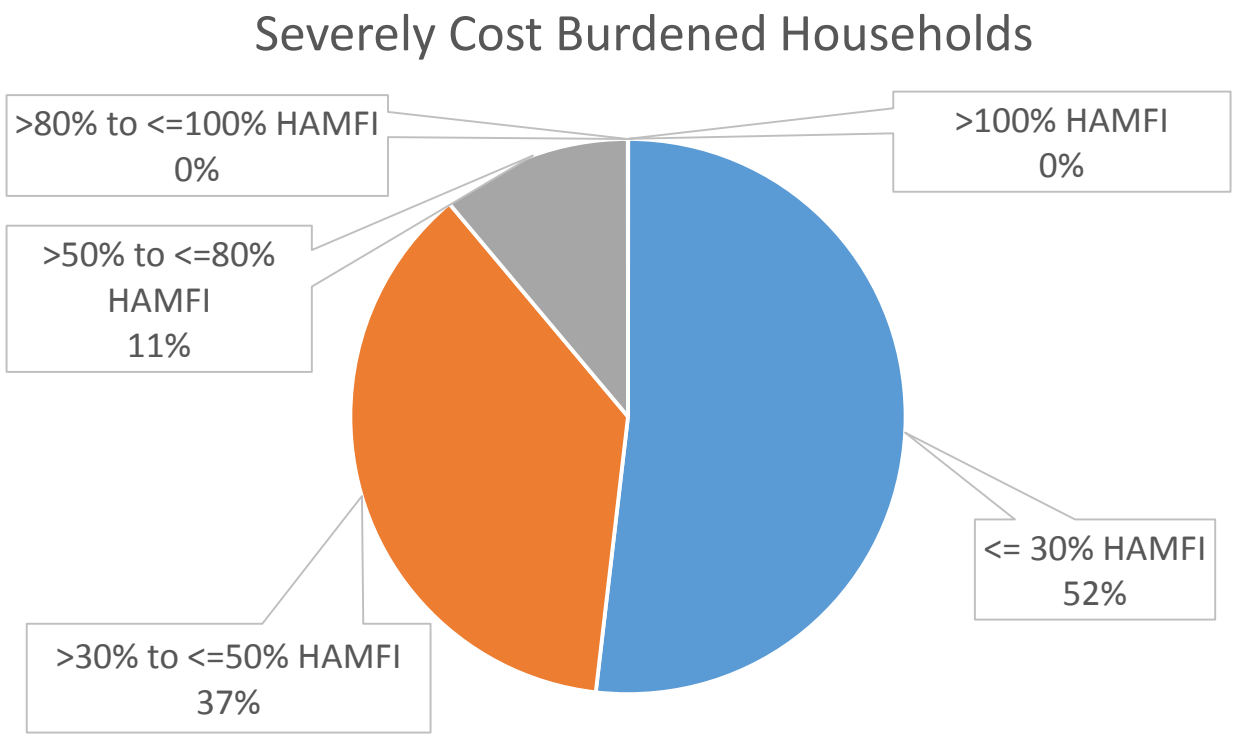
Cost-burdened and Severely Cost-burdened Households by Income
Owners & Renters Combined

Income by Cost Burden (Owners and Renters)	Cost burden > 30%		Cost burden > 50%		Total HH within income level
<= 30% HAMFI	275	65.5%	210	50.0%	420
>30% to <=50% HAMFI	230	46.9%	150	30.6%	490
>50% to <=80% HAMFI	335	39.0%	45	5.2%	860
>80% to <=100% HAMFI	90	22.2%	0	0.0%	405
>100% HAMFI	40	2.6%	0	0.0%	1520
Total	970	26.3%	405	11.0%	3690

Sources: US Census, American Community Survey 2008 – 2012;
Department of Housing and Urban Development 2015

Share of Cost-burdened and Severely Cost-burdened Households by Income
Owners & Renters Combined





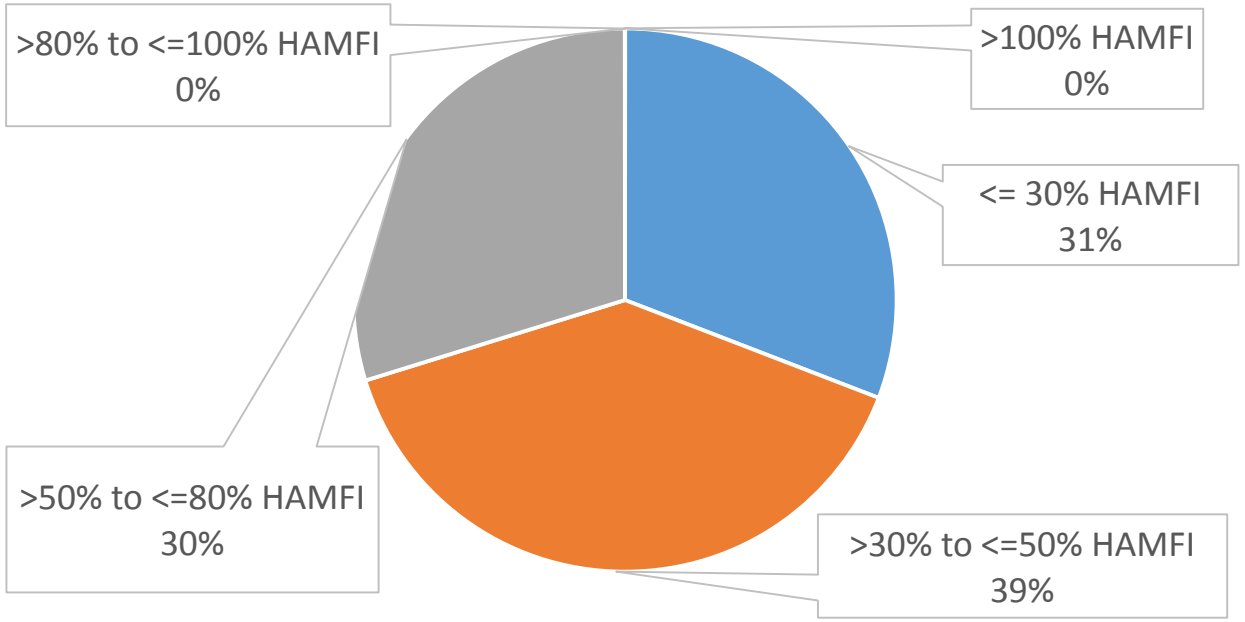
Cost-burdened and Severely Cost-burdened Households by Income Renters Only

Income by Cost Burden (Renters only)	Cost burden > 30%		Cost burden > 50%		Total HH within income level
<= 30% HAMFI	145	61.7%	145	61.7%	235
>30% to <=50% HAMFI	185	71.2%	135	51.9%	260
>50% to <=80% HAMFI	140	44.4%	15	4.8%	315
>80% to <=100% HAMFI	0	0.0%	0	0.0%	90
>100% HAMFI	0	0.0%	0	0.0%	275
Total	470	40.2%	295	25.2%	1170

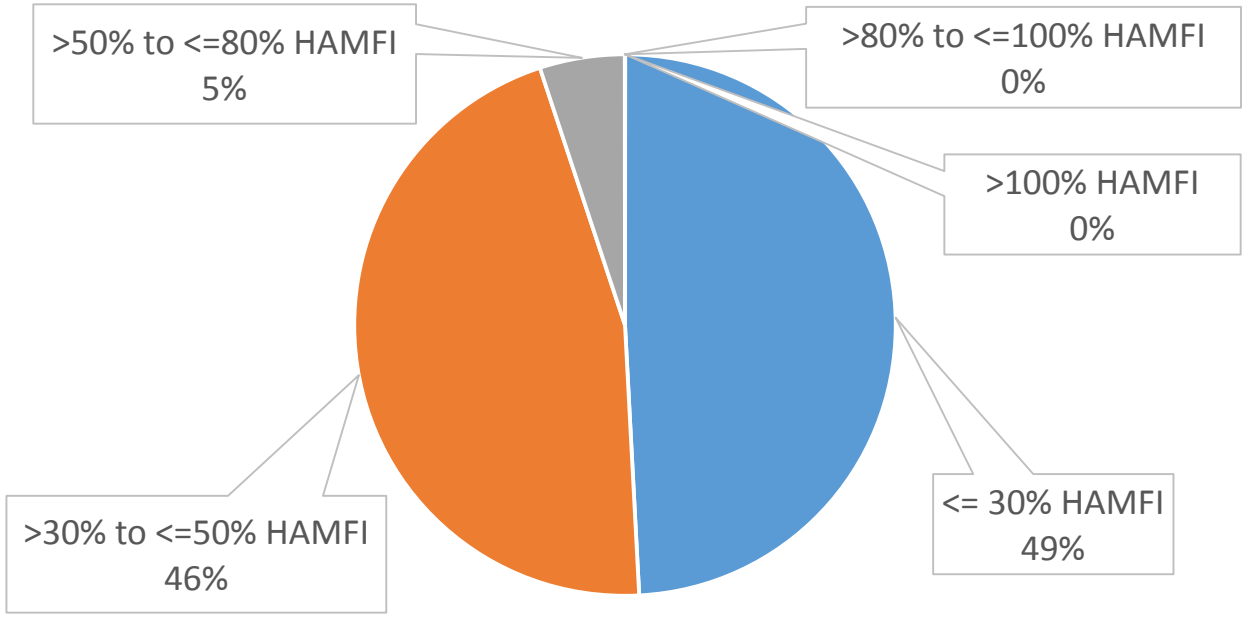
Sources: US Census, American Community Survey 2008 – 2012;
Department of Housing and Urban Development 2015

Share of Cost-burdened and Severely Cost-burdened Households by Income
Renters Only

Cost Burdened Households



Severely Cost Burdened Households

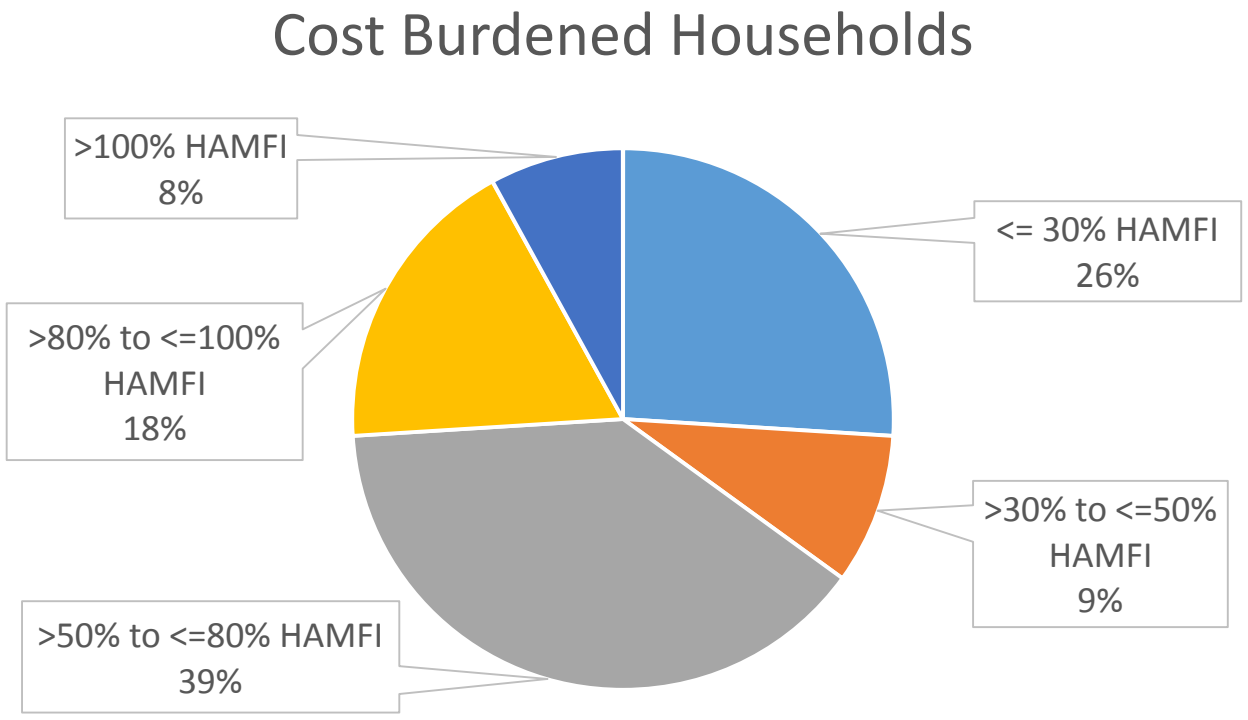


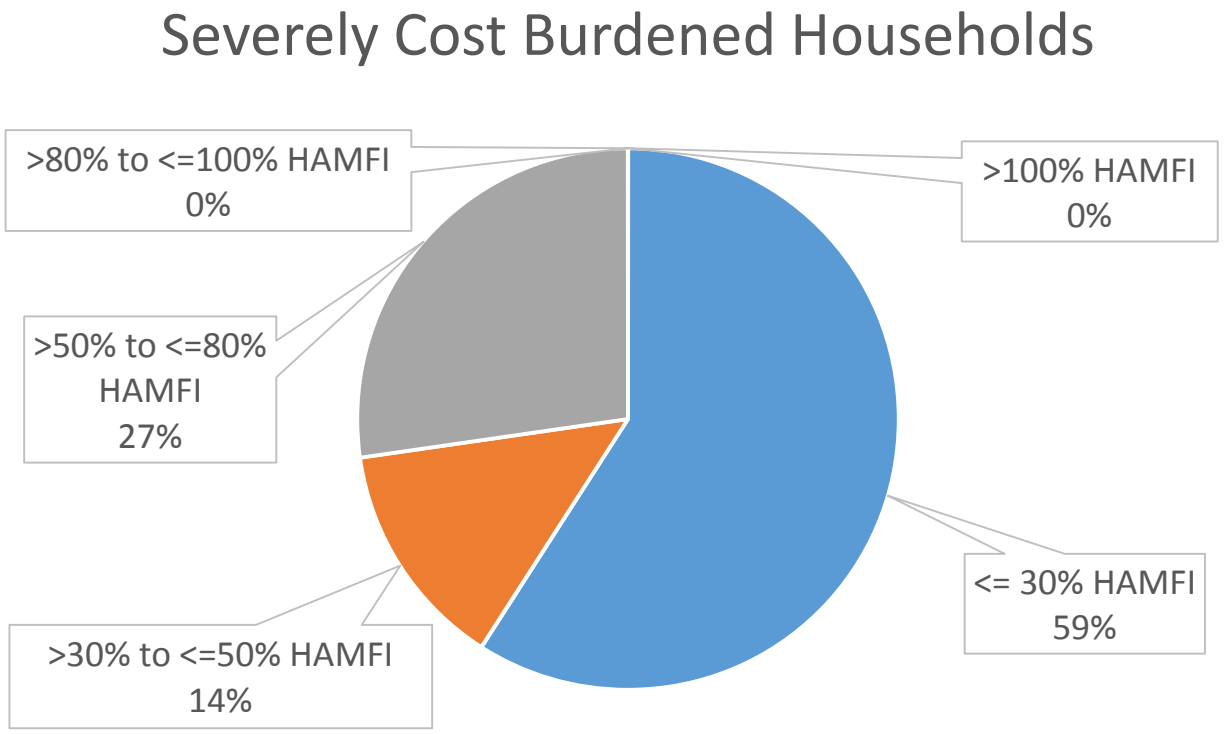
Cost-burdened and Severely Cost-burdened Households by Income Owners Only

Income by Cost Burden (Owners only)	Cost burden > 30%		Cost burden > 50%		Total HH within income level
<= 30% HAMFI	130	70.3%	65	35.1%	185
>30% to <=50% HAMFI	45	19.6%	15	6.5%	230
>50% to <=80% HAMFI	195	35.8%	30	5.5%	545
>80% to <=100% HAMFI	90	28.6%	0	0.0%	315
>100% HAMFI	40	3.2%	0	0.0%	1245
Total	500	19.8%	110	4.4%	2520

Sources: US Census, American Community Survey 2008 – 2012;
Department of Housing and Urban Development 2015

Share of Cost-burdened and Severely Cost-burdened Households by Income Owners Only





10.5.15 Interdepartmental Code Enforcement Conversation: Challenges and Solutions

Primary Challenges (by Departments present)

Fire Philip Mosher	Nightly rental conversions are often unsafe due to poor construction standards and lack of fire code awareness. Owners fail to acquire building permits – violations of the fire and building codes are common. Firefighters visiting the Moab Area on vacation will alert the Fire Chief to fire code violations in nightly rentals. The Fire Department doesn't know where nightly rentals exist, so they cannot always prepare properly for emergency calls. The Fire Chief doesn't currently see business license renewal forms, so regular inspections don't take place. Regular inspections and updates can result in lower costs incurred by the owner *over time.* Oddly, the Fire and Building Departments receive calls from renters hoping to find code violations as a means to avoid paying rent.
Building Jeff Whitney Bill Hulse	Communication between the Assessor and Building Official helps to identify non-compliant structures, and properties in need of a tax adjustment. Coordination with the Health Inspector and Fire Chief has helped prevent or stop illegal construction. The RV/Travel Trailer ordinance is too vague and creates unnecessary difficulties for enforcement. The code is not clear on how to deal with "temporary" of undefined time periods. The absence of a staff person dedicated to code enforcement is a significant challenge. Other than life safety concerns, enforcement is, by necessity, low on the priority list. Unsafe structures are commonly used for residential uses (e.g. sheds, trailers, etc.)
Travel Council Callie Tranter	Monitoring the overnight accommodations websites reveals illegal nightly rental properties. Communication with the Clerk and Assessor helps to bring non-compliant properties into compliance, or shuts them down. However, communication is sometimes lost in the day-to-day shuffle. B&Bs are permitted by-right in the County's residential zones, but owners often fail to comply with the regulations after acquiring a business license. Property management companies can use 1 business license that covers several individual properties throughout the County.
Clerk/Auditor Diana Carroll	Businesses are not acquiring business licenses. Temporary business licenses are especially difficult to manage. Grand County's business license ordinance is unclear.
Assessor Debbie Swasey	It is difficult to keep track of (and collect taxes on) nightly rentals and associated personal properties. While doing assessments, residents often complain about garbage/refuse/junk. They cite impacts on health, safety, welfare, and property values. Owners are circumventing the "30 day" rental requirement in order to do overnight rentals.
Attorney Danalee Gerber-Welch	Business License Ordinance needs to be revisited. The enforcement process currently states violations 1st go to "Commissioners" Process, process, process! Evidence and adherence to a stated timeline is critical for prosecution.

Community Development Zacharia Levine	Primary violations: Junk/refuse; unfit structures used for residential uses; Illegal overnight rentals; land development without appropriate permits; general undermining of land use code; Affordable housing deed restrictions will become a challenge as we develop more affordable housing options. After the CD department threatens owners with letters, there is no recourse for completing enforcement process. How does the CD department levy a citation, and eventually a lien? What is needed to prosecute?

Also present: Ruth Dillon, Council Administrator; Mary McGann, County Council

Proposed Solutions:

0. Encourage the County Council to support code enforcement efforts. Perhaps a resolution is needed to affirm their commitment.

1. Clean-up Grand County Ordinances related to: business licenses, RV/travel trailers, junk/refuse, and code enforcement processes/timelines

    Ex: RV/Travel Trailers may not be used as accessory dwelling units.

    Ex: Each overnight rental accommodation is required to have a business license. A property management company may not hold one “umbrella” license for all of the properties it manages.

    Ex: Properties may have a maximum of two (2) inoperable vehicles on premises at any given time. Any vehicle not currently registered with the State of Utah must be screened.

2. Establish a “community action team” (CAT) modeled after Moab City, and establish a clear code enforcement protocol.

    The CAT meets regularly, and as-needed, to identify and review potential code violations. If the CAT agrees a violation has occurred, code enforcement protocol is followed.

    The Moab City CAT has been somewhat effective in working with property owners to correct violations outside of formal prosecution. The degree to which it has reduced code violations is unknown.

    Create a shared code enforcement letter with all pertinent departments (and signatures) listed. Use the Sheriff to serve letters.

    Although opinions vary as to whether a “code enforcement officer” is needed at this time, the group agrees that an individual dedicated to overseeing the centralized code enforcement process will be needed in the near future, if not now. Coordinating the entire process will be more time intensive than any individual department can handle currently.

For once-off violations, the group agrees it is important to have the choice of writing citations immediately versus going through the longer code enforcement protocol. Some violations require an “on-the-ground” presence because they are temporary or invisible during business hours (e.g. parking violations).

3. A central database shared across “code enforcement” departments, including the ability to enter new violations, track enforcement process, store evidence, and issue letters with department signatures is needed.

First step: explore and utilize the functionality inherent in iWORQ. Because iWORQ is primarily used by the Community Development and Building Departments, code violations should be submitted to the Community Action Team. The CAT will serve as the point of contact for the department or individual initiating the complaint. Someone on the CAT will oversee the code enforcement protocol.

4. Ensure Fire Chief reviews business license renewal forms to evaluate the need for an inspection.

5. Initiate a public education campaign targeting realtors, property management companies, and land developers to ensure accurate information is provided to prospective buyers regarding the regulation of overnight accommodations.

Next Steps:

1. Go over the Grand County Code – specifically the Business License Ordinance and Land Use Code – with the Attorney’s office to determine what modifications are needed to support enforcement.

Implement necessary changes through public hearings (if necessary)

2. Review protocol and established timeframe

Look at Z:/ Drive (BuildingPlanningShare)

Determine necessary evidence for prosecution

Ex: what triggered enforcement, what you saw, photos, verbal and written correspondence, adherence to the established protocol and timeline

The complainant form needs “lawful statement” and signature from person who receives complaint?

3. Draft new Shared letter w/signatures from all department heads, and enter it into iWORQ

Get the template used by the City.

Letter template:

-I have read this letter ____

-The violations listed in this letter violate the _____ code: yes_____ no _____

-This letter addresses the violations identified, and only those. However, it doesn't make other violations acceptable.

4. Talk to Matt about a centralized database for code enforcement.

CODE ENFORCEMENT

RECOMMENDATIONS FOR SMALL TOWNS

RURAL PLANNING GROUP

UNDERSTANDING CODE

CODE: WHAT IS IT?

Codes are the parameters a city* places on what may be done and how it may be done within city or county limits. Cities and counties derive their authority to write and enforce code from the state constitution, their subsequent municipal charter, and statutes established by the state legislature; the charter outlines the authority of elected officials to manage affairs within the community through its code.

Code establishes how development may occur, requires care of personal property, and implements the goals and plans the city made in its general plan. It is important to note that municipal codes' authority comes from supporting the vision and goals in the community general plan and zoning map. If the codes do not have a direct connection to these broader documents, they can be viewed as arbitrary and create legal liabilities for communities.

*In this document "cities," "communities", and "municipalities" refer to towns, cities, and counties. Counties also create and enforce codes. The recommendations apply to all of these communities in a similar fashion.

ON-SITE ENFORCEMENT

All codes require enforcement. Codes that regulate how people use their personal property typically require city or county officials to visit site violations. The following are common code violations requiring on-site enforcement.

NUISANCE ORDINANCE

A nuisance can be almost anything, direct or indirect, that negatively affects other people's ability to use their property (e.g. loud music).

ZONING

Zoning is included in code to allow for different uses. Businesses and/or residences in the wrong zone are common violations (e.g. unauthorized apartment).

SIGNS

The time, place, and manner of sign placement and use can be managed by communities through code (e.g. signs blocking walkways).

SOLID WASTE

Solid waste refers to garbage and debris. Having solid waste on private property is prohibited by most communities (e.g. junk cars and equipment in the yard).

ANIMAL CONTROL

Animal control ordinances address allowed types of animals, requirements for cleaning up after animals, noise, etc. (e.g. unauthorized farm animals).

DANGEROUS BUILDINGS

Dangerous building code addresses health and safety hazards in homes, businesses, or planned additions (e.g. asbestos, unpermitted additions).

CODE ENFORCEMENT

BENEFITS

SENSE OF COMMUNITY
Community cohesiveness is closely associated with the look and feel of a community.

PUBLIC HEALTH & SAFETY
Code enforcement protects residents from potential hazards and health risks.

COMMUNITY & ECONOMIC DEVELOPMENT
Well-maintained communities attract tourism, new housing, and business development that evades poorly maintained communities.

PROPERTY VALUES
Property values stay higher when code enforcement protects neighborhoods from blight and other issues.

COMMUNITY IMAGE
Maintaining a clean community establishes a positive image of the community for residents and tourists alike.

PUBLIC WELFARE
Enforcement informs leaders of potential dangers and of residents who may need assistance in maintaining their property.

IMPLEMENTATION OF COMMUNITY VISION
Enforcing code is one of the primary tools a city has in implementing the long-term vision for the community.

QUALITY OF LIFE
A direct result of the benefits listed above, residents quality of life is directly tied to a city's decision to enforce its code.

DIFFICULTIES

MONETARY CONSTRAINTS
Most small towns and counties receive little revenue; this makes funding code enforcement difficult.

FEAR OF OFFENDING NEIGHBORS
Mayors and County Commissioners are not far removed from their constituents in small communities. Enforcing code on neighbors and friends is often personally difficult.

CONSISTENCY
Communities that have not enforced their code consistently in the past fear legal repercussions for starting to enforce now.

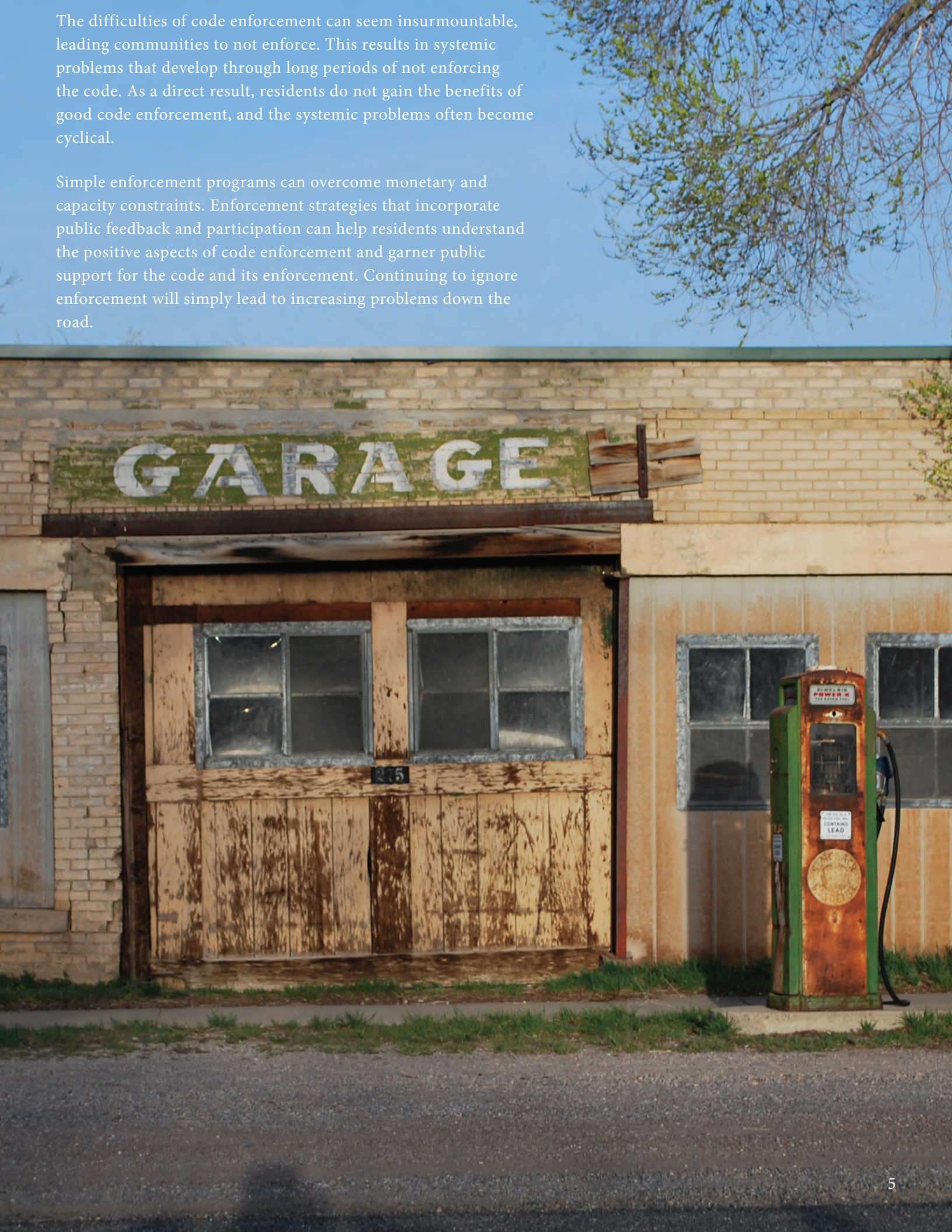
NO CAPACITY
Limited staffing raises the question of "what official or elected official has the time or know-how to enforce our code?"

NOBODY CARES (MOST OF THE TIME)
In many cases residents don't support enforcement until an issue directly affects them or their property.

POLITICAL CONSTRAINTS
Political leaders can be hesitant to support code enforcement when it causes frustration among voters.

The difficulties of code enforcement can seem insurmountable, leading communities to not enforce. This results in systemic problems that develop through long periods of not enforcing the code. As a direct result, residents do not gain the benefits of good code enforcement, and the systemic problems often become cyclical.

Simple enforcement programs can overcome monetary and capacity constraints. Enforcement strategies that incorporate public feedback and participation can help residents understand the positive aspects of code enforcement and garner public support for the code and its enforcement. Continuing to ignore enforcement will simply lead to increasing problems down the road.



STEPS TO GOOD CODE ENFORCEMENT

STEP #1: START AT THE PLAN

Good code enforcement starts long before city officials stand at a doorstep and ask a resident to clean up the half-dozen broken down cars in front of their home. *Good* code enforcement must be based on *good* code and good code must be based on a *good* general plan. Community plans must justify the provisions in the code which in turn justify the community in enforcing the code.

ACTION STEPS

1. Ensure your general plan accurately represents your community's long-term goals.*
2. Review the current code and zoning map to check for consistency with the general plan.*

*See worksheet at the end of this document

STEP #2: ENSURE YOU HAVE GOOD CODE

Good code does not mean *lots* of code. For most communities, having a thick code book can be more burden than blessing. Good code establishes guidelines that assist cities in reaching their long-term vision. Similarly, good code provides succinct, clear definitions of what is and is not allowed. City officials, especially the planning and zoning commission and city council, should be familiar with the code. Having complicated code can often lead to confusion rather than clarity in decision making. Simplifying code instead provides the public and decision making bodies with the clarity needed to understand what is and is not permissible.

ACTION STEPS

1. Review current code for consistency with plans and zoning.
2. Consider code revisions for sections that are unclear, or that do not support the community's goals, vision, or plans.
3. If serious inconsistencies exist, consider a code re-write.

A good general plan clearly and consistently outlines the long-term goals of community members and leaders. Consistency throughout the plan will provide solid backing for code enforcement within the community. To help ensure plans are implementable, think about how the goals and vision will be reflected in the code and how they could be enforced as the goals are being written.

STEP #3: ENFORCEMENT PRECEDENT & STRATEGY

Cities often neglect code enforcement until there is a controversial disturbance. This can place communities in legally difficult situations because the sudden enforcement of code can appear arbitrary, curtailing a specific instance of a use, or targeting a single resident or disturbance.

To avoid this potentially dangerous situation, communities should consistently enforce their codes. If they do not, they will have more difficulty defending the code's enforcement when enforcement is most needed.

Communities should adopt an enforcement framework and strategy that outlines their intended means of enforcing the code. Enforcement methods vary significantly based on a community's size, resources, culture, and needs. Communities should take these factors into account as they select enforcement strategies. Enforcement strategies that match capacity and community culture will be most successful.

Community engagement is legally required for amending or adopting code. Community leaders should go above and beyond the legal requirements for public outreach before and after adopting major shifts in their code or code enforcement strategy and process.

Providing the public with information will help ensure residents know what is expected of them and can provide valuable feedback on how rules should be enforced.

Informing and asking for citizen feedback does not mean allowing citizens to make all the decisions. Community leaders still bear responsibility for final rules. Using resident feedback to inform the code's writing and enforcement process will help community residents feel more ownership of the code and more comfortable with its implementation.

ACTION STEPS

1. Evaluate current enforcement methods for gaps and opportunities to improve.
2. Conduct a public meeting soliciting public comment on preferred enforcement measures.
3. Establish enforcement plan improvements and ensure the public is aware of the code's requirements.
4. Evaluate how consistently you can conduct enforcement with time and monetary constraints.
5. Do not commit to more enforcement (faster response, consistency of patrols, etc.) than is reasonable for your finances or employee capacity.

CODE ENFORCEMENT BRAINSTORM

Enforcement in the real-world can be extremely difficult. Typically, questions surrounding who, what, and when sum up the key concerns leaders have about enforcement. The following are ideas that address these issues. Many of these strategies can be used at the same time, and the list is not comprehensive. Leaders should tailor these ideas to fit their communities needs and culture.

STRATEGY WHAT OPTIONS OR PROGRAMS EXIST?

The following list of strategies are in use or provide flexibility for communities in their enforcement strategies. Community leaders should recognize that incentive and assistance programs provide more flexibility than purely punitive enforcement strategies (fines and legal proceedings). Incentives and assistance tend to better match the culture of small towns. Incorporating multiple strategies into a comprehensive compliance plan is the best way to maintain the community's culture while ensuring code enforcement occurs.

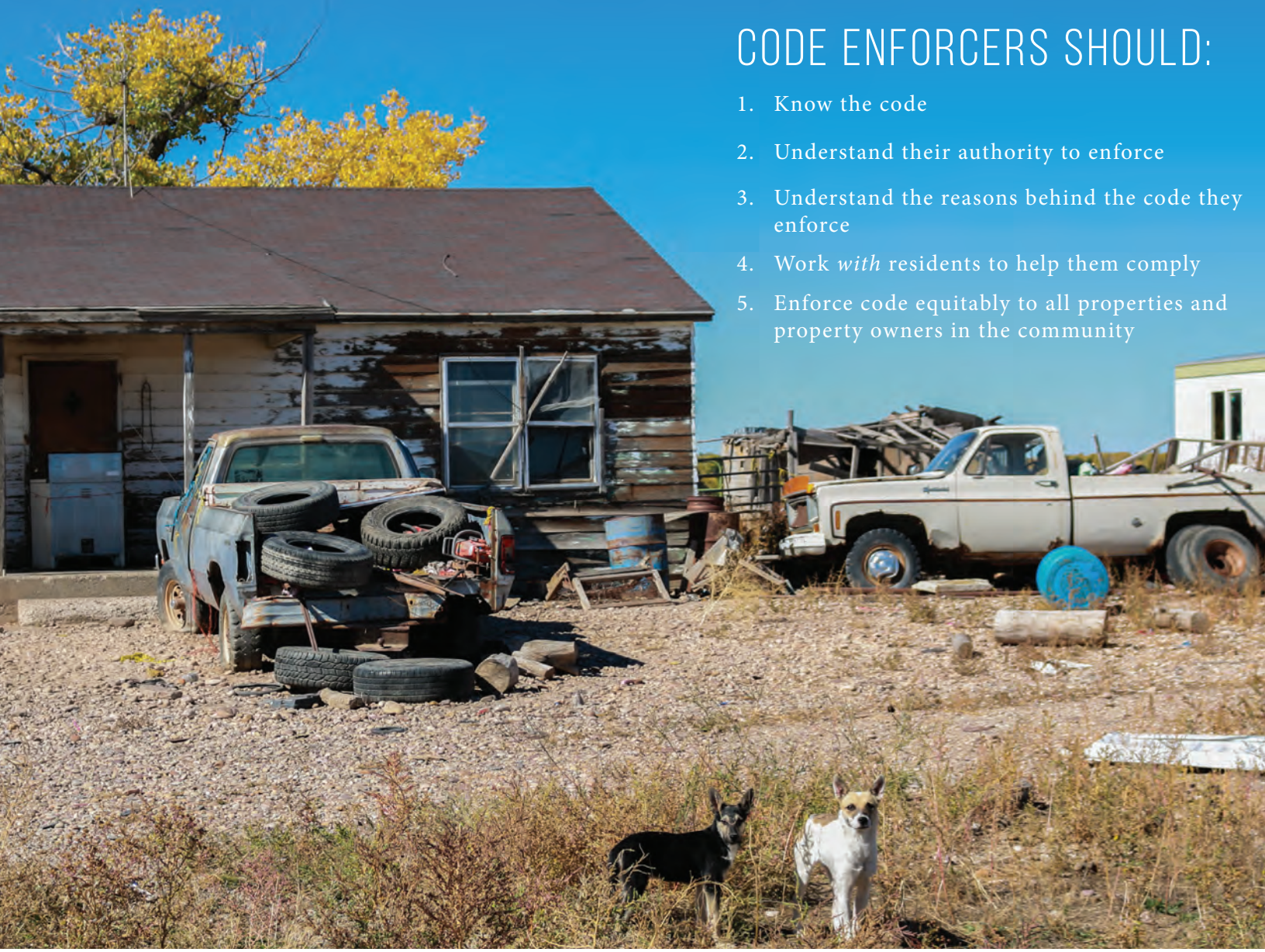
STRATEGY	PROS	CONS	EXPLANATION
Community Incentive Programs	• Incentivizes all community members • Reward instead of punishment • Low public resistance	• Costs money • Takes time to set up program • Potentially complicated • Creates expectations	Incentive programs provide benefits to the community when specific goals are reached. For instance, Duchesne County, Utah provides raffled prizes to community members when the community has collectively removed a set number of broken down vehicles from private property. Everyone who donates a car is a potential winner.
Individual Incentive Programs	• Incentive can match cost of compliance • Directly assists those in most need • Reward instead of punishment	• Potential abuse • Community resistance	Individual incentive programs provide rewards to the property owner who has come into compliance. RPG recommends caution in forming individual incentives as they can encourage community members to be in violation in order to qualify for the incentive. These incentives (such as reduced taxes for a period or free dump passes) can be safely used for new property owners who come into compliance within a specific timeframe after purchasing the property.
Education Programs	• Reduces ignorance • Increases peer pressure to comply • Community-wide	• Takes time • Outreach and materials cost money • Less direct impact	Community leaders should engage with and educate community members on the reasons for the codes they hope to enforce. Taking time for public outreach to teach explain code requirements and why they exist reduces the threat of backlash when codes are enforced.
Community Clean-Up Days	• Reminds residents of need to clean-up • Allows town and residents to work together • Reduces barriers for compliance	• Staff and/or volunteer time • Cost of supporting services (dumpster, lost revenue for landfill access, etc.)	Community clean-up days provide free dump access and community outreach supporting clean-up in specific timeframes. Cities can provide and optimize use of the equipment and physical capacity required to clean up property that some community members may not have. These programs can help residents come into compliance when the primary barriers to compliance are physical or equipment related.
Assistance Programs	• Directly assists those in most need • Creates "no excuses" for violators	• Significant burden for limited staff • Expectations from residents for services • Potential abuse	Similar to community clean-up days, assistance programs are a great way to help community members who are incapable of complying with code requirements on their own. Some communities provide one time financial support to bring property in compliance. Ideas include using public works employees and equipment or having the city council organize service crews[2]. These programs require a clear definition of who qualifies for the services.
Short-Term Loans	• Reduces barriers • Directly assists those in most need • Generates some revenue	• Requires capital • Complexity of loaning • Issues with non-repayment	For minor to moderate violations, communities can provide small, low interest loans to residents to bring their property into compliance[3].
Vacant Property Tax Increases	• Incentivizes vacant properties to be inhabited • Generates revenue	• Citizen resistance • Community culture • Punishment instead of reward	Louisville, Kentucky increases tax rates for abandoned properties by as much as three times that of well kept properties. Other communities increase tax rates for perpetually non-compliant properties, increasing the rate annually until it reaches compliance[4].
Vacant Property Fines	• Incentivizes vacant properties to be inhabited • Generates revenue	• Citizen resistance • Community culture • Punishment instead of reward	Cincinnati, Ohio charges fees for vacant property and increases fees year-over-year until the property is inhabited or sold[5].
Fine Structures	• Flexibility • Recouping costs	• Too steep of a fine structure can create citizen resistance • Punishment instead of reward	Communities can use multiple sets of fine structures that are informed by the severity and frequency of an infraction. The cost of enforcement should be a primary consideration when setting fine schedules, however it is unlikely fines will cover the entire cost of enforcement. These can be assessed after a hearing (inferring criminal violation) or as an administrative citation where the enforcement authority can cite the violator according to administrative rule without first having a trial.
Criminal Classification	• Flexibility • Motivate exceptionally resistant non-compliers	• Citizen resistance • Community culture • Punishment instead of reward	Communities can classify most violations as a Class B Misdemeanor. In Utah, this allows for a maximum fine of $1,000 and up to six months in prison. Some municipalities in the country even classify severe violations as felonies[6]. Communities must bring suit for the violator to be found guilty of criminal offense. RPG recommends taking violators to court as a last resort, when public health and safety are clearly endangered as a result of the violation **and** the violator has received multiple warnings without bringing their property into compliance.

CAPACITY WHO CAN HELP?

Various groups are able to enforce code, including contractors, volunteers, and employees. The following is a list of people and groups that can be considered as small towns set up their compliance and enforcement plan structure. Generally, the community's executive authority is expected to ensure code enforcement occurs.

PERSON / ORG.	WHO & HOW
Enforcement Resource Sharing	Several communities in northern Utah currently share the cost of enforcement by having multiple jurisdictions pay a contractor (in many cases the local sheriff's office) to cite violations in their jurisdictions. Other communities also pay local law enforcement to issue fines and clean up violations.
Community Institutions (Churches, Clubs, etc.)	Local scout troops, churches, and service organizations are great resources for helping residents with trash, cars, or other blight problems. These local institutions can increase the number of residents aware of clean-up days and code requirements. They also reduce barriers for citizens resistant to city interference with their property. Public works vehicles and volunteers vehicles can be used in partnership with these institutions to maximize participation.
Citizens	Citizen complaints can be the primary information source for violations in the city. Online submission forms tied into community websites provide a low-cost means of collecting citizen complainants addresses, contact information, dates, and concise descriptions of violations before the complaint is submitted. These systems require a community to make someone available to follow up on complaints.
Planning & Zoning Commission	Planning and zoning commission members should know the code and the general plan; this knowledge makes them ideal candidates for an enforcement team. This can be done with compensation for commission members or pro bono. Flexibility should be provided to these groups to institute legal, yet creative, enforcement programs.
Neighboring Communities	For communities with no capacity to pay, trading services with neighboring communities can reduce costs and ensure enforcement. In this scenario, two neighboring cities would provide code violation warnings and fine violators for each other. This allows a third party to cite violations which may reduce interpersonal tensions in small towns. It also makes high-school sports games more interesting.
Private Company on Retainer	Similar to enforcement sharing, communities can put their code enforcement on retainer to a private entity. This provides arms-length, unbiased enforcement and helps ensure consistency across the community.
Citizen Inspectors	Cities can educate specific residents on the municipal code and train them on the cities enforcement procedures. The city can then allows these citizen inspectors to patrol their neighborhood, document violations, and begin the code enforcement process. Belligerent or repeatedly incompliant cases should be referred to city officials[7].

Relationships developed between code enforcers and community members are consistently recognized as the most important components of good enforcement. When enforcers know and can work with community members to come into compliance, enforcement helps solve, rather than create, problems for community members.



CODE ENFORCERS SHOULD:

1. Know the code
2. Understand their authority to enforce
3. Understand the reasons behind the code they enforce
4. Work *with* residents to help them comply
5. Enforce code equitably to all properties and property owners in the community

FREQUENCY

WHEN SHOULD I ENFORCE? HOW OFTEN SHOULD I PATROL?

Enforcement should be conducted when there are violations (whether identified by citizens or community officials). Citizens don't always know what constitutes a violation or don't want to report their neighbors violations. City officials also rarely know everything occurring in their community. For these reasons, community inspections help inform enforcement needs.

Consistency is the most important consideration for enforcement over time. Available personnel and capital and the severity of code enforcement problems within a community are key considerations for developing an enforcement timeline. Based on these considerations, communities can create a compliance plan that incorporates specific enforcement strategies, who will carry out these strategies, and how frequently enforcement patrols or surveys will take place. Ensure your city has the manpower and budget to enact their compliance plans timeline.

Several communities along the Wasatch Front elect to only respond to resident complaints and blatant violations recognized by city officials; others have full-time enforcement specialists who patrol the city as their full-time job. In most small towns, a patrol that occurs once a year or every six months is sufficient to recognize new violations and begin enforcement procedures. The violations cited in these patrols require immediate follow-up to support and enforce compliance.

A community clean-up day is a great precursor to code violation patrols. Having the patrol after a clean-up day ensures residents have been provided a reminder and, in some cases, assistance to come into compliance. When a property is incompliant after a well executed clean-up day, additional efforts will be necessary to ensure compliance.

BUT WHAT IF . . . WE HAVEN'T BEEN ENFORCING OUR CODE?

Communities that have not consistently enforced their code have placed themselves in a difficult situation, but continuing to not enforce code will only make things worse. Communities who find themselves in this situation should consider the following steps:

1. Conduct a general plan review, ensuring the plan accurately represents the residents' long-term desires for your community. If it does not, a general plan revision is needed.

2. Review the current code and evaluate how well it implements the vision laid out in the general plan. If the code does not support the plan, consider revising or hiring consultants to re-write the code to align with the general plan.

If the plan is acceptable, and the code supports the plan, communities should:

1. Develop a code enforcement plan.
2. Present the enforcement plan in a public meeting.
3. State that the city intends to enforce consistently moving forward.
4. Accurately enforce the code in perpetuity.

These steps cannot completely protect communities, however they do provide the basis for justifying a fresh start in enforcement and will ensure community members are aware of, and have the opportunity to comment on, expectations established in the code. It is not possible to enforce with 100 percent accuracy. Rather than waiting to have the perfect process or perfect code, leaders should ensure the code is viable and start enforcing at a pace that is feasible for the community in the long-run.

SAMPLE: ENFORCEMENT PROGRAM

ACTION	RESPONSIBLE	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Plan audit*	Planning Commission	■											
Code audit*	Planning Commission		■	■									
Public meeting	Mayor			■									
Code compliance officer training	Planning Commission				■							■	
Community clean-up day	City Council				■							■	
Town-wide violation patrol	Code Enforcement				■							■	
Complaint response	Code Enforcement	■	■	■	■	■	■	■	■	■	■		■

*Every five years. This is simply a generic recommendation. Cities should consider their rate of change in determining how often to review.

This sample enforcement plan is intentionally simple. It focuses on two community clean-up days, where clean-up occurs community wide, with assistance from public works. Most enforcement programs in very small towns should stay simple, and ensure they do not over-extend the town's capacity to enforce. In this example, any empowered group could implement the enforcement program. This model would be carried out as follows:

- **Plan & Code Audit.** Every five years, the planning commission will audit the general plan and code, ensuring the plan still matches community goals and that the code serves to accomplish the goals in the general plan.
- **Public Meeting.** Each March the Mayor and City Council will host a public meeting, in which they will briefly explain the code's requirements, the reasons for the code, and a brief explanation of how code is enforced within the city, including advertising the upcoming community clean-up. Treats should be provided.
- **Compliance Training.** Following the public meeting, the code enforcers (consisting of one council member, public works employee, and the city recorder) will be retrained on city code and proper code enforcement procedures.
- **Community Clean-Up Day.** A semi-annual Community Clean-Up Day will occur in the first two weeks of April and November. One free pass to the local landfill will be provided to each residence (large trailers could be used when landfills are not available).
- **Community Compliance Patrol.** During the two weeks following the clean-up day, city officials will patrol the community, providing notice to property owners of violations.[†]
- **Complaint Response.** During the rest of the year, the city will respond to citizen complaints via the city website's code violation referral page.

[†] All notice of violations will follow the city's enforcement model, with the maximum penalty being a class b misdemeanor for gross neglect and an unwillingness to work with city officials to remedy violations (see next page for example).

Working with local institutions, like churches, clubs, and political groups. to get the word out about enforcement measures, "clean-up days," and other information will improve the turn-out and results of city efforts to bring residences into compliance.

SAMPLE: ENFORCEMENT PROCESS

There are two primary methods of code enforcement: offering incentives or issuing penalties. This sample methodology incorporates an incentive/assistance program into a more traditional, penalty based system. Incorporated communities can adopt any process they deem valuable, provided it does not violate residents constitutional rights.

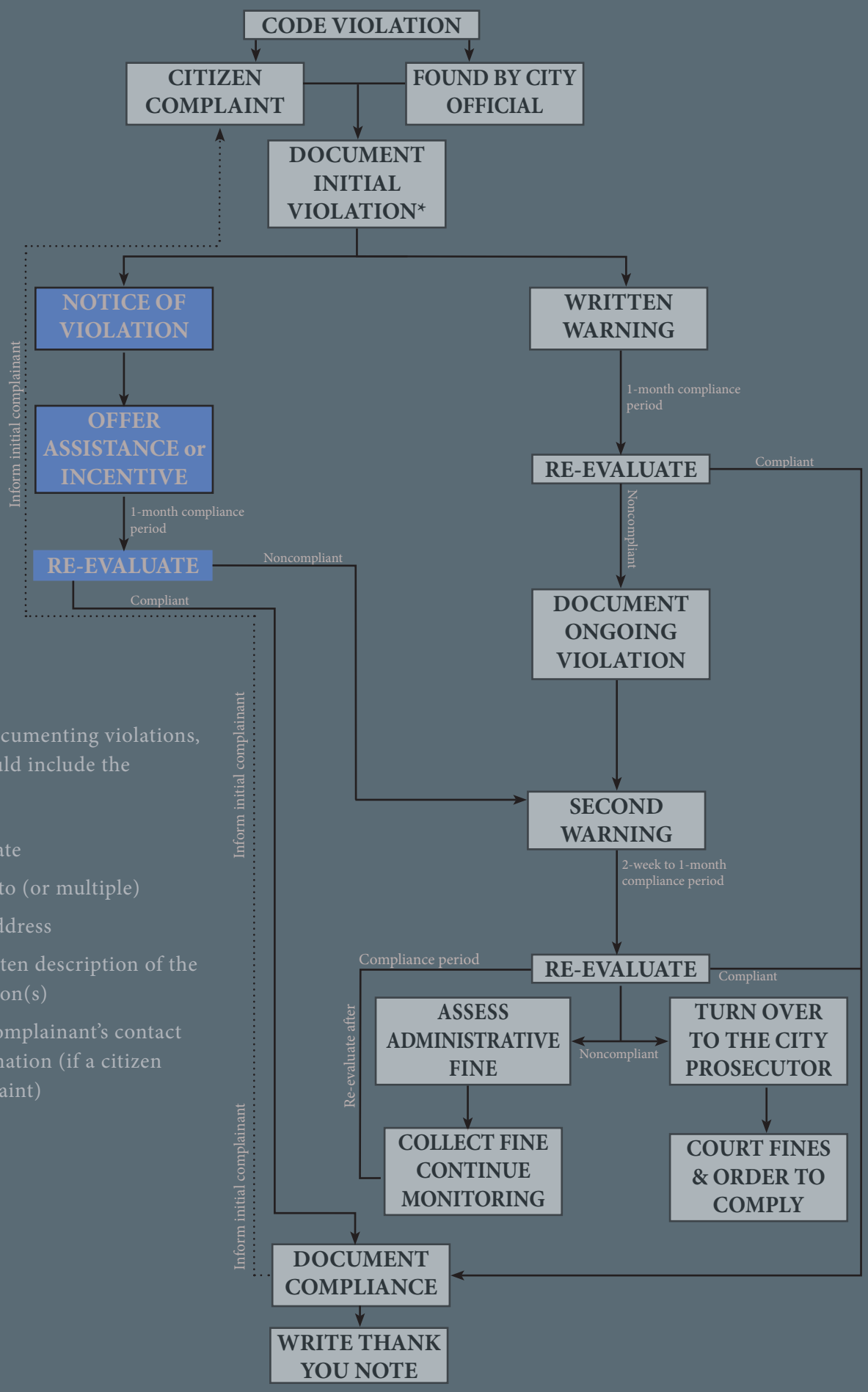
THIS MODEL*

In this model, a violation is observed and documented. Based on the nature of the violation, the resident is informed of their noncompliance with a written warning or notice of violation (with reference to the violated code). The city can then offer assistance or an incentive to come into compliance, or provide a warning of pending legal action and potential fines. If the resident does not take advantage of the assistance or incentive, or respond to an initial warning after a one-month compliance period, the ongoing violation will be documented. Then, a second warning will be issued, illustrating the city's intent to fine or seek a court ordered injunction to comply. After a two-week to one-month additional compliance period, the property will be re-evaluated, and an administrative fine will be assessed or the case will be turned over to the city (or county) prosecutor.

When compliant, the city will document compliance, issue a notice to the resident who made the initial complaint, and write a thank you note to the resident who brought their property into compliance.

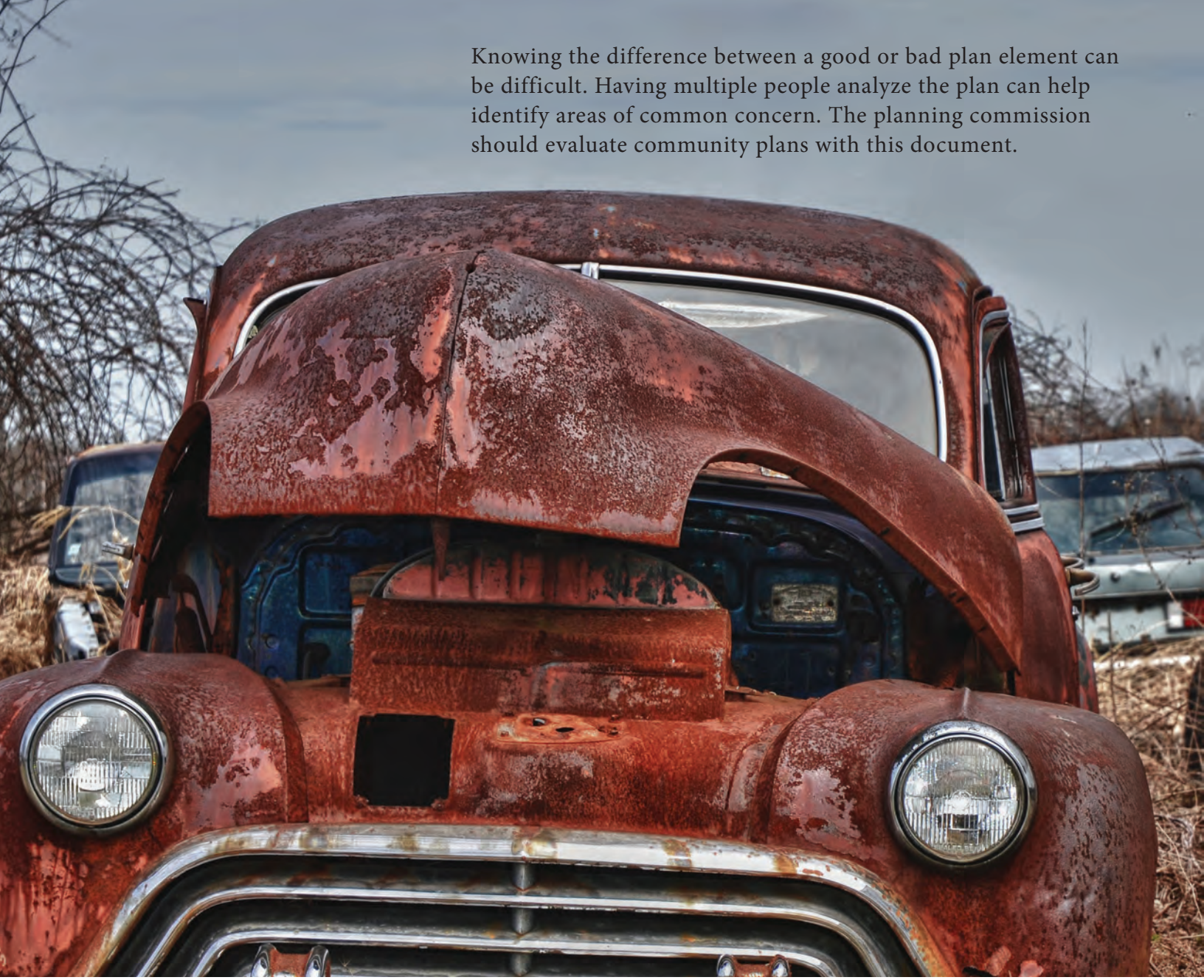
*See Works Cited reference 8 for the sample enforcement procedure that informed this model.

Resources like the local health department can help with violations related to public health. The Utah Ordinance Compliance Association also provides community training on the threats of code violations and importance of complying. Local leaders should familiarize themselves with these and other resources.



*When documenting violations, cities should include the following:

1. The date
2. A photo (or multiple)
3. The address
4. A written description of the violation(s)
5. The complainant's contact information (if a citizen complaint)



Knowing the difference between a good or bad plan element can be difficult. Having multiple people analyze the plan can help identify areas of common concern. The planning commission should evaluate community plans with this document.

SAMPLE: PLAN & CODE AUDIT

The Rural Planning Group (RPG) uses this code and zoning audit to evaluate communities' codes, plans, and zoning maps. This audit considers many of the legal requirements (as per state laws) for municipalities' general plans, zoning, and code. This audit also assesses a community's plan and code cinsistency. Each area is scored based on a "red," "yellow," or "green" scale. Red indicates a community does not have the provision, yellow indicates the provision exists but is lacking, and green indicates that the provision is present and adequate. Additional criteria that address issues specific to individual municipalities are recommended as add-ins to the audit. Planning commissions or other city officials should be capable of completing this audit.

As community leaders complete this assessment, they often ask, "Well what do I do now?" The findings of this audit need to be shared with the elected officials who have the authority to create or authorize changes to the plan, map, and code. If things are in serious disarray, RPG recommends taking a hard look at updating or re-writing the community's general plan and orienting the code to the goals set forth in the general plan. This will ensure the community's code and zoning have a bearing towards the community's long-term ambitions.

PLANNING & ZONING **ORDINANCE AUDIT**

ITEM Required by State code... *(State code reference)*	CONDITION	NOTES
Do we have a General Plan? *(10-9a-401)*		
Do we have an official map? *(10-9a-401, -407, 10-9a-103(34))*		
Do we have a zoning ordinance? *(10-9a-502)*		
Do we have a zoning map? *(10-9a-502, 505)*		
Are our plans and ordinances publicly available?		
PLAN ELEMENTS Does it cover...		
Transportation *(10-9a-403)*		
Affordable housing *(10-9a-408)* *(Towns are exempt from this requirement)*		
Land use *(10-9a-403)*		
Implementation strategy *(best practice)*		
Capital improvements plan *(aligned to GP 10-9a-406)*		
ORDINANCE REQUIREMENTS		
Creates a Planning Commission *(10-9a-301(1)(a))*		
Establishes an appeal authority *(10-9a-701)*		
Residential facilities for elderly/persons w/disabilities *(10-9a-516)*		
Allows for compliant manufactured homes *(10-9a-514)*		
Addresses cell towers (can't prohibit)		
Reestablish nonconforming structure after calamity *(10-9a-511)*		
Allows for charter schools *(10-9a-305)*		
Allow for adult-oriented businesses		
PROCEDURES for...		
Planning Commission *(10-9a-302)*		
Land use authority *(10-9a-103(24))*		
Appeal authority *(10-9a-701)*		
PUBLIC NOTICE		
Have they been posting to the Utah Public Notice website?		
GENERAL PLAN & CODE CONSISTENCY Do our plan and code work together to the community's ultimate goals?		
Overall, how well are city goals and vision reflected in the code?		

List community goals from each section of your general plan and review city code with each goal in mind. Using green, yellow, and red, describe if and how well current codes establish each goal.

The requirement is fulfilled and in good condition

The requirement is fulfilled but is in questionable condition

The requirement is not fulfilled

Duchesne
Football
Sponsored by:
Cowan's Cafe
Sponsored by
4-C
Reclamation
Sponsored by
Express Title
CAFE

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3 Ibid.

4 City Auditor's Office. "Performance Audit Neighborhood Preservation Division." City of Auditor's Office of the City of Kansas City, MO. September 2012.

5 Bracco, Frank. "An Incremental Approach to Improving Code Enforcement and Compliance in Clayton County, GA." Carl Vinson Institute of Government. 2010.

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RURAL PLANNING GROUP

Rev Feb 2016

GRAND COUNTY CODE ENFORCEMENT

ADMINISTRATIVE PROCEDURES & BEST PRACTICES

January 2016

Administrative Procedure for Enforcing the Code

This document sets forth the recommended procedures to enforce the Grand County (the "**County**") Ordinances (the "**Ordinances**"). Code enforcement is essential to the effectiveness of all aspects of local government, so this document also serves as a means for collaboration amongst the many involved departments and officials. The County utilizes a complaint-based system, which in simpler terms means we do not go out looking for problems, but we also don't ignore obvious issues simply because they have not been reported. Our objective is to use our limited resources as effectively as possible, with life/safety issues being the highest priority. The Community Development Director, Building Official, Southeastern Utah Health District Inspector, County Assessor, and Clerk-Auditor, in conjunction with the County Attorney, are responsible for determining which issues will be pursued and to what degree.

Procedural Overview

The following is a step by step guide for handling a routine Code Enforcement complaint. More detailed, issue-specific instructions follow.

1. A citizen will contact the County and report an issue, or a County official will observe a violation and trigger the code enforcement protocol.

2. If the complaint is a legitimate code violation, issue the complainant a Code Enforcement Complaint Form.

3. The Code Enforcement Complaint Form (see attached) includes the following:
   a. Property Address
   b. Complaint/violation
   c. Complainants name, address, and phone number if they want to stay informed with the progress made, (this it is not required - it can be anonymous).

4. Inspect the property, and:
   a. Take pictures
   b. Get the correct property address, if applicable
   c. Assess how the property is violating Code

5. Contact the Grand County Recorder (435-259-1332) and/or Assessor (435-259-1329) to get the property identification number, property owner information, and whether or not they are a repeat violator. Add this information to the Complaint Form.

Comment [ZL1]: We'll need a database or enforcement log in order to accomplish this goal.

6. Provide a "courtesy notice" to the property owner via certified mail indicating the property is in violation of the Code, provide a code reference, and give a compliance date generally 10-14 days into the future. Attach a copy of the notice to the Complaint Form. If the address of the property owner is different than the property in violation, also send a notice to the tenant, if applicable.

7. When the compliance date has come, inspect the property, and:
   a. Take pictures
   b. If the property has reached compliance:
      i. Write COMPLIANT on the top of the Complaint Form, with a date
      ii. Provide the property owner a verbal or written thank you, and indicate the file has been closed.
   c. If the property is still in non-compliance:
      i. Provide a "second and final notice" to the property owner via certified mail, provide a code reference, and issue a new compliance date 10-14 days into the future. Attach a copy of the notice to the Complaint Form. If the address of the property owner is different than the property in violation, also send a notice to the tenant, if applicable.

8. When the second and final compliance date has come, inspect the property again, and:
   a. Take pictures
   b. If the property has reached compliance:
      i. Write COMPLIANT on the top of the Complaint Form, with a date
      ii. Provide the property owner a verbal or written thank you, and indicate the file has been closed.
   c. If the property is still in non-compliance, submit all associated file materials to the County Attorney. The County Attorney will decide whether to:
      i. Send the property owner another letter,
      ii. Send a notice of violation to a property management company,
      iii. Issue a citation, or
      iv. Proceed with Class C misdemeanor prosecution.

Comment [ZL2]: WC?

Common Code Violations & Issue Specific Procedures

Many code violations arise time and time again. Below you may find some of the most common complaints and where they are referenced in the respective codes.

Grand County Code

Grand County Land Use Code (LUC)

Inoperable Vehicles/Junk/Refuse

Issue-specific instructions:
1. Contact the Community Development Director *and* Health Inspector.
2. The Community Development Director *and* Health Inspector will visit the property together to make an initial evaluation of the problem severity.
3. Proceed with the code enforcement procedure.

3.2.3.B Auto Repair Garage

All motor vehicles on the premises must carry a current registration and/or a work order with a completion date not to exceed 90 days. Motor vehicles without valid registration and/or a work order shall be classified as salvage and junk, and may not be kept, stored or worked on in an auto repair shop.

3.3.2.G.3 Home Occupation

There shall be no visible storage of equipment, materials, or vehicles with more than 2 axles

6.3.4.F.5 Outdoor Storage Areas

All outdoor storage areas for materials, trash, mechanical equipment, vehicles, or other similar items shall be screened from street view by a minimum 6 foot high screening device. Such screening device shall consist either of plant material or a wall constructed of or finished with materials to match the main building of the site.

6.12.10 Refuse and Debris

The space around buildings and structures in any district shall be kept free from refuse and debris. No yard, open yard space, open space or land in any district may be used for the storage of junk, or inoperable or wrecked vehicles, except as specifically permitted by this LUC.

Non-residential Structures Used for Dwelling Units

Issue-specific instructions:
1. Contact the Community Development Director, Building Official, *and* Health Inspector.
2. The Community Development Director, Building Official, *and* Health Inspector will visit the property together to make an initial evaluation of the problem severity.
3. Proceed with the code enforcement procedure.

Comment [ZL3]: Required code amendments:
1. Definitions for registered, unregistered, inoperable, dismantled, wrecked, abandoned vehicles, and vehicle parts
2. Clear statement to the following effect: "A maximum of (1 or 2) unregistered vehicles may be stored on an individual parcel. A property owner may apply for an exemption permit for additional unregistered vehicles. However, in all cases, inoperable or wrecked vehicles must be screened according to Section 6.3.4.F.5 of this LUC "
3. The health inspector may have cause to order to the removal of refuse or debris to protect the health, safety, or welfare of Grand County citizens not specifically granted by this LUC.

Comment [ZL4]: Required code amendments:

3.3.2.B.2.b Accessory Dwelling Unit (ADU) Site Plan and Design Requirements

An accessory dwelling unit shall be a permanent structure. No travel trailer, boat, or similar recreational vehicle shall be used as an accessory dwelling unit.

Overnight Accommodations

***Due to the exceptional impacts, volume, and fiscal importance of overnight accommodations within Grand County, code violations associated with this use will be proactively addressed. In other words, overnight accommodations code enforcement is not limited to complaint-based action.*

Issue-specific instructions:
1. Contact the Community Development Director, Clerk-Auditor, Assessor, *and* Travel Council Director
2. The Community Development Director, Clerk-Auditor, Assessor, *and* Travel Council Director will make an initial evaluation of the code violation(s) by visiting the property together and/or reviewing online advertisements, guest reviews, tax records, business licenses, or any other evidence suggesting the presence of an illegal overnight accommodation.
3. Proceed with the code enforcement procedure.

Section 3.1 Use Table

Principal Uses by Zoning District														
		RESIDENTIAL					NONRESIDENTIAL							
Use Category	Specific Use	SLR	LLR	RR	MFR	RG	NC	GB	RC	RS	HC	LI	HI	Use-Specific Standards
Key: P = Permitted by right C = Conditional Use Permit Required ___ Not Permitted (Use-specific Standards and descriptions of Use Categories are provided in 3.2 and 3.4, respectively)														
Overnight Accommodations	Bed and breakfast	P	P	P	P	P			P		P			3.2.3D
	Dude ranch or destination resort					C								3.2.3F
	Hotel or motel						P	P	P	P	P			
	Recreational vehicle parks and campgrounds								C	C	C			3.2.3L
	Residential units used for overnight accommodation							P	P	P	P			3.2.3M
	All other overnight accommodation uses													4.6.4

***Residential units used for overnight accommodations are not permitted in residential zone districts excluding the –OAO designation.**

Section 4.6 -OAO, Overnight Accommodations Overlay District

4.6.1 Purpose

The -OAO, Overnight Accommodations Overlay District is an overlay district intended to designate subdivisions and developments within which overnight accommodations are permitted. Overnight accommodations use of residential dwelling units is an important part of the Grand County economy and tradition, but such use is not appropriate in all districts and parts of the county. The -OAO district should be applied only to entire developments and subdivisions or to portions of such developments and subdivisions planned or historically used primarily for such use and activity, and where appropriate and compatible with adjacent land uses and neighborhoods. The -OAO district will not be applied to individual units or lots.

6.3.2.A-C Height and Location of Fences and Walls

A. General
All fences and walls shall comply with the requirements of this subsection.

1. All fences and walls shall be erected in accordance with the requirements of Section 6.2.3, Corner visibility – street, alley and driveway intersections.
2. All fences and walls over 6 feet in height shall require a building permit and must be constructed in conformance with the International Building Code.

B. Residential Districts
Fences and walls in residential districts shall comply with the requirements of this subsection.

1. No fence or wall erected within a required front yard shall exceed 4 feet in height.
2. Barbed wire shall be prohibited except as follows:
    a. Agricultural and ranching operations may utilize barbed wire in fencing up to 4 feet high, and
    b. Telecommunications facilities may utilize barbed wire for security purposes in otherwise conforming fences.

C. Nonresidential Districts
Fences and walls in nonresidential districts comply with the requirements of this subsection.

1. No fence or wall erected within a required front yard shall exceed 6 feet in height.
2. No fence or wall erected within a required side or rear yard shall exceed 6 feet in height; provided, however, with adequate demonstration of necessity, the Zoning

Administrator may approve security fencing higher than 6 feet subject to the following requirements:

a. Such fencing shall comply with the setback requirements for structures in the underlying zoning district, and

b. A dense and irrigated, landscaped buffer shall be installed and maintained between the fence and the property line.

3. No barbed wire shall be allowed below 6 feet adjacent to any residential district or residential use.

International Building Code (IBC)

Moab Valley Fire Code

Southeastern Utah Health District Code

Code Enforcement Best Practices

Code enforcement is not an easy or fun aspect of local government, but it is necessary to ensure the long-term effectiveness of our County Ordinances and to protect the health, safety, and welfare of our residents. The following "best practices" should simplify the process and reduce the potential for negative reactions to enforcement throughout the County.

Dealing with an angry citizen

Many times when people call in they are very unhappy about something, and they will share their unhappiness with you. It is important for you to stay cool. The following are several pointers that will help you to stay on top of things. Remember, no matter how well you deal with a citizen, there still may be times when he/she will not be satisfied. Don't worry about it, they are not angry with you personally, they just don't know how else to deal with the problem.

Comment [ZL5]: Re-write

Do:

- Remain Calm
- Listen- acknowledge what the complainant is saying and feeling
- Let the person know you understand the situation

- Let them know the timeline for the process and the procedure required
- If they want to be kept up-to-date on the issue, keep them informed and contact them regularly
- Thank them for calling in and for letting you know about the problem. Assure them that it will be addressed

Do not:

- Ignore what the complainant is saying and feeling
- Become argumentative
- Promise things that won't happen (this can be hard)

Complaint form

See the attached standard Complaint Form. If your department or organization requires additional information than provided on the standard form, please modify it as needed.

Property owner information

To find the property owner information, all you need is the address of the property in question. You may contact the Grand County Assessor (435-259-1329) to find the owner's mailing address and phone numbers.

Repeat violator

In order to check if a property is a repeat violator, simply open the code enforcement log, and click on the previous years. In each of the years you can hold down the "Ctrl" button and "F" in order to do a search. Type in the address and see if it is found. Try just the house number in case the previous person typed in the address slightly differently. Perform this search in each of the past years.

If you do find that a property has been in violation before you should be able to see what their previous violation was. Depending on the violation, you will need to determine what the next step will be. You can either contact the property owner and go through the usual process, or you can automatically send the case to the City Prosecutor, depending on the severity of the violation. If you choose to send it directly to the City Prosecutor, let the City Planner review it first.

Comment [ZL6]: This may or may not stay depending on our ability to establish a code enforcement log/database (attached to the enterprise GIS system).

Notifying the property owner

It is important to notify the property owner as soon as possible. For the initial courtesy notification you may do it verbally in addition to writing. Most people prefer a personal conversation rather than a "cold" letter, but the certified mail receipt is important for record keeping.

Certified letter

Sending a certified letter is basically a way of officially telling a property owner which property is in violation of Code, what the code says, and when they need to have the property brought into compliance. An example letter is attached, but basically you will need to give the owner their file #, the complaint, the code citation, and a compliance date.

Certified mail supplies may be found in the Clerk-Auditor's office. To send a certified letter, fill out a green certified card, and place letter in the "Special Handling" tub in the County's mail room. Notify a staff member of the Clerk-Auditor's office, and he or she will charge you department for the costs. When the letter is delivered the green card will be sent back to the County. Keep this receipt with the file! Without it, you cannot prove the recipient ever received the letter. Sometimes the letter will not have been picked up, or the address could be wrong; be sure to keep this also. If a forwarding address is provided, the Assessor's office appreciates getting the new address.

Comment [ZL7]: May need to be specified differently.

Verbal contact

For a verbal contact you can either talk to them right at the property, if you feel comfortable with that, or you can call them on the phone. Remember to listen and to not argue.

Compliance

When the deadline for the property to be in compliance arrives, you will need to drive to the property and see if it is in order. If it has come into compliance, then you will send a thank you letter to the property owner.

Sending a thank-you letter

See the attached thank you letter. This will be sent if the property has been brought into compliance. You may also choose to provide a thank you verbally by phone or in person.

Sending a notice to a property management company

If the property in question has not been brought into compliance, you can call a property management company to come in and clean up the property. Be sure to document all of the calls and the costs, and the costs will be affixed to the property owner's property tax bill.

Working with the County Attorney

When working with the County Attorney, be sure to have open communication. You will need to submit the files along with a legal review request form, but make copies for yourself first. Talk with the Attorney, or a designated staff person, and tell him or her about the issue. The Attorney will then have you check the property one final time in order to make sure it is still in non-compliance. Let the Attorney or a designated staff person know about the status of the property, and he or she will either drop the case or set a trial date.

Don't forget about the cases that have been sent over to the County Attorney. Check back and see if you can help with anything. The Attorney will ask you to periodically check the property for progress.

Code Enforcement Letter Templates

(See attached word documents to be included in the finalized .pdf)

Building Department
Telephone: 435-259-1344
Fax: 435-259-2520

Community Development
Telephone: 435-259-1343

125 East Center St.
Moab, Utah 84532

GRAND COUNTY UTAH

Building/Zoning Complaint Form

Please use this form to report possible building and zoning violations or concerns related to building and zoning issues you observe. Mail or return this signed form to the Building or zoning offices at the above address. Include your name, address, and a daytime phone number you can be reaches should we require additional information.

County policy establishes that building and zoning complaints are investigated upon receipt of a *signed* complaint alleging a violation of the building or zoning ordinance. All complainant information is kept confidential by our office.

Please Note: in the absence of a signed complaint, a concern will be acted upon at the discretion of the building or zoning administrator, and only as time allows. No follow-up information can be provided in the absence of a signed complaint form.

Affected Property Address:

_____

Location of Violation at the Site:

_____

Date and Time of Alleged Building or Zoning Violation:

_____

Description of the Violation:

_____

Additional Information:

_____

_____

_____

_____

Name (Print Legibly):

_____

Address:_____

_____

Phone (Daytime):_____ Cell:_____ Email:_____

Complainant Signature:_____

Date:_____

Grand County 125 E. Center St. Moab, Utah 84532 (435) 259-4134	Southeastern Utah District Health Department 575 S. Kane Creek Blvd. Moab, Utah 84532 (435) 259-5602	Moab Valley Fire Dept. 45 S. 100 E. Moab, Utah 84532 (435) 259-5557

CODE ENFORCEMENT | ADMINISTRATIVE ACTION
(FIRST NOTICE or SECOND AND FINAL NOTICE)

Hand Delivered or Mailed Certified
Mail Return Receipt Requested

Responsible party

Name:
Address:
Moab, Utah 84532

Location of violation

Parcel #:
Address:
Moab, Utah 84532
Date of violation:

Violation(s)

(Describe violation)

Violation case number: xxxxx

Code references

GRAND COUNTY CODE ( ):

GRAND COUNTY LAND USE CODE (LUC):

SOUTHEASTERN UTAH HEALTH DISTRICT CODE ( ):

INTERNATIONAL BUILDING CODE (IBC):

FIRE CODE ( ):

Corrective action(s)

(Set compliance date 10-14 days into the future)

Penalty fpr non-compliance

Any person, firm, entity or corporation who shall violate any of the provisions of this LUC or who shall fail to comply with any provisions hereof within Grand County shall be guilty of a Class C misdemeanor and upon conviction shall be subject to a fine and imprisonment for up to 90 days. Any person violating any of the provisions of this LUC shall be fined up to $750 upon conviction and any corporation or other entity violating any provisions of this LUC shall be fined up to $1000. The minimum penalty for a single violation of any provision of this LUC shall be $100, and each day that such violation continues shall be considered a separate offense.

Appeal

Any person directly affected by a decision, notice, or order issued under Grand County Code shall have the right to appeal to the appropriate appeals authority, provided that a written application for appeal is filed within 21 days after the day the decision, notice or order was served.

Acknowledgement of Violation (applicable signatures required)

_____		_____	
Grand County Building Official	Date	Grand County Planning & Zoning Official	Date
_____		_____	
Grand County Clerk-Auditor	Date	Grand County Assessor	Date
_____		_____	
Southeastern Utah Health Inspector	Date	Grand County Fire Chief/Marshall	Date

Received By: _____ Title: _____ Date: _____

Grand County 125 E. Center St. Moab, Utah 84532 (435) 259-4134	Southeastern Utah District Health Department 575 S. Kane Creek Blvd. Moab, Utah 84532 (435) 259-5602	Moab Valley Fire Dept. 45 S. 100 E. Moab, Utah 84532 (435) 259-5557

CODE ENFORCEMENT | ADMINISTRATIVE ACTION (CASE CLOSURE)

Hand Delivered or Mailed Certified
Mail Return Receipt Requested

Responsible party

Name:
Address:
Moab, Utah 84532

Location of violation

Parcel #:
Address:
Moab, Utah 84532

Violation(s)

Violation case number: xxxxx

Case Closure

Thank you for addressing the violation referenced above. Grand County appreciates your compliance with all applicable codes and regulations. Should you have any questions, please contact the County.

Acknowledgement of compliance (applicable signatures required)

Grand County Building Official	Date	Grand County Planning & Zoning Official	Date
Grand County Clerk-Auditor	Date	Grand County Assessor	Date
Southeastern Utah Health Inspector	Date	Grand County Fire Chief/Marshall	Date

EXAMPLE

JOB DESCRIPTION

JOB TITLE: Code Enforcement Officer _____ **CODE**: _____
(leave blank)

DEPT.: Community Development Department_____ **STATUS**: ■ Full Time **or**
■ Part Time
□ Seasonal

JOB DESC. APPROVAL DATE: _____ **SALARY / GRADE** $_____

REVISION DATE: _____
(leave blank)

SUPERVISOR: Community Development Director_____

GENERAL PURPOSE

Investigates and resolves County Code violations under the direction of the Community Development Director, Building Official, Sheriff, and County Council Administrator. Provide the public with answers to general zoning and land use questions. The Code Enforcement Officer may also assist in review and approval of building permits and home business applications.

SUPERVISION RECEIVED

Works under the specific supervision of the: Grand County Sheriff_____

and the general supervision of the: Community Development Director_____

SUPERVISION EXERCISED

None

DUTIES

- Oversee code enforcement protocol.
- Evaluate, respond to, and catalog citizen complaints of code violations.
- Perform site inspections of possible County Code violations.
- Communicate with Grand County Sheriff and County Attorney when necessary.
- Communicate with property owners, supervisors, County Council, and Development Review Team (DRT) regarding County Code violations.

- Tactfully, uniformly, and impartially enforce ordinances.
- Receive and respond to inquires regarding compliance and processes.
- Provide the public answers to general zoning and use questions.

JOB QUALIFICATIONS

Experience: One (1) year of practical planning, code enforcement, or law enforcement related experience; **or** an equivalent combination of job-related education and experience.

Knowledge of:

- Planning and zoning principles and ordinances.
- Enforcement and adjudication procedures.
- Basic computer operations and applications.
- Correct English language, spelling, and vocabulary.
- Spanish language skills desired, but not required.

Ability to:

- Interact with the public in emotional situations.
- Review residential building and site plans.
- Communicate effectively both orally and in writing.
- Work independently with little supervision.
- Establish and maintain effective working relationships with public, coworkers, and supervisors.
- Interpret general orders and research data and information.
- Prepare letters to property owners and reports on findings.
- Deal with the public in a pleasant, courteous, and calm manner.

Special County Employment Requirements: Grand County will require applicants to have a driver license, criminal background check, and drug testing before an employment offer.

Note: The above statements are intended to describe the general nature and level of work being preformed by the Code Enforcement Officer. This job description is not intended to be an exhaustive list of duties, responsibilities, and skill required for this position.

Inclusionary Housing

Creating and Maintaining Equitable Communities

RICK JACOBUS

POLICY FOCUS REPORT

NATIONAL COMMUNITY LAND TRUST NETWORK CORNERSTONE PARTNERSHIP LINCOLN INSTITUTE OF LAND POLICY

POLICY FOCUS REPORT SERIES

The Policy Focus Report series is published by the Lincoln Institute of Land Policy to address timely public policy issues relating to land use, land markets, and property taxation. Each report is designed to bridge the gap between theory and practice by combining research findings, case studies, and contributions from scholars in a variety of academic disciplines, and from professional practitioners, local officials, and citizens in diverse communities.

ABOUT THIS REPORT

After decades of disinvestment, American cities are rebounding, but new development is driving up housing costs and displacing lower-income residents. Roughly 500 communities in the United States have developed inclusionary housing policies, which require developers of new market-rate real estate to provide affordable housing. For cities struggling to maintain economic integration, inclusionary housing is one of the most promising strategies to ensure that the benefits of development are shared widely. But policies must be designed with care to suit local conditions and guarantee that requirements do not overburden development. Through a review of the literature and case studies, this report details how local governments are realizing the potential of inclusionary housing by building public support, using data to inform program design, establishing reasonable expectations for developers, and ensuring long-term program quality.

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Front Cover (clockwise from top left):
Inclusionary housing developments in Chapel Hill, NC; San Francisco, CA; Chapel Hill, NC; and Carrboro, NC. *San Francisco photo is courtesy of Tenderloin Neighborhood Development Corporation; all North Carolina photos are courtesy of Community Home Trust.*

Back Cover:
Pacifica Cohousing Community, Carrboro, NC. *Courtesy of Community Home Trust.*

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Executive Summary

Redevelopment of the former Mueller Airport in Austin, Texas, will include more than 4,600 new homes and apartments, 25 percent of which will be affordable to lower-income families.
Credit: Garreth Wilcock

After decades of disinvestment, American cities are rebounding, but new development is often driving housing costs higher and displacing lower-income residents. For cities struggling to maintain economic integration, inclusionary housing is one of the most promising strategies available to ensure that the benefits of development are shared widely. More than 500 communities have developed inclusionary housing policies, which require developers of new market-rate real estate to provide affordable units as well. Economically diverse communities not only benefit low-income households; they enhance the lives of neighbors in market-rate housing as well. To realize the full benefit of this approach, however, policies must be designed with care.

Inclusionary housing is not a new idea. Successful programs have evolved over the years as policy makers and housing officials learned hard lessons about what works and what doesn't. This report draws from these lessons to highlight major challenges that inclusionary programs face and to outline the ways that communities address those problems.

Empirical research on the scale, scope, and structure of inclusionary programs and their impacts is limited. The valuable research that does exist is often inaccessible or lost in dense academic journals or consultant reports. This report captures and digests the lessons from these sources and makes them readily available to local policy makers. It also draws heavily on an empirical project conducted in 2014 by the National Housing Conference's Center for Housing Policy (CHP) and the National Community Land Trust Network, which resulted in the Lincoln Institute working paper "Achieving Lasting Affordability through Inclusionary Housing" (Hickey, Sturtevant, and Thaden 2014).

Policy makers are understandably concerned that affordable housing requirements will stand in the way of development. But a review of the literature on the economics of inclusionary housing suggests that well-designed programs can generate significant affordable housing resources without overburdening developers or landowners or negatively impacting the pace of development.

Nevertheless, inclusionary housing policies can be controversial and thus require broad local support. Several case studies describe the process through which communities have reached out to key stakeholders, including partners in the real estate community, to build endorsement for these programs.

Research into the very real benefits and limitations of mixed-income development suggests that the creation and preservation of affordable homes in asset-rich neighborhoods is one of the few successful strategies for overcoming economic segregation. It also demonstrates that integration within each new market-rate development does not always make sense. Successful economic integration requires careful attention to a number of policy design choices.

Every community must consider key legal concerns as well. While cities must take care to develop policies that fit within standards outlined by the federal or state judiciary, courts have generally supported a community's right to require affordable housing. Ultimately, there is almost always a path to a legally defensible inclusionary policy.

Inclusionary housing programs also require significant staffing to oversee the development process and to steward units after they are built, to ensure long-term affordability. This report highlights essential roles for staff or third-party contractors, describes common mechanisms for funding this work, and explains ways that local stakeholders can monitor a program to ensure that it is having the intended impact.

Recommendations address the following questions:

- What can local governments do to maximize the impact of inclusionary housing?
- What can states do to support local inclusionary housing policies?
- What can the federal government do to support inclusionary housing policies?

In most cities, the need for affordable housing has never been more urgent. For many jurisdictions across the country, now is the time to consider adopting robust inclusionary housing policies that build permanently affordable housing stock and create inclusive communities.

CHAPTER 1

An Introduction to Inclusionary Housing

In Williamsburg, Brooklyn, the developer of this luxury tower called the Edge (background), where condos sell for $400,000 to $3 million, also built the Edge community apartments (foreground) where units rent for as little as $886 per month. *Credit: NYC Department of City Planning*

Brooklyn in the 1970s was a rough place. It would have been hard to imagine that one day it would be one of the most expensive communities in the country. Over the past 40 years, hundreds of thousands of people have worked very hard to make Brooklyn a better place: artists have painted murals, parents have volunteered at local schools, neighbors have patrolled streets to combat crime, and the City of New York has invested billions of dollars in housing and infrastructure projects to improve struggling neighborhoods. It has worked. As a result, however, many of those people who labored so hard to change Brooklyn could not afford to stay there. The *cost* of making Brooklyn what it is today was borne by the community at large and the City itself, but the economic *benefit* of this investment accrued primarily to a small number of property owners.

When people work to make our cities better places, they indirectly contribute to higher housing costs. Public investment, in particular, makes a big difference. When we build new infrastructure or transit systems, we see dramatic and immediate increases in the price of surrounding properties because these areas become more attractive places to live. Ideally, everyone would benefit from improved cities, but in reality the costs and benefits of improvement are not shared equally.

Lower-income residents looking for a new home soon face a choice among several undesirable options: extreme commute times, overcrowding, substandard housing, or rents or mortgages that are so high they deplete resources for other essentials. Displaced families are not the only ones who suffer—everyone loses when economic diversity deteriorates. Unequal access to housing drives sprawling development patterns; worsens traffic congestion; pollutes air quality; increases taxpayer dollars spent on basic infrastructure; and decreases racial, cultural, and economic diversity (Ewing, Pendall, and Chen 2003).

Recognizing that this basic dynamic will not change naturally, more and more communities have been consciously seeking to promote mixed-income development. Instead of accepting the assumption that economic growth must automatically lead to economic exclusion, they have been developing local policies that seek to increase economic inclusion.

The Chicago Community Land Trust maintains a reserve of permanently affordable homeownership options for working families. *Credit: Chicago Community Land Trust*

Inclusion Is Possible

The Washington, DC, area is home to some of the most prosperous and fastest-growing suburban communities in the country. In Fairfax County, Virginia, the expansion of the DC Metro created a once-in-a-lifetime opportunity to build a new transit-oriented community in Tysons Corner. In a suburban area that housed fewer than 20,000 people in 2010, the county has planned a 24-hour urban center that will be home to more than 100,000 people and 200,000 jobs. Fairfax County will work with developers to ensure that 20 percent of all residential units in Tysons Corner are affordable for people who earn between 50 and 120 percent of the area's median income. In addition, new commercial development projects will pay a fee to fund affordable housing units (Fairfax County Board of Supervisors 2010).

Across the Potomac River, Montgomery County, Maryland, has had a similar program in place since the early 1970s. It has created more than 14,000 homes for lower-income families that are integrated into some of the area's most expensive neighborhoods. A 2005 study found that this strategy had succeeded in promoting racial integration throughout the county (Orfield 2005). A later study found that the children living in affordable housing produced by the program were not only able to attend higher-quality schools than other children in lower-income families, but they also performed higher in school (Schwartz 2010).

These programs—and hundreds of others like them—show that, with concerted effort, it is possible for communities to grow in ways that create and maintain meaningful economic diversity.

A Definition

Inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development. In its simplest form, an inclusionary housing program might require developers to sell or rent 10 to 30 percent of new residential units to lower-income residents. Inclusionary housing policies are sometimes referred to as "inclusionary zoning" because this type of requirement might be implemented through an area's zoning code; however, many programs impose similar requirements outside the zoning code.

Inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development.

Many programs partially offset the cost of providing affordable units by offering developers one or more incentives, such as tax abatements, parking reductions, or the right to build at higher densities. Most programs recognize that inclusion of affordable units on-site within market-rate projects may not always be feasible, so they allow developers to choose among alternatives, such as payment of an in-lieu fee or provision of affordable units off-site in another project.

While early inclusionary housing policies imposed mandatory requirements applicable to all new residential development in a city or county, more recent programs have developed a wider variety of structures in response to differing local conditions and needs. Some programs have taken a voluntary approach, requiring affordable units only when developers choose to utilize incentives. Other programs have been

The City of Santa Fe, New Mexico, requires that 20 percent of all new developments be affordable to buyers earning 80 percent or less of the area median income. *Credit: John Baker Photography*

designed to apply only to targeted neighborhoods, where zoning has been changed to encourage higher-density development.

Another trend has been to apply inclusionary policies to commercial real estate as well. Often called "commercial linkage" programs, "jobs housing" linkage programs, or affordable housing "impact fees," these programs generally collect a fee per square foot from all new commercial development to fund new affordable housing production. Some jurisdictions have responded to legal obstacles by adopting linkage or impact fees that apply to new residential development as well. Whereas a traditional inclusionary zoning program would require on-site affordable units or allow payment of an in-lieu fee as an alternative to on-site development, these newer programs require every project to pay a fee, and some offer on-site development as an alternative to payment of the fee.

Because most inclusionary programs are at least partly motivated by a desire to create or preserve mixed-income communities, preservation of affordability is essential. Early inclusionary housing programs frequently imposed very short-term affordability requirements. As communities saw these units revert to the market rate, most have moved to require affordability periods of 30 years or longer. Inclusionary housing programs tend to create relatively small numbers of affordable units each year because they rely on new development. If these units remain affordable for long periods of time, however, a community can expect to gradually build a large enough stock of affordable homes to make a difference.

Prevalence of Programs

The 2014 Network-CHP Project identified 512 inclusionary housing programs in 487 local jurisdictions in 27 states and the District of Columbia. Concentrations in New Jersey and California account for 65 percent of all programs. Inclusionary housing programs were found in most parts of the country; Massachusetts, New York, Colorado, Rhode Island, and North Carolina have 10 or more local programs each (figure 1).

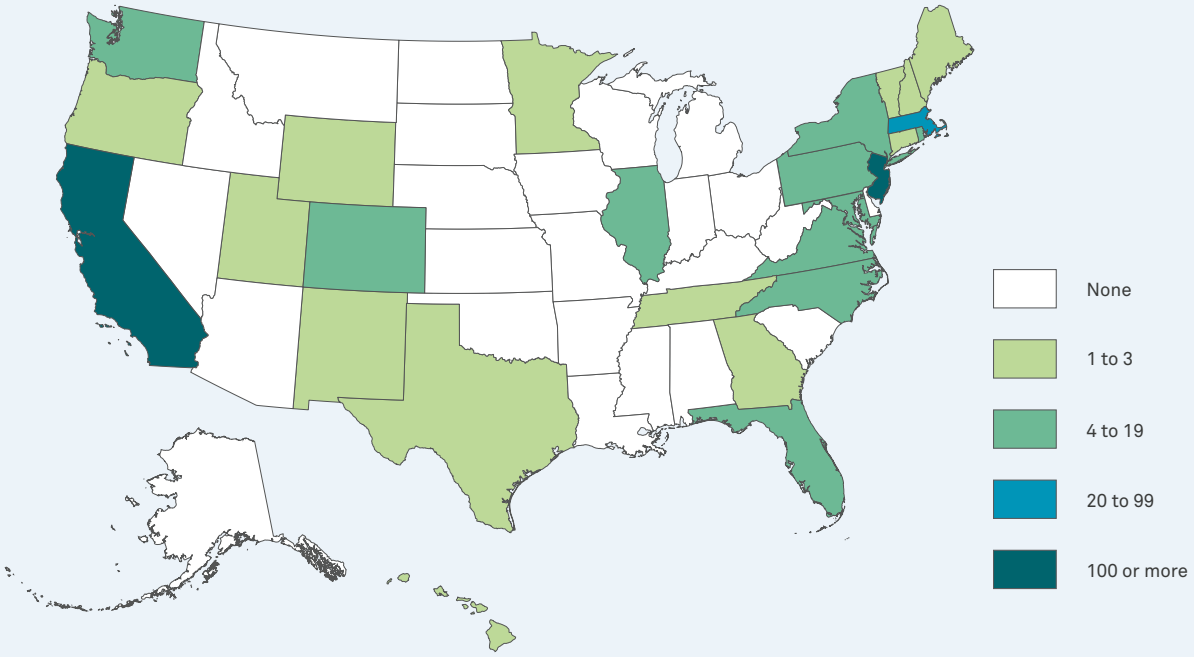
There is no national data on the rate at which inclusionary housing programs are producing new affordable units. A 2006 study found that California's inclusionary programs produced 30,000 affordable units over a six-year period (Non-Profit Housing Association of Northern California 2007). The Innovative Housing Institute later surveyed 50 inclusionary programs distributed across the country and reported that they had produced more than 80,000 units since adoption (Innovative Housing Institute 2010). While these numbers are significant, inclusionary housing programs alone are not producing a sizable share of the national affordable housing stock. The Low Income Housing Tax Credit (LIHTC) program, by comparison, has produced two million units since 1987 (U.S. Department of Housing and Urban Development 2015).

In most cities, inclusionary housing is just one tool in a suite of local policies intended to address the affordable housing challenge. A study of 13 large cities showed that nearly all those with inclusionary programs also manage the investment of federal housing funds and issue tax-exempt bonds to finance affordable housing. Most also used local tax resources to finance a housing trust fund, and many had supported land banks and community land trusts as well. About half those cities took advantage of tax increment financing, and a growing minority established tax abatement programs that exempt affordable housing projects from property taxes. While the exact mix of programs differed from one city to the next, every city employed multiple strategies (OTAK and Penninger Consulting 2014).

In communities that have long-established and well-designed programs, however, inclusionary housing can be an important source of affordable units. Brown (2001) found that inclusionary housing accounted for half of the affordable housing production in Montgomery County, Maryland. And Mukhija and colleagues (2010) found that inclusionary programs in Southern California were producing about as many units annually as the LIHTC program was creating.

Figure 1

Concentration of Inclusionary Programs Throughout the United States



Source: Hickey, Sturtevant, and Thaden (2014). An online directory of these programs is available at http://cltnetwork.org/topics/deed-restricted-or-inclusionary-housing-programs.

Untapped Potential

The research summarized in this report clearly shows that inclusionary housing is a tried and tested strategy that can make a real impact on the affordable housing crisis, but it also shows that inclusionary housing has yet to reach its full potential. Most existing programs were adopted within the past 10 years, and many of the communities that could benefit from inclusionary policies have yet to implement them. Where inclusionary policies are in place, details in the design and implementation make a large difference in overall effectiveness. However, the evidence presented below suggests that inclusionary housing is likely to play a more significant role in our national housing strategy in the coming decade.

Faced with declining federal and state resources for affordable housing and growing populations within cities and urban cores, communities need to take full advantage of every potential tool. Inclusionary housing programs produce a modest yet steady supply of new affordable housing resources. Because these programs generally preserve long-term affordability, the pool of local inclusionary units can grow steadily into a significant share of the local housing stock. As importantly, inclusionary housing is one of the few proven strategies for locating affordable housing in asset-rich neighborhoods where residents are likely to benefit from access to quality schools, public services, and better jobs. Communities across the country are increasingly investing in the creation of new transit-oriented urban neighborhoods, and inclusionary housing policies are one of the only ways to ensure that these places develop in an equitable manner. Equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.

Equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.

In San Mateo, California, six of the Amelia development's 63 town houses sell for below-market rates to lower-income residents. *Credit: Sandy Council*

CHAPTER 2

Understanding the Economics

Two blocks from the MIT subway stop in Cambridge, Massachusetts, the Third Square apartment complex offers 56 permanently affordable units. *Credit: City of Cambridge*

The adoption of inclusionary housing has almost always been controversial. This type of intervention into the private market raises some real economic concerns that must be taken seriously and addressed with care. This chapter explains the economics of inclusionary housing requirements by addressing the most common questions about local inclusionary policies:

- Is it fair to ask one group (developers) to solve a broad social problem?
- Will developers pass on the cost to tenants and homebuyers?
- Will inclusionary policies prevent new development and make the housing problem worse?
- Can inclusionary housing work in every type of housing market?

Fairness

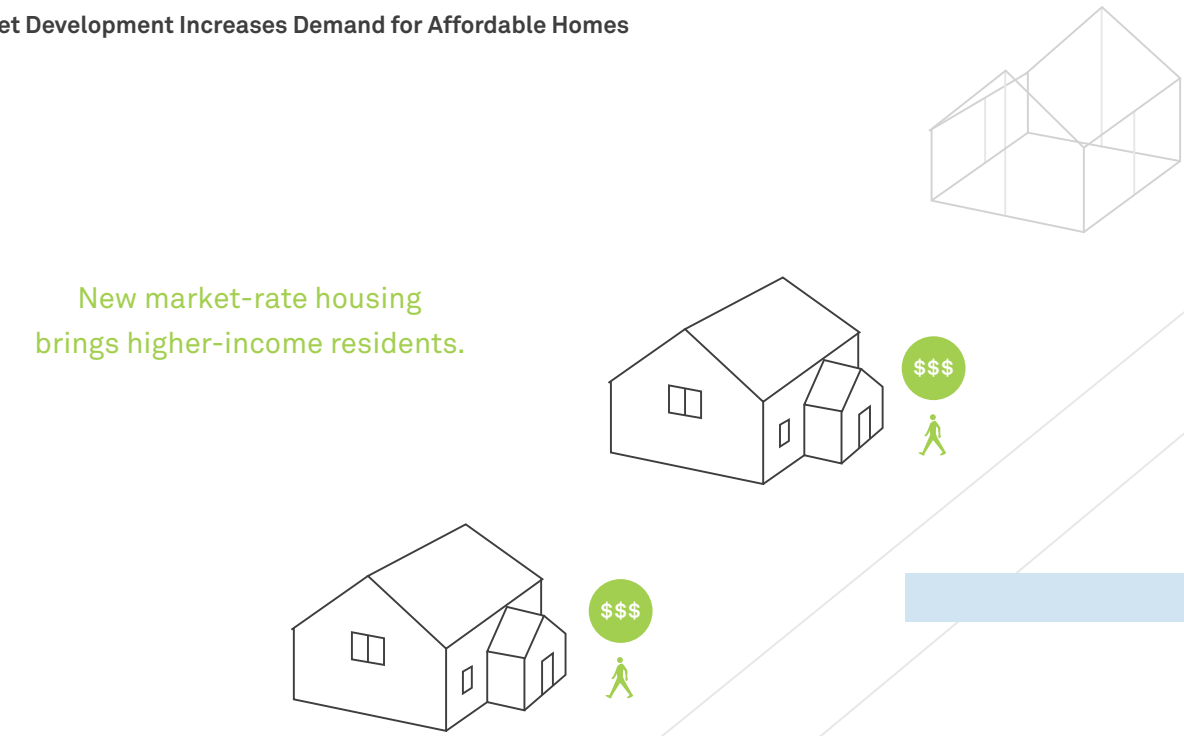
Inclusionary housing policies should not make developers responsible for resolving all the affordable housing needs within a jurisdiction. What is fair is to ask them to compensate for the economic impacts of their developments and to share a portion of the profits they make on the public's investment in the places they develop.

It might stand to reason that development of housing—any kind of housing—would lead to lower housing prices. In most urban areas, however, the opposite occurs. Construction of new residential real estate impacts the price or rent of existing homes in two different ways simultaneously. As the basic notion of supply and demand suggests, the addition of new units in a given market will inevitably put some downward pressure on the cost of existing units. But the larger effect tends to be upward pressure on housing costs because new homes are primarily built for higher-income residents. A 2015 study commissioned by the *Wall Street Journal* found that 82 percent of new rental housing in the United States was luxury housing (Kusisto 2015). Not only do the new units command higher rents, but also the new residents who can afford them spend money in ways that create demand for more lower-wage workers in the area. This, in turn, creates more demand for housing and ultimately raises housing costs. Figure 2 illustrates this cycle.

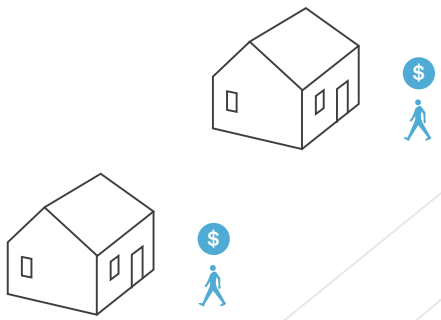
Modest price increases in a region can translate into very acute increases in specific neighborhoods. For example, new luxury housing may cause dramatic upswings in the price of residential real estate in formerly distressed central neighborhoods, but the lower costs resulting from increased supply may be apparent only at the suburban fringe of the region.

Figure 2

Market Development Increases Demand for Affordable Homes



New lower-wage workers generate added demand for affordable housing.



Increased spending generates new jobs in the area.

Seattle's South Lake Union, Part One

In the mid-1990s, Microsoft cofounder Paul Allen made a $20 million loan to finance a proposed park in a warehouse district known as South Lake Union in Seattle, Washington. When voters rejected the proposal, Allen was stuck with 11 acres of unimpressive real estate. But he saw potential and quietly began purchasing more land until his Vulcan Real Estate had amassed a portfolio of over 60 acres—more than one-third of all property in the area. Allen lobbied the city to invest in a fixed-rail streetcar line, which opened in 2007, to connect South Lake Union to Downtown Seattle. When Amazon decided to relocate its headquarters to South Lake Union, Vulcan developed the property and later sold it for $1.2 billion (Jones 2012).

In 2013, the Seattle City Council considered rezoning South Lake Union, but it faced a dilemma. At that point, Vulcan had developed fewer than half its properties, and the company sought to change the zoning code to allow for construction of 40-story towers as part of a mixed-use urban development. However, the new towers would block views and strain public infrastructure citywide. The upzoning would create a massive financial windfall for one man, while its negative impacts would affect residents throughout the city.

One likely impact was particularly troubling to many Seattle residents: the project's potential to worsen the already acute challenge of rising housing costs. New office and laboratory space would allow for many new jobs that would inevitably translate to higher housing demand and costs.

South Lake Union provides a somewhat exaggerated example of the dynamic seen in most growing cities: private developers and landowners benefit disproportionately from public investments such as transit and other infrastructure. New development creates both costs and benefits, but both are unevenly distributed. Inclusionary housing programs recapture some share of the benefits to help the people who disproportionately bear the costs. While inclusionary housing won't solve the housing challenge, it is both fair and appropriate to expect new development to contribute to the solution.

These inclusionary homeowners in South Lawndale, Illinois, won prize money to redecorate their living room through the Chicago Community Land Trust's Extreme Makeover contest. *Credit: Chicago Community Land Trust*

Absorbing the Costs

Generally, developers do not pass on the costs of inclusionary housing to tenants and homebuyers. The local real estate market sets the prices of market-rate units, and developers of one project can't change the overall market price or rent. Therefore, the costs associated with construction of inclusionary housing are either absorbed by modest declines in land prices or reductions in developer profits, or some combination of the two.

To understand this process, we need to think about housing prices in the market in general. There are basically three elements to the price of any new house: (1) the land; (2) the cost of building the house (including fees, permits, construction, and everything else); and (3) the developer's profit.

Because buyers can choose to purchase existing homes, builders of new units are basically stuck with the market price or rent. When the market rises, builders don't sell for the same price that they had intended; rather, they charge the new market price and earn extra profits. When the market falls, things happen in reverse. In the short term, developer profits suffer. But in the long term, land prices will drop because developers avoid projects that won't earn profits.

Over time, builder profits will return to "normal" because land prices will rise to capture the higher prices. If builders can earn "extra" profits, landowners will have a lot of builders competing for their land and will be able to sell at higher prices to developers willing to settle for more modest profits.

When a city imposes inclusionary housing requirements, it may increase a developer's costs. But developers can't really pass those costs on to homebuyers or tenants, because new units must still be competitively priced in the overall market. Instead, over time, land prices will fall to absorb the costs of the inclusionary housing requirements. Any incentives offered by a community would reduce the degree of land price reductions.

Impacts on New Development

While we don't need to worry that developers will pass the costs of inclusionary housing requirements on to residents, there is still a risk that these policies could lead to higher prices. If the costs are great enough, they could push land prices so low that some landowners would choose not to sell at all. If this happened, less housing would be built and prices would rise.

There seems to be agreement that inclusionary programs could theoretically diminish the supply of housing and therefore increase prices, but there is no agreement about how often this happens or how significant the impact is. A study by the libertarian Reason Foundation concluded that the production rate of market-rate homes fell following the adoption of inclusionary housing policies (Powell and Stringham 2004). Basolo and Calavita (2004) critiqued this study, pointing out that jurisdictions are most likely to adopt inclusionary housing policies toward the peak of the economic cycle, weakening the argument that inclusionary housing causes production to fall. A follow-up study by researchers at the University of California, Los Angeles, carefully compared the data for communities with and without inclusionary housing in Southern California and concluded that the adoption of inclusionary policies had no impact on the overall rate of production (Mukhija et al. 2010).

The most rigorous study to date was conducted by researchers at the Furman Center at New York University (Schuetz, Meltzer, and Been 2009), who studied inclusionary programs in the Boston and San Francisco metropolitan areas. In the towns around Boston, inclusionary requirements modestly decreased the rate of housing production relative to the rates in nearby towns, slightly raising the market price of residential real estate. But in the San Francisco area, inclusionary programs had no impact on production or prices, suggesting that it is possible to develop inclusionary programs that don't impact market prices. These same programs were also able to create more affordable units than their counterparts did in the Boston area.

Seattle's South Lake Union, Part Two

The Seattle City Council faced a major dilemma when it considered increasing the affordable housing requirements for South Lake Union. While Paul Allen's Vulcan Real Estate claimed to support the goal of creating affordable housing, it also contended that any increase in the city's requirements would be financially infeasible (Tangen 2008). Supporting this concern, a study by a local consultant concluded that more aggressive policies would likely depress land values by 8 to 17 percent (Fiori 2012). A different local consultant performed a similar analysis and concluded that—even with the more aggressive affordable housing requirements—the upzoning would increase land values to 13 times their current levels (Spectrum 2013). Unable to choose between dueling consultants, the city council enacted a very modest increase in the housing requirements even as they approved a dramatic increase in height limits.

This case illustrates that, even in a very strong market like Seattle, it is difficult for policy makers to evaluate technical economic claims. In fact, the two South Lake Union studies painted a very similar picture of the economics of the proposed policy. But one failed to look at the *value* added by incentives for developers and focused only on the *cost* of providing affordable housing; the other considered both the cost and value that was being provided by increasing height limits.

Seattle's city council eventually commissioned a new, detailed economic feasibility study, which found, for example, that the increased density of a high-rise rental project in the city's downtown added $4.5 million to the value of the land, while the affordable housing requirement recaptured only about $3.2 million of that increase (David Paul Rosen & Associates 2014). Ultimately, the results of that study helped the council commit to a stronger housing requirement without concern that it would overly burden developers.

Inclusionary housing policies can create affordable units without decreasing development or increasing prices. But programs must be strategically designed and carefully run, or local policy makers will find themselves caught in the middle of a highly technical debate over real estate economics.

Offsetting Opportunity Costs

When incentives are offered, it is meaningless to talk about the cost of providing affordable housing in isolation. The whole economic picture must be taken into account. At the heart of this difference in approach is a concept known as "residual land value," which is vital for designing policies that appropriately allow communities to share in the benefits of new construction without stifling development.

"Residual land value" refers to the idea that landowners end up capturing whatever is left over after the costs of development. When the cost of construction rises, it might impact developer profits in the short term, but higher costs will then cause all developers to bid less for development sites. As land prices fall, developer profits tend to return to "normal" levels.

When a city requires developers to provide affordable housing, developers are likely to earn less than they would have if they had been able to sell or rent the affected units at market value. This forgone revenue represents the "opportunity cost" of complying with the affordable housing requirements (figure 3). It is fairly easy to calculate this "cost" for any given mix of affordable housing units, and, if these requirements are predictable in advance, they should roughly translate into corresponding reductions in land value over the longer term.

However, most inclusionary housing programs don't simply impose costs; rather, they also attempt to offset those costs (at least, in part) with various incentives for the developers. The most common incentive is the right to build with increased density. When developers can build more units, the extra income can offset the costs of providing affordable units and the result will be a smaller (if any) reduction in land value.

Land values don't change overnight, and some communities have carefully phased in inclusionary requirements with the expectation that, when developers can see changes coming, they will be in a better position to negotiate appropriate concessions from landowners before they commit to projects that will be impacted by the new requirements. Similarly, some program designs are likely to have a clearer and more predictable impact on land prices than others. More universal, widespread, and stable rules may translate into land price reductions more directly than complex and fluctuating requirements with many alternatives.

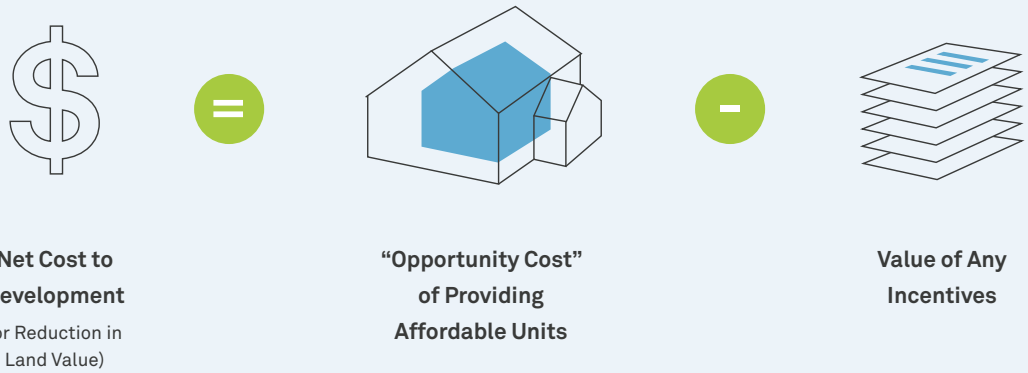
Suiting the Market

Inclusionary housing may not be suitable in every type of housing market, but it can work in more places than many people realize. Inclusionary programs are tools for sharing the benefits of rising real estate values, and, as a result, they are generally found in communities where prices are actually rising. In many parts of the United States, land prices are already very low, and rents and sales prices would often be too low to support affordable housing requirements even if the land were free. In these environments, policies that impose net costs on developers are unlikely to succeed (though some communities nonetheless require affordable housing in exchange for public subsidies).

The types of communities where rising housing prices are a real and growing problem are quite diverse, and many of them are not high-growth central cities like Seattle. In California, one-third of inclusionary programs are located in small towns or rural areas. Wiener and Bandy (2007) studied these smaller-town inclusionary programs and found that many were motivated

Figure 3

Market Development Increases Demand for Affordable Homes



by the influx of commuters or second-home buyers entering previously isolated housing markets.

While inclusionary policies are clearly relevant in a wide range of communities, the appropriate requirements can differ from one market to another. In communities where higher-density development is not practical, higher affordable housing requirements may not always be feasible, but lower requirements may still be effective. San Clemente, California, requires only 4 percent of new units to be affordable. But because the city was growing so rapidly, it produced more than 600 affordable homes between 1999 and 2006 (California Coalition for Rural Housing 2009). Wiener and Bandy (2007) also found that many smaller jurisdictions relied heavily on in-lieu fees, and some set fees at very modest levels.

Smaller communities with inclusionary housing programs must address unique considerations, such as limited staff capacity and administration costs. Outsourcing and multi-jurisdiction collaborations can make smaller programs easier to implement, but in some localities the benefits of an inclusionary housing policy will not adequately offset its costs.

Conclusion

It is entirely reasonable to ask real estate developers to help address the pressing need for more affordable housing, because developers and landowners benefit financially from the conditions that give rise to the shortage of decent, well-located homes for lower-income residents. But inclusionary programs need to be designed with care to ensure that their requirements are economically feasible. While developers are not able to pass on the cost of compliance to tenants and homebuyers, there is some risk that poorly designed inclusionary requirements could slow the rate of building and ultimately lead to higher housing costs. Policy makers can avoid this unintended consequence by offering developers flexibility in how they comply and by calibrating requirements and incentives so that the net economic impact on projects is not too great. At some level, inclusionary housing can be implemented in most housing markets, but the stronger the local real estate market, the greater the potential for inclusionary housing to make a meaningful difference.

CHAPTER 3

Building Support for Policy Adoption

A family gathers outside their inclusionary home in the Old Las Vegas Highway development in Santa Fe, New Mexico. *Credit: John Baker Photography*

Winning broad public support for a new inclusionary housing ordinance is essential to both the short-term prospects of adopting a strong ordinance and the long-term success of the program. Inclusionary housing raises complex and sometimes controversial issues, so it is important to explain to local stakeholders why inclusionary housing is an appropriate response to real local housing challenges. Carefully studying the economics and engaging private real estate developers seem to help minimize opposition and improve the quality of the policy being proposed.

Understanding Housing Needs and Tools

Many local inclusionary ordinances appear to have grown out of much broader efforts to document housing needs and develop local affordable housing strategies. A broad-based community process that builds support for the goal of increasing the supply of affordable housing and considers the limitations of available tools often leads local stakeholders to conclude that inclusionary housing is one of the most promising options for addressing a growing problem.

That is what happened in Stamford, Connecticut. During the latter part of the 1990s, housing affordability became a growing concern for many residents. A local nonprofit, the Housing Development Fund, organized a conference on creating affordable housing in the summer of 2000. Stamford's mayor, Dan Malloy, later established an affordable housing task force of leaders representing the community, businesses, and government to explore new strategies. The city hired Alan Mallach, the former housing director in Trenton, New Jersey, to work with the task force and the city to create an affordable housing strategy. After many meetings, the group agreed on an ambitious strategy that was presented to the community during an Affordable Housing Summit in May 2001 and in a report published the following September (Mallach 2001). The task force agreed on the need to create more mixed-income development, and consultants recommended a citywide inclusionary housing policy as a key strategy for achieving this goal. During the next year, the zoning board worked to design the inclusionary housing policy and program, and in 2003 Stamford established a mandatory policy.

Appealing to the Public

Wherever housing costs are rising, the public is likely to be concerned and want to see local government take action to preserve affordability. But it can be challenging for policy makers to connect the important technical details of any proposed inclusionary policy with broad public values. Many ordinances have been adopted without significant efforts to educate and engage the public, but it is harder to pass a strong policy if leaders focus only on the details. Appealing directly to the public helps to garner political will for reaching widely shared goals.

When officials in Arlington County, Virginia, conducted a poll of 1,700 local residents, they found that "requiring affordable housing units when developers build or renovate housing" was one of the most popular among several housing strategies. Seventy-two percent of county residents supported this strategy, and only 24 percent opposed it (Frederick 2014).

A nearly decade-long effort led by the Non-Profit Housing Association of Northern California (NPH) shows how broader public outreach can make a difference. NPH supported inclusionary housing campaigns in 20 jurisdictions and published a 77-page *Inclusionary Housing Advocacy Toolkit* designed to help local advocacy campaigns better communicate with the public (Non-Profit Housing Association of Northern California 2003). The toolkit helped local neighborhood and faith-based organizations engage with this complex issue and led to the successful adoption of 14 new inclusionary policies. These activities created a widespread sense that inclusionary housing is a normal part of the development landscape throughout the San Francisco Bay Area (Stivers 2014).

In Denver, Colorado, City Councilwoman Robin Kniech discovered the power of direct appeal when she led a yearlong process to update the city's inclusionary housing ordinance (IHO). Kniech lost a key committee vote after developers convinced some of her colleagues that the city should study the issue further. After the loss, Kniech appealed directly to voters through an op-ed in the *Denver Post* titled, "What Can

Wherever housing costs are rising, the public is likely to be concerned and want to see local government take action to preserve affordability. But it can be challenging for policy makers to connect the important technical details of any proposed inclusionary policy with broad public values.

Denver Do When a Hot Housing Market Hurts?" (Kniech 2014a). In a subsequent interview, she said, "Very few of my constituents understood the technical issues involved, but they were almost universally supportive of our goals. . . . We won in the media coverage because our city is changing in ways that most people are not comfortable with, and everyone liked the idea that the council was taking that seriously" (Kniech 2014b). After publication of her op-ed, Kniech won strong support from Denver's mayor, and the new ordinance passed the city council by a safe margin.

Researching Market Feasibility

In a number of communities, economic feasibility analyses have been a useful technical tool to help policy makers get the details right. They have also been a vehicle for building public support for an inclusionary policy. Typically, this kind of analysis involves staff or consultants researching development economics and demonstrating that local projects can safely support the costs associated with provision of affordable housing without adversely affecting construction or housing values.

Salinas, California, is a farming town in one of America's most productive agricultural regions. But the area is also located near the California coast, sandwiched between vacation communities such as Monterey and bedroom communities in Silicon Valley. It was no surprise when, in the early 2000s, rising housing prices began displacing the town's historic working class. Salinas had adopted a relatively weak inclusionary housing ordinance in 1992, but by 2002 rapidly rising prices convinced some local policy makers that a higher requirement might be appropriate. They wondered how high they could reasonably go.

Salinas hired Bay Area Economics (BAE) to evaluate the economic feasibility of inclusionary requirements for 15 to 40 percent of new residential units. BAE built a complex financial model that enabled the city to understand how changes in these requirements might impact the overall profitability of likely development projects. They modeled five different types of residential development, including single-family detached homes, town houses, and multifamily rentals. They chose prototypes that were similar to projects that had recently been completed and interviewed local developers to verify their assumptions.

BAE determined that a typical local project provided profit equal to roughly 10 percent of the total development cost. Then they evaluated the feasibility of various designs for the inclusionary housing requirements. Designs that yielded profits at or above 10 percent of development cost were considered "feasible." Some project types were feasible with a 35 percent affordable housing requirement, and others could support only 20 percent. BAE concluded that an ordinance requiring 20 percent affordable units would be generally feasible for the vast majority of projects (Bay Area Economics 2003). This analysis gave the city the confidence it wanted to pass an update to their ordinance unanimously in 2005.

It is important to keep in mind that when a study like this one shows below-normal development profits, that result could imply only a short-term problem. Over time, developers should be able to negotiate lower prices from landowners. Therefore, some studies also evaluate the likely longer-term impact of proposed requirements (and incentives) on land values.

Any kind of feasibility study is necessarily somewhat imperfect, but the goal is to give policy makers a general sense of the likely impact of proposed housing requirements and incentives on land prices and development profits. Ultimately, a detailed feasibility study is the only way to address legitimate concerns about whether affordable housing requirements could do more harm than good.

Engaging Private Developers

In some communities, private developers, homebuilders, and others in the real estate industry have been outspoken opponents of inclusionary housing programs. In other areas, these same parties appear to have accepted or become key advocates for more effective programs. A concerted effort to engage and listen to the real estate development community can make a program stronger and more effective, and it can also win support or neutralize opposition from a powerful set of stakeholders.

While it would be unrealistic to expect developers to champion policies that increase their costs or

In North Cambridge, Massachusetts, four units are priced below market rate in the 7 Cameron Avenue development, connected by a greenway to bustling Davis Square in Somerville. *Credit: City of Cambridge*

administrative burdens, developers can be supportive of inclusionary housing for a number of reasons. First, public opposition to development is a key risk faced by developers and providing affordable housing can help win public support for development. Second, inclusionary housing requirements can also garner support for higher-density development, which is often more profitable. Third, in communities that sometimes demand affordable housing as a condition of approval for high-profile projects, a formal inclusionary ordinance can make requirements more predictable, thus reducing a developer's risks. Inclusionary requirements, when coupled with development-by-right rules or expedited processing, can also reduce delays and financial risk for developers.

In Chapel Hill, North Carolina, a college town of 60,000 people in the state's research triangle area, the town council passed a resolution in 2005 calling for formal consideration of an inclusionary housing program. A council-appointed task force included a range of stakeholders, including advocates for lower-income families and private real estate representatives, who helped develop the inclusionary ordinance and recommended its adoption. It was passed in June of 2010.

Prior to adoption of the mandatory policy, Chapel Hill began to negotiate routinely with developers to secure commitments for affordable housing whenever projects requested zoning changes. The specific requirements varied from project to project, however, so reaching agreements became burdensome for the town and developers. Council member Sally Greene, who ran for office promising to enact inclusionary housing, reported that throughout the process "opposition from the development community wasn't substantial, and the chamber of commerce was supportive. Developers needed something that was standardized. They need to know what the rules are, but they are willing to work with us. They're willing to build upon what was accomplished in the past and give this a try" (Greene 2014).

Conclusion

Little has been written about the process through which local communities develop and adopt inclusionary housing policies. Nonetheless, many communities have created their policies through a similar process of (1) studying and understanding the housing need and the full spectrum of available tools; (2) educating and engaging the public; (3) researching the market economics; and (4) engaging with the real estate community.

The Veloce Apartments is a transit-oriented development with 64 affordable units in Redmond, Washington. *Credit: City of Redmond*

CHAPTER 4

Designing a Policy

Affordable homes for seasonal ski resort workers and others are made possible by the inclusionary housing ordinance in Park City, Utah. *Credit: ULI Terwilliger Center for Housing*

Given that no two communities are exactly alike, no two inclusionary housing policies should be identical either. But, regardless of their location, policy makers must consider a number of standard questions in order to create a program that suits local conditions. While every policy should address each of these considerations, the answers will differ considerably from place to place.

Key questions include:

- Should affordable housing units be required for all projects or only for projects that voluntarily elect to access certain benefits?
- What income group should the program serve?
- Should requirements apply across the whole jurisdiction or only to targeted neighborhoods?
- What is the set-aside requirement (i.e., the share of units that must be affordable)?
- Should builders be allowed to pay a fee in lieu of providing affordable units on-site, and, if so, how much should it be?
- Should developers be allowed to provide the required affordable units at off-site locations?
- Should developers receive any incentives or cost offsets to reduce the economic impact of providing affordable units?
- Do affordable units have to be comparable in design to market-rate units?
- How long must regulated units remain affordable?

Program Structure: Mandatory or Voluntary

Traditionally, most inclusionary housing programs mandate the provision of on-site affordable units in market-rate developments. A small number of voluntary programs are structured to offer incentives in exchange for affordable units.

Communities with a mandatory inclusionary housing program simply require that some percentage (usually 10 to 30 percent) of new units built be affordable for low- or moderate-income households. These communities may also offer developers incentives such as increased density to offset the cost of providing the affordable units, but the developer has no choice about *whether* to provide them.

Other communities offer developers a choice. Under these voluntary inclusionary housing programs (sometimes called "incentive zoning" programs), developers receive certain valuable bonuses, such as the right to build at higher density, in exchange for providing affordable homes.

Mandatory programs are more common: 83 percent of the 512 programs identified by the 2014 Network-CHP Project were mandatory (Hickey, Sturtevant, and Thaden 2014). The Non-Profit Housing Association (2007) found that voluntary programs in California produced significantly fewer homes than mandatory programs, in part because most California programs offered only fairly modest density bonuses. In communities where development density was a hot-button issue, elected officials were unwilling to increase heights significantly. However, voluntary programs have some notable political and legal advantages. In a few states where mandatory affordable housing requirements are prohibited by law, programs that offer bonus density or other incentives in exchange for voluntary production of affordable housing may be allowed. Even where state law allows mandatory requirements, the idea of trading density for affordable housing may be more acceptable politically than outright requirements.

The more recent trend toward urban infill and transit-oriented development has given rise to a new breed of voluntary programs that appear promising. A number of cities have adopted inclusionary requirements that apply only to targeted areas that benefit from significant upzoning. However, there is no guarantee that a voluntary program will produce a significant volume of affordable housing, even when the incentives are potentially significant.

A study of Seattle's voluntary incentive zoning program found that, for many projects, lower-density alternatives were more economically attractive than higher-density options, due to the high cost of steel frame construction. Thus, even without any affordable housing requirements, most developers were unlikely to take advantage of the density bonus that Seattle offered (David Paul Rosen & Associates 2014). The les-

son seems to be that, for a voluntary program to work well, the incentives have to be very valuable.

Identifying Beneficiaries

Because it is not possible for cities to meet all local housing needs, it is necessary to prioritize certain income groups or geographic areas. Some cities prefer to target one particular need that is not met by the market or other publicly funded programs, and other jurisdictions prefer to address some of the need across all incomes.

Income targets should be based on a clear analysis of local needs and should consider both supply and demand for housing at different price points. Inclusionary housing programs tend to serve low- and moderate-income households (those that earn between 60 and 120 percent of the local median income). Many cities face more acute housing needs at lower incomes, and some choose to design their programs to generate at least some units affordable to very low- and extremely low-income residents (earning less than 50 or 30 percent of median income). Figure 4 documents how selected cities target different income groups.

Cities that want to create units for lower-income residents have a number of options. Common strategies are to (1) allow developers to provide fewer units with deeper affordability; (2) pay developers or give them additional incentives to deepen the affordability

Figure 4

Income Targeting in Selected Programs

Data Source: Hickey, Sturtevant, and Thaden (2014).

level; (3) add additional subsidy to rent or sell units at alternative affordability levels; and (4) accept in-lieu fees and partner with nonprofits to build housing with deeper affordability.

For example, Arlington County, Virginia, conducted a careful study of local housing needs that compared U.S. Census Bureau data on the distribution of local households by income with data on rents and home prices. Not surprisingly, the study found that the number of households earning less than 30 percent of the median income was three times greater than the number of affordable units available. It also found shortages of affordable housing for households earning up to 80 percent of median income, and an adequate supply of affordable homes for households earning above 80 percent of median income (Sturtevant and Chapman 2014). Based on this analysis, the county's Affordable Housing Working Group recommended targeting their inclusionary program to serve households earning 60 percent of median income or less.

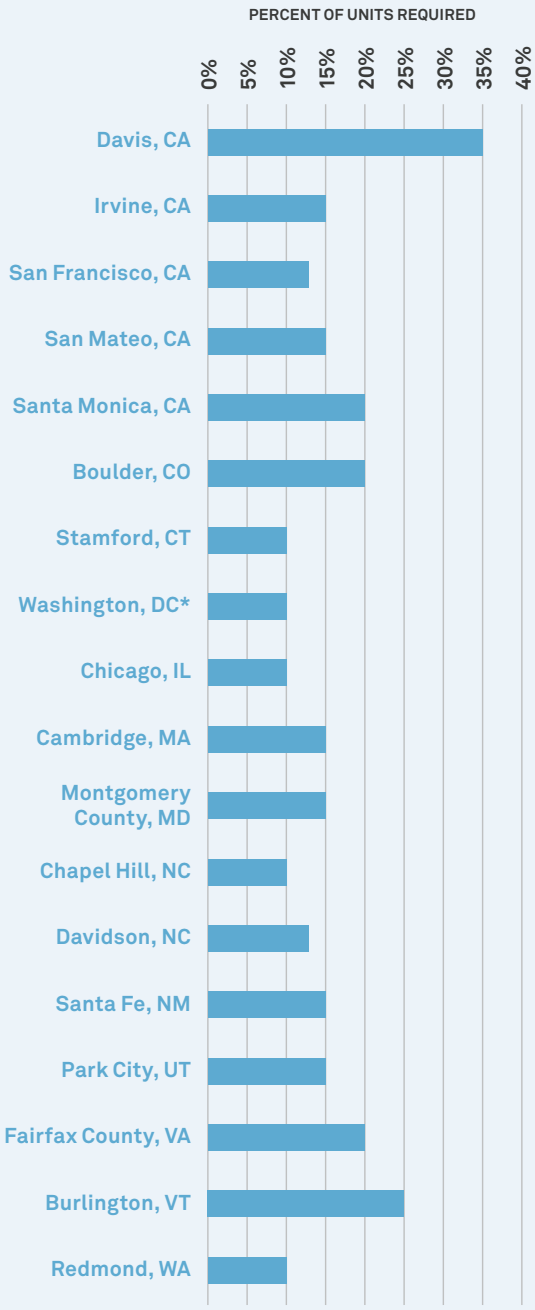
Geographic Targeting

Some inclusionary housing programs apply the same requirements uniformly across an entire jurisdiction, some programs apply requirements only to targeted neighborhoods expected to experience significant growth, and others vary requirements by neighborhood.

For instance, Burlington, Vermont, requires 15 percent affordable units citywide, but it requires 25 percent of units to be affordable in higher-cost waterfront areas. On the other hand, a few cities such as Chapel Hill, North Carolina, have done the opposite and lowered their requirements in the highest-density areas because higher-density construction can be significantly costlier. Using a different approach, Fairfax County, Virginia, varies requirements by construction type rather than by neighborhood. The requirements range from 5 percent in developments with structured parking

Figure 5

Set-Aside Requirements in Selected Programs



**Washington requires the greater of 8 to 10 percent floor area or 50 to 75 percent of the bonus density.*

Source: Hickey, Sturtevant, and Thaden (2014).

to 12.5 percent in single-family and low-rise multifamily developments with a sliding-scale density bonus.

Geographically targeted programs such as these may be more complex to design and administer, and they still may fail to capture all the important fine-grained differences among projects. It is also worth noting that most citywide inclusionary requirements automatically compensate for some differences in neighborhood market conditions. For instance, it may be more expensive to build in high-cost neighborhoods, but a density bonus is worth more where the home prices or rents are higher.

The Set-Aside Requirement

Every inclusionary housing program should also consider how much of a city's affordable housing needs developers should be expected to meet. Typically, cities establish this basic requirement as a percentage of the units or square footage area of each development that must be set aside to be rented or sold at affordable prices on-site (figure 5).

Many cities then allow developers to choose among one or more alternative methods of satisfying the requirement, such as paying a fee or producing off-site units. Some cities allow developers to build fewer units if they serve a higher-need population. In any case, the baseline performance option sets the economic bar against which other alternatives are evaluated, so it must be appropriate for local market conditions.

In a neighborhood of single-family homes, this duplex in Redmond, Washington, is affordable on the left side and market-rate on the right. *Credit: City of Redmond*

Increasingly, cities commission economic feasibility studies to bring real market data to bear on this essential question. Traditional inclusionary housing programs are designed around the assumption that units will be provided on-site even if the program allows payment of fees as an alternative. These programs generally evaluate the economic feasibility of their performance requirements and then set in-lieu fees so they are economically comparable to (or slightly more expensive than) the performance requirements. Alternatively, fee-first impact or linkage programs study the economic feasibility of the fee and then design a performance alternative requirement (i.e., on-site construction of affordable units) that is economically comparable.

In-Lieu Fees

It's a challenge to design requirements that work equally well for every potential real estate project, so most cities offer developers a menu of alternative ways to satisfy their affordable housing requirements. The most common alternative is to pay a fee in lieu of on-site production. In-lieu fees are generally paid into a housing trust fund and used (often along with other local funding sources) to finance affordable housing developed off-site.

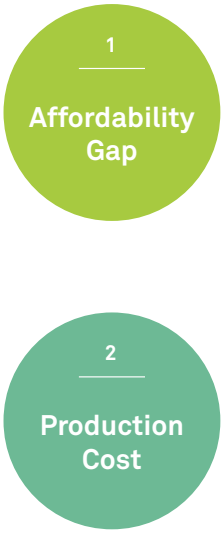
Jurisdictions use multiple formulas to set fee levels (figure 6). A key factor that often shapes those decisions is whether a jurisdiction wants to encourage on-site performance or collect the revenue to leverage other sources of funding to build affordable units off-site. All other things being equal, the higher the fee, the higher the chance that developers will choose to build units on-site. A number of communities have made the mistake of setting in-lieu fees far below the cost of on-site performance, and this practice has resulted in poor overall performance of the affordable housing program.

Over time, a city's preference for fees relative to on-site units may evolve according to changes in the market or other factors. Somerville, Massachusetts, created its inclusionary program at a time when local nonprofit developers did not have the capacity to build large quantities of affordable housing. Consequently, the city set its fees very high. According to the city's inclusionary administrator, "It was a very punitive formula aimed at discouraging developers from taking this option" (Center for Housing Policy 2009, p. 6). As the nonprofit development community matured and built capacity, the city decided that it preferred receiving trust fund revenue and lowered its fees. By adjusting its program approach in response to changing local conditions, Somerville was likely able to produce more units than would have been generated by either approach applied consistently.

Under the right circumstances, off-site production with in-lieu fees can result in more affordable homes than on-site production, but increased production

Figure 6

Approaches to Setting the In-Lieu Fee



The in-lieu fee is based on the typical difference in price between market rate and affordable units.

The in-lieu fee is based on the average amount that the public has historically invested to actually produce each additional off-site affordable unit.

Linkage Fee Programs

Linkage fees (sometimes called impact fees) are an alternative to traditional inclusionary zoning programs. Although the name is similar, linkage fees should not be confused with in-lieu fees. In some states, communities can charge developers a fee for each square foot of new market-rate construction and use the funds to pay for affordable housing. These programs are actually structured to require fees rather than units on-site. Initially, commercial linkage fees were developed to apply to commercial projects where an on-site housing performance requirement would be impractical or even undesirable. More recently, as state prohibitions on rent control have been interpreted to prohibit inclusionary programs that require affordable rents, a number of communities have converted traditional programs to those based on a housing linkage fee or impact fee.

A small number of "fee first" programs require payment of fees but offer as an alternative the provision of on-site units "in lieu" of paying the required fees. In these cases, the programs are almost identical to traditional inclusionary housing programs, but they are designed around a different legal rationale.

To enact an affordable housing linkage fee on commercial or residential development, cities generally conduct a "nexus" study, which evaluates the extent to which new development projects contribute to the local need for affordable housing and estimates the maximum level of fees that would offset this impact of these projects.

There are a number of advantages to linkage fees. Like in-lieu fees, they offer flexibility and can leverage other sources of funding. However, because land is likely to be more affordable and easier to obtain in lower-income neighborhoods, a reliance on fees may further economic segregation. Another disadvantage is that linkage fee programs may generate fewer resources for affordable housing than traditional programs would.

An informal analysis by the Non-Profit Housing Association of Northern California found that among Bay Area jurisdictions that replaced traditional on-site performance-based programs with impact fees, all adopted impact fees were less than the in-lieu fees of their prior programs. The reason was that, while the in-lieu fees had been based on the cost of providing an affordable housing unit, the impact fees were based on a nexus study. Most cities chose to set their impact fees well below the maximum fee suggested by their nexus studies to avoid possible legal challenges.

is not automatic. Effective use of fees relies on the presence of a number of key resources, which are not necessarily available in every community. These include the availability of other locally controlled financing sources to leverage inclusionary housing funds, the capacity of public agency staff, the availability of local nonprofit or private partners with affordable housing development experience, and the availability of land for development of affordable housing. Even when all these elements are present, successful off-site strategies require careful attention to where units are located if a program aims to achieve some level of economic integration.

Many cities have written these fees as specific dollar amounts in their ordinances. Over time, a fixed fee will drop in relation to inflation and the cost of providing affordable housing. Some communities keep fixed fees current by enabling the city council to annually approve a change to the fee calculation, but these yearly approvals can be a challenging source of local controversy. In response, a number of communities have begun to index their fees to allow for regular increases (and potentially decreases) in response to market conditions. Santa Monica, California, annually increases its in-lieu fee according to an index that takes into account annual changes in the cost of construction and local land values.

This inclusionary home in the Sand River Cohousing community was developed through the Santa Fe Homes Program in New Mexico. *Credit: Pauline Sargent*

CAN FEES BE MORE EFFICIENT?

Through the incentive zoning program in Seattle, Washington, developers who provide on-site affordable units receive bonus density in certain targeted areas. In most zones, however, the program gives developers the option to pay an in-lieu fee instead. Between 2002 and 2013, in every case where developers had this choice, they chose to pay the fee because it was far less costly than producing on-site affordable units.

Cornerstone Partnership analyzed data from Seattle's Office of Housing to better understand the outcomes of these trade-offs (Jacobus and Abrams 2014). Consistent with earlier studies, Cornerstone found that the city took several years to spend the fees received. However, by investing this money in nonprofit projects, the city was able to leverage these funds with state and federal resources to produce significantly more units than would have been provided in on-site projects. Cornerstone found that the additional $27 million of in-lieu fees enabled the city to finance 616 additional units that would not have been built without the inclusionary funds.

Additionally, this local money enabled the city to bring in $97 million in federal and state funds that otherwise were unlikely to be invested in Seattle. Furthermore, Cornerstone's analysis found that Seattle invested the fees primarily in projects located downtown and in other higher-cost central neighborhoods—the same neighborhoods where the projects paying the fees were located (Jacobus and Abrams 2014).

Other cities may have a hard time matching Seattle's performance in this regard. Seattle has relatively high capacity both within its Office of Housing and among its network of nonprofits, without which lower rates of leverage would be expected. Even in Seattle, limited land in central locations is likely to make it increasingly difficult over time to continue relying exclusively on fees to achieve meaningful economic integration.

The "opportunity cost" of providing units on-site (i.e., what the developer gives up by selling or renting for less than market value) is higher for higher-priced units, but the in-lieu fee is likely to be the same for all projects. As a result, when a single fee is set according to expected average costs, there will be a natural tendency for higher-end projects to prefer paying the fee and lower-end projects to prefer on-site production (figure 7).

In many communities, this tendency is not a problem, but some communities have found that it leads to further concentration of affordable housing in lower-income neighborhoods. Nevertheless, some jurisdictions have effectively designed programs so that fees advance economic integration, and others have found ways to create more affordable homes without increasing segregation.

Off-Site Development

Another common alternative to on-site housing performance is the right to build mandated affordable units on another site. Generally this is done by constructing

a dedicated project where all the units are affordable. A 2004 survey found that two-thirds of programs in California allowed developers to do off-site construction (California Coalition for Rural Housing 2004). When done well, off-site production can provide flexibility to developers and increase production. However, cities need to develop guidelines to ensure that off-site properties are located in appropriate neighborhoods, built to a high standard of quality, and well maintained over the long term.

Santa Monica, California, has one of California's older inclusionary housing programs. It allows developers the option of providing units off-site, but only when doing so will result in additional public benefit. Specifically, Santa Monica requires that builders provide 25 percent more affordable units in off-site projects than would have been required on-site. To promote economic integration throughout the community, off-site projects must be located within a quarter mile of a market-rate project, though projects up to one mile away are allowed if they will not result in overly concentrated affordable housing.

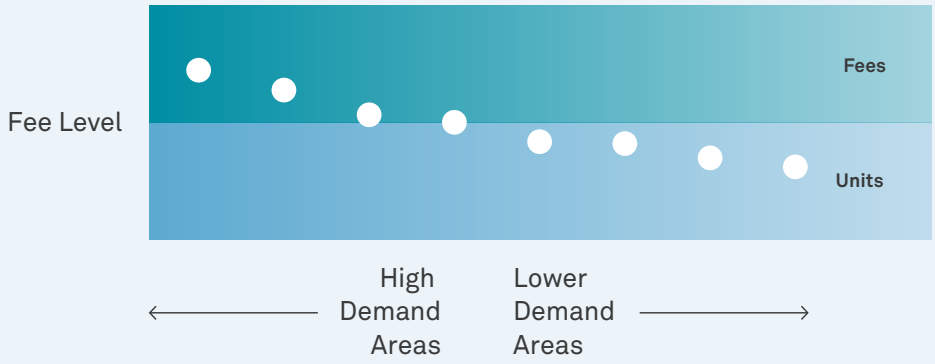
LEVERAGING OTHER AFFORDABLE HOUSING RESOURCES

Many jurisdictions prohibit developers from using scarce federal, state, and local affordable housing funds on the same affordable units as those required by the inclusionary program. A city could end up with no increase in affordable housing units as a result of such "double-dipping."

In general, cities are more cautious about using funds that are highly limited. For example, many cities will allow developers to utilize tax abatements but prohibit the same projects from applying for housing grant funds. A second general guideline is that access to external funding should be balanced against the burdens required or requested of a developer. In many communities, developers are allowed to access affordable housing subsidies only when doing so enables them either to provide more affordable units or to serve more lower-income households than would otherwise be required.

Figure 7

In-Lieu Fees and Economic Integration



NONPROFIT PARTNERSHIPS AND LAND DEDICATION

While direct off-site development can be challenging for both cities and developers, a number of communities have found that encouraging off-site production through partnerships with nonprofit housing developers facilitates implementation and may produce more affordable housing. Nonprofit developers often have considerable expertise in both building and managing affordable housing. They are skilled at combining various funding sources to get the most possible units. A well-run nonprofit is also likely to be a good steward of the units, protecting the affordability in perpetuity and potentially reducing the monitoring and enforcement burden on city staff.

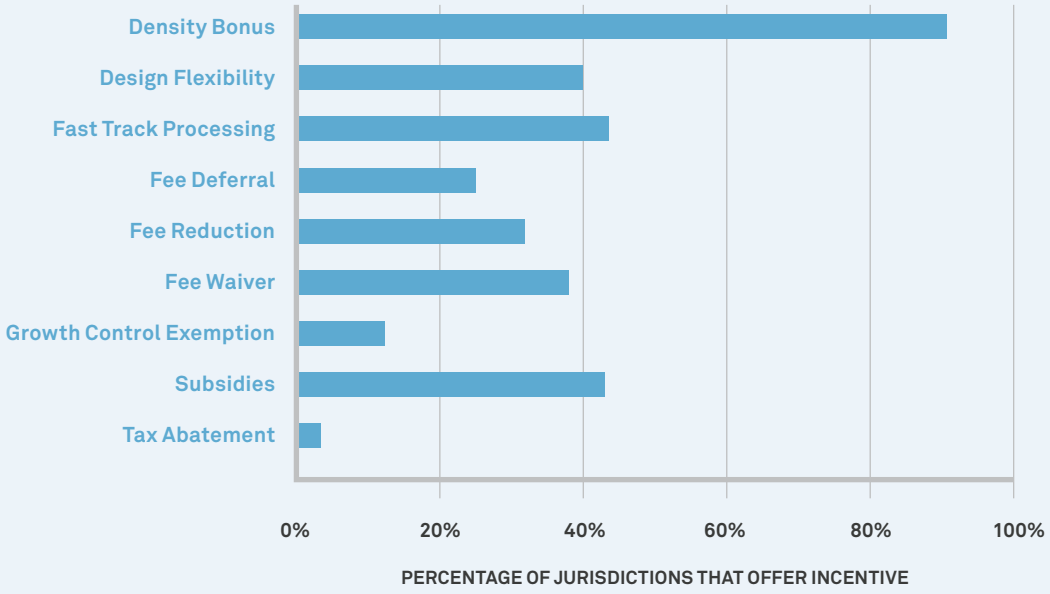
However, there are limits to the benefits of such partnerships. For example, nonprofits often do not have the seed funding to do predevelopment work or to purchase land. A number of cities have designed their off-site production rules to encourage these partnerships. A few, including New York City, allow off-site development only if there is a nonprofit partner that will own the off-site project.

Incentives

The Non-Profit Housing Association of Northern California (2007) and Hickey, Sturtevant, and Thaden (2014) found that most communities offer significant incentives to developers to offset the cost of providing affordable housing units. The most common incentive is the ability to build with increased density, but other common incentives include parking or design waivers, zoning variances, tax abatements, fee waivers, and

Figure 8

Developer Incentives



Source: Non-Profit Housing Association of Northern California (2007).

Park City, Utah, utilized in-lieu fees from its inclusionary zoning program to build the Snow Creek Cottages, which are deed restricted to maintain affordability. *Credit: Rhoda Stauffer*

expedited permitting (figure 8). While a small number of communities seek to offer incentives to fully offset the cost of providing affordable units, incentives are seen as a way to reduce but not eliminate the economic impact on development in most programs.

These incentives are sometimes criticized as "giveaways" to developers. Calavita and Mallach (2009) point out that incentives generally come at a real cost to the public sector. If inclusionary housing requirements are modest enough to be absorbed by land prices, then any incentives merely move the cost from landowners back onto the public. Incentives such as tax abatements and fee waivers reduce revenues available to jurisdictions, just as cash subsidies would to development projects. Even planning incentives such as density bonuses, which appear free, result in increased infrastructure and other public costs.

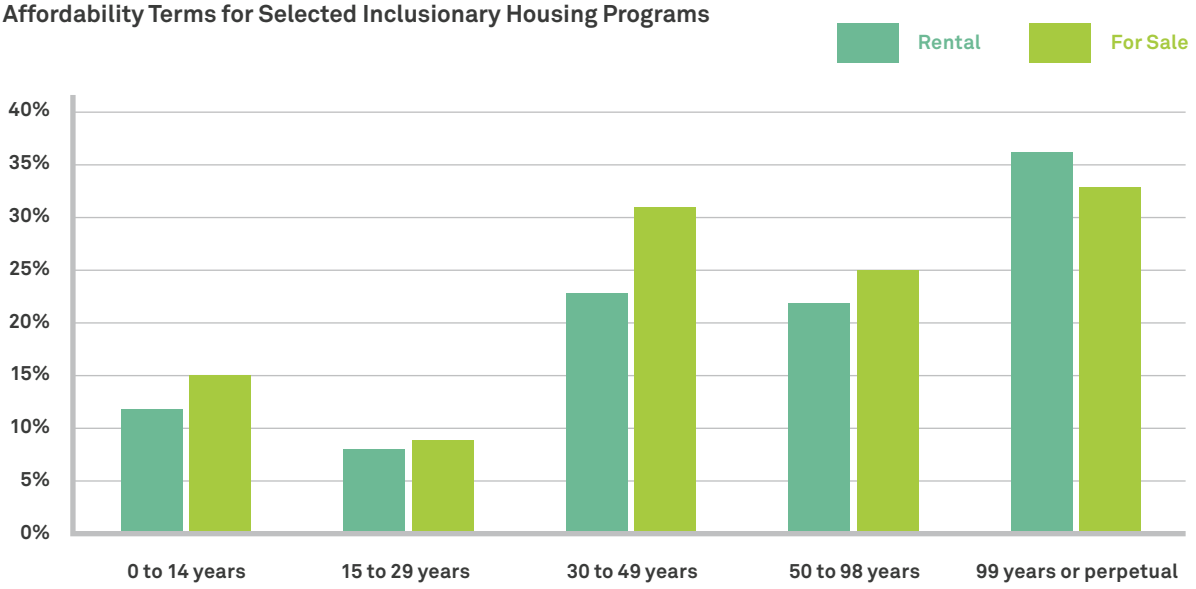
When communities base inclusionary requirements on detailed feasibility studies, it becomes clear how incentives can play a role in maximizing the impact of an inclusionary housing program. If the goal of an inclusionary requirement is to enable developers to earn "normal" profits while capturing some share of "excess profits" for public benefit, any incentive a city can offer to make development more profitable enables the imposition of an inclusionary requirement higher than would otherwise be feasible. However, communities have to carefully weigh the costs and benefits of each incentive and evaluate them relative to the cost of meeting specific affordable housing requirements.

Design Standards

It is difficult to design and implement inclusionary housing policies with appropriate standards to ensure quality affordable housing, given developers' under-

Figure 9

Affordability Terms for Selected Inclusionary Housing Programs



Includes 330 inclusionary housing programs for which affordability term data is available. Source: Hickey, Sturtevant, and Thaden (2014).

standable desire to minimize costs. Some cities have insisted that affordable units be identical in every respect to market-rate units, but it can be hard to defend the public policy rationale behind requiring granite countertops and luxury ranges in affordable units. On the other hand, providing developers with no standards has its own risks. One California developer sold affordable units without any kitchen cabinets (Jacobus 2007a).

An additional concern is the location of affordable units in market-rate developments. There might not be a clear public benefit in requiring that a proportional share of units with waterfront views are affordable, but some standard regarding where affordable units can be located is clearly appropriate.

Many communities develop specific minimum standards. Some programs require that affordable homes be externally identical to market-rate units, but others provide developers with a list of specific requirements regarding minimum unit size and amenities. So long as affordable units meet these standards, they can be different or less costly to build than market-rate homes.

Affordability Preservation

In booming housing markets, it would do little good to require affordable homes or apartments without providing a mechanism to ensure that the units remain affordable over time.

Between 1973 and 2005, Montgomery County, Maryland, created more than 12,000 affordable homes through its widely copied inclusionary program. Because the affordability of those homes was regulated for only 10 years, however, by 2005 only 3,000 of those units were still affordable (Brunick and Maier 2010). If inclusionary programs are to create and preserve mixed-income communities, long-term restrictions are vital for a program to have a lasting impact. After all,

if homes expire out of a program and return to market rate after a few decades, the program won't actually increase the stock of affordable housing.

Well-designed inclusionary housing programs are able to offer homebuyers meaningful and safe asset-building opportunities while concurrently preserving a sustainable stock of homes that remains affordable for future generations.

The overwhelming trend has been for inclusionary housing programs to adopt very long-term affordability periods (figure 9). In 2005, Montgomery County amended its program to require 30 years of affordability for new projects, and to administrate a new 30-year restriction each time a property is sold. A recent national study found that more than 80 percent of inclusionary housing programs require units to remain affordable for at least 30 years, and one-third of those require 99-year or perpetual affordability (Hickey, Sturtevant, and Thaden 2014). Even programs with 30-year affordability restrictions frequently aim to preserve affordability in perpetuity by "resetting the clock" on each transaction and by maintaining the preemptive option to buy back the unit upon transfer.

It is not entirely clear who benefits from shorter-term restrictions. For homeownership projects, a developer forced to sell units with 15-year restrictions faces the same economic cost as selling units with 99-year restrictions. For rental properties, the economics are a bit more complex. An investor might pay more for a property with rent restrictions that expire after 15 years than for one with 99-year restrictions, but the difference might be slight. In other words, the length of affordability makes a big difference to the long-term impact of the program but only a small difference on the front end.

Policy makers sometimes feel that they are forced to choose between preserving affordability and offering wealth-building opportunities to homeowners. However, research strongly suggests that well-designed inclusionary housing programs can achieve both goals.

A team from the Urban Institute studied economic outcomes for buyers in seven homeownership programs with long-term affordability restrictions and found that sellers were able to experience significant equity accumulation even when the resale prices were restricted to preserve affordability (Temkin, Theodos, and Price 2010). For example, the typical owner of an inclusionary unit in San Francisco, California, received $70,000 when he sold the home. Even with the strict price restrictions on resale, the typical owner earned an 11.3 percent annual return on the home investment—far more than would have been earned through other investment options (Temkin, Theodos, and Price 2010).

Well-designed inclusionary housing programs are able to offer homebuyers meaningful and safe asset-building opportunities while concurrently preserving a sustainable stock of homes that remains affordable for future generations.

Conclusion

Communities that are developing inclusionary housing programs must take the time to consider carefully each of the issues described above. Because real and important political and market conditions differ from place to place, there is no single best approach that should be used everywhere. However, that does not mean that each jurisdiction has to reinvent the wheel. Inclusionary housing is a well-tested local policy, and much has been learned about how to make it work in a variety of contexts.

CHAPTER 5

The Challenges of Economic Integration

In San Francisco, 1400 Mission is a 100 percent affordable apartment complex built by the nonprofit Tenderloin Neighborhood Development Corporation. *Credit: Tenderloin Neighborhood Development Corporation*

The desire to create and sustain more mixed-income communities has been a key motivation behind many inclusionary housing programs. The evidence suggests that most inclusionary programs are able to deliver affordable housing efficiently and at the same time integrate those units into areas of economic opportunity that other affordable housing programs have difficulty reaching. At the extremes, however, communities are sometimes forced to choose between housing the greatest number of households and integrating that housing into the greatest range of environments.

Does support for this general goal of economic integration imply that we need to ensure integration into every project? To address the more extreme cases, it is important to look closely at the motivation for polices that promote economic integration, the research on the effectiveness of mixed-income housing, and the pros and cons of each approach (table 1). Recent experiences in San Francisco and New York City offer insights into the challenges of meeting broad goals and expectations with a single policy.

Mixed Income, Mixed Results

Since the mid-1980s, a broad consensus among scholars and urban planners has emerged in support of the idea that housing policies should encourage the creation of more mixed-income communities. The work of William J. Wilson (1987) highlighted the serious and compounding challenges that result from overconcentration of urban poverty and suggested that social isolation of people in high-poverty neighborhoods

Table 1

Comparison of On-Site and Off-Site Production

	ADVANTAGES	DISADVANTAGES
ON-SITE	• Ensures access to high-opportunity neighborhoods • Is easier to enforce design quality • Has low risk of ongoing maintenance problems • Provides integration in the same building, which can be symbolically important and help build public support	• Can be difficult to monitor scattered units • May produce fewer family-sized units • May not be economically feasible for all project types • Is harder to incorporate very low-income or special needs residents
OFF-SITE	• Can be more cost-efficient (i.e., can often produce more total units) • Can leverage other affordable housing subsidies to produce additional units or serve lower-income residents • Can design and operate properties to meet the needs of the local population (e.g. family units, amenities, social services, etc.)	• May concentrate affordable units in lower-income areas • May produce lower-quality buildings • May lead to lower-quality long-term maintenance • Presents risks of “double-dipping,” whereby developers reduce their costs by relying on scarce affordable housing subsidies

might lead to the creation of an "underclass" that is very hard to escape. While the supposed "culture of poverty" does not appear to explain the results, there is clear evidence that even better-off residents suffer significant social and economic disadvantages when they live in neighborhoods with very high concentrations of poverty.

In one example, the Pew Charitable Trusts' Economic Mobility Project followed 5,000 families to determine whether children moved up or down the income ladder relative to their parents. Surprisingly, the study found that the poverty rate in the neighborhood where children grew up strongly predicted their economic mobility as adults, even more strongly than differences in their parents' education levels or occupations (Sharkey 2009).

It is easy to see that children who live in distressed communities face tougher odds. But what we haven't

Case Study: San Francisco

San Francisco's Central Market neighborhood has been changing. One of the most high-profile changes has been a new, 19-story luxury apartment building called NEMA, located directly across the street from Twitter's new headquarters. NEMA is billed by its developer as not simply upscale but "inspirational" living because of the wide range of high-end amenities, from 24/7 spa treatments to dog walking services. Like other recent developments, NEMA was required to rent 12 percent of its 750 units to low-income residents at affordable prices.

To document this program, filmmaker Michael Epstein followed one of the lower-income families that moved into NEMA. After falling on hard times, the Ramirez family had been living in a van under the Golden Gate Bridge and then briefly in a homeless shelter before moving into the gleaming new NEMA tower. And yet Yesenia Ramirez describes her family's new living situation as "awkward." The building has no other children, but it does have a "doggie spa" (Epstein 2014).

Next door to San Francisco's NEMA apartment tower, another residential tower is being built by the nonprofit Tenderloin Neighborhood Development Corporation (TNDC). Like the affordable units at NEMA, this project also resulted from San Francisco's inclusionary housing program. But in the TNDC project, all of the 190 apartments will be affordable to low- or moderate-income families. Where NEMA offers mostly studio and one-bedroom units, TNDC's project has mostly two-bedroom and even some three-bedroom apartments. TNDC was able to build this project with financial support from the developer of a nearby 650-unit luxury condo project that elected to take advantage of the off-site production option under San Francisco's inclusionary program (Conrad 2014). This off-site partnership will produce far more affordable units than the developer would have been required to provide on-site.

This kind of compromise has been controversial in San Francisco, where many housing advocates are understandably concerned that developers will see the off-site option as a loophole, allowing them to provide substandard housing in undesirable locations. On-site inclusion of affordable units within market-rate projects seems to work well most of the time, and it remains the city's preferred outcome. Most of the city's inclusionary residents comfortably blend into market-rate projects where the cost of affordable and market-rate units are not quite so far apart. Collecting fees or creating off-site projects might be less efficient in many of these cases. But luxury projects like NEMA, where the benefits of inclusion decline as the costs increase, make it clear that on-site units may not always be the best option.

been able to prove before is whether those underprivileged neighborhoods attract families who would face challenges anywhere, or whether it is something about the places themselves that negatively affects the kids.

A new study from Harvard University (Chetty and Hendren 2015) has added very strong new evidence to support the conclusion that the places themselves matter. Economists studied children who moved from "worse" to "better" neighborhoods and found that kids who grew up in better neighborhoods earned more as adults when compared to kids who didn't move or who moved to a worse neighborhood. And the effect grew over time. The younger kids were when they moved, the greater the gains. Similarly, the researchers found that younger siblings in families that moved experienced better economic outcomes relative to their older brothers and sisters who spent less time in the better neighborhood before entering adulthood. This research suggests that housing policies encouraging greater economic integration will lead to better economic outcomes for lower-income children.

Concentrated poverty was clearly an outcome of the housing policies of the mid-twentieth century. But by the end of the century, many housing programs explicitly began seeking to create more mixed-income communities. A range of mixed-income housing programs and policies has been studied widely, and while the results are sometimes contradictory, the evidence paints a fairly consistent picture of both the potential and the limitations of mixed-income housing.

On the positive side, lower-income residents appear to benefit socially and economically from mixed-income communities. In a series of carefully designed experiments, inner-city public housing residents were offered housing vouchers that would enable them to rent market-rate apartments for no more than they had been paying in public housing. Families that moved to neighborhoods with low poverty levels saw

Case Study: New York

In 2009, New York City made a set of changes to its zoning rules—including one that would allow developers of inclusionary projects to concentrate their affordable units in separate buildings on the same lot. Separating the affordable units in this way was considered more economically efficient and enabled these developers to access additional tax benefits. While many cities prohibit this practice, New York's inclusionary program is voluntary. After considering the alternative—developers opting out of the program—city leaders decided that the benefit of more voluntary units would outweigh any negative consequences.

Five years later, this obscure change of policy made national headlines because of the placement of a single door on one property. Several developers had already taken advantage of the new policy without apparent controversy. But an approved development on Riverside Boulevard came under intense public scrutiny because it featured two doors—one on Riverside Boulevard for buyers of the luxury condos selling for up to $25 million, and one on 62nd Street for the tenants paying as little as $850 a month.

The *New York Times* referred to the second door as a "poor door" and called the practice "distasteful" (Bellafante 2014). A state assemblywoman said, "It looks and smells like discrimination" (Navarro 2014). Somehow, in a city that had long allowed off-site development, the idea of separating affordable residents within a site had seemed like an acceptable compromise. But the *image* of mixed-income buildings with two different doors touched a raw nerve with the public.

physical and mental health improvements and increased self-esteem and motivation. The studies also showed that those who moved to higher-income areas were more likely to be employed, although their wages were no higher than those of residents who relocated in low-income neighborhoods (Levy, McDade, and Dumlao 2011).

Integration of lower-income residents into middle- and upper-income *neighborhoods* can be very valuable, but integration in the same *building* may offer few additional benefits.

Many policy makers pursued mixed-income housing policies in the hope that social interactions between lower-income and higher-income residents would lead to better access to jobs or other resources for lower-income residents. The research clearly suggests that these hopes are not realistic. Explaining her opposition to "poor doors," Manhattan Borough President Gale Brewer described her aspirations for inclusionary housing to the *Wall Street Journal*: "I'm hoping that as time goes on, people will share play dates, and I hope that they'll do BBQs together" (Kusisto 2014).

The Urban Institute reviewed dozens of studies of housing programs that promoted mixed-income communities and found little evidence of any meaningful social interaction between lower-income and higher-income neighbors in mixed-income developments. It also found no evidence that lower-income residents reliably benefitted from the employment connections or other "social capital" of their higher-income neighbors (Levy, McDade, and Dumlao 2011). Even among members of the same income and racial groups, this kind of social interaction among neighbors appears to be rarer than is often imagined.

Integration of lower-income residents into middle- and upper-income *neighborhoods* can be very valuable, but integration in the same *building* may offer few additional benefits.

Ensuring Access to Opportunity

This research result does not mean that on-site performance is not a key way to achieve the real benefits that economic integration does offer. Inclusionary housing programs with on-site performance requirements may be one of the very few successful strategies available for integrating lower-income housing into high-opportunity neighborhoods at all.

Recent research has shown just how hard it is to achieve economic integration through traditional affordable housing strategies. A 2012 New York University study found that the vast majority of subsidized affordable housing was located in neighborhoods with poor performing schools. The schools nearest to public housing projects had a median state test score ranking in the 19th percentile (81 percent of schools performed better). Low Income Housing Tax Credit projects did slightly better; their nearest schools ranked in the 30th percentile. But even families with portable housing choice vouchers ended up in locations where the nearest school had a median rank in the 26th percentile. For a variety of reasons, these families who should have been able to rent anywhere ended up in neighborhoods where 75 percent of kids qualified for free lunch at school (Ellen and Horn 2012). Decades after embracing "deconcentration of poverty" as a federal housing policy goal, most federal programs don't appear to be achieving meaningful economic integration.

By contrast, the results of another 2012 study suggest that inclusionary housing programs have been more successful in achieving this goal. Heather Schwartz and her colleagues at the RAND Corporation mapped the locations of affordable units created by inclusion-

ary policies in 11 cities. They found that the typical inclusionary unit was in a neighborhood where only 7 percent of the population lived in poverty (half the national average for all neighborhoods). Children in these inclusionary units were assigned to schools with state test scores ranking in the 40th to 60th percentile and with lower-than-average numbers of students eligible for free lunches. Noting the stark contrast with other affordable housing programs, the authors concluded that "while [inclusionary housing] programs serve relatively more-advantaged families than other subsidized housing programs, the degree of access [inclusionary housing] provides to low-poverty neighborhoods is still remarkable" (Schwartz et al. 2012, p. 15).

Local policy makers have to struggle with how much importance to place on integrating lower-income households into higher-income neighborhoods. While we should be careful not to expect significant social mixing, the real economic and health benefits from living in higher-opportunity locations are sufficient to justify policies that promote integration. But for a variety of reasons it is very difficult to build affordable housing in higher-opportunity neighborhoods. Inclusionary housing is one of the only housing strategies that effectively integrates lower-income households into higher-income, higher-opportunity locations.

Frazer Court in Redmond, Washington, offers six affordable units to families making 80 percent of the area's median income. *Credit: City of Redmond*

CHAPTER 6

Addressing Legal Concerns

by Ben Beach

A father and daughter anticipate construction of their affordable home in the Old Las Vegas Highway development in Santa Fe, New Mexico. *Credit: John Baker Photography*

State and Federal courts have repeatedly upheld inclusionary housing measures, which have been adopted by hundreds of jurisdictions across the country. While some state laws have substantially limited the options available to local policy makers, in any jurisdiction there is almost always a path to an effective, legally defensible inclusionary policy. This chapter addresses four of the most important legal considerations for inclusionary housing programs: (1) takings standards; (2) on-site performance requirements; (3) linkage or impact fees; and (4) fees collected in lieu of providing required units on-site. It also looks at policy and priority differences among states.

Takings Standards

The legal issue most commonly implicated by inclusionary housing measures is known as "takings," derived from the prohibition in the U.S. Constitution against taking private property without just compensation. Courts confronted with a takings challenge to an inclusionary housing measure may apply one of two quite different standards. One standard, set forth by the U.S. Supreme Court in the *Penn Central* case, should apply to generally applicable land use controls, such as a simple mandatory inclusionary housing ordinance that merely requires on-site inclusion or off-site production of affordable units. To be considered a taking under the *Penn Central* precedent, a local ordinance would have to be so drastic in its effect that it is functionally equivalent to a "classic taking," in which the government directly appropriates private property.

In a pair of cases known as *Nollan* and *Dolan*, the Supreme Court outlined a stricter standard for exactions—development conditions imposed ad hoc or through negotiation as part of the land use approval process. These cases center on the "unconstitutional conditions" doctrine, which limits the government's authority to condition the grant of a privilege or benefit (such as a building permit) when a proposed condition contains a mandate (such as a requirement to dedicate land to the public) to give up or refrain from exercising a constitutional right. Under the *Nollan/Dolan* standard, such a requirement must (1) have an "essential nexus" to the impact of the development that is being mitigated by the condition (i.e., there must be a clear relationship between the impact of the development and the required mitigation); and (2) the condition must be "roughly proportional" to the impact that the development is likely to have on the problem that the condition is intended to mitigate. The Court recently clarified that the *Nollan/Dolan* analysis applies to conditions imposed in the development approval process that take the form of monetary fees (*Koontz v. St. Johns River Water Management District*).

While a number of cases have established some clear guidelines, the exact treatment of various inclusionary housing policies is still being considered by courts across the country, and it may be some time before all the relevant issues are resolved. Two important questions can help make sense of the confusion: (1) Is the measure in question imposed ad hoc or is it generally applicable? and (2) Is the purpose of the measure to mitigate a project's impact or instead to accomplish a legitimate regulatory goal under the jurisdiction's police power?

It is clear that generally applicable on-site affordable housing requirements can be structured as expressions of a jurisdiction's police power to regulate land use. If so, they should be evaluated under the *Penn Central* standard when subject to a federal takings challenge. To date, no court has used the *Nollan/Dolan* standard to review a generally applicable mandatory inclusionary zoning ordinance.

It is also clear that measures imposed ad hoc should be evaluated under *Nollan/Dolan*. And it is somewhat likely that linkage fees or impact fees designed as mitigations will be evaluated under *Nollan/Dolan*, or some other standard examining the relationship between the cost of compliance and the impact of the project on the problem. What is less clear is how the courts should treat fees charged in lieu of on-site performance, which seem to be quite different from traditional land use regulations.

Which of these standards a court chooses to apply in evaluating a challenge to an inclusionary housing measure has significant implications for policy making. First, the *Nollan/Dolan* standard requires extensive documentation to establish the appropriateness of the measure in question. Second, the proportionality requirement places an upper limit on the level of fees charged, which is almost certainly well below any upper limit imposed by the *Penn Central* standard. Under *Penn Central*, a land use regulation can significantly constrain the potential uses of a property

regardless of whether or how much a given development would contribute to a social problem—as long as the regulation advances a legitimate government purpose and leaves the property owner with *some* profitable use of the property.

Recently, the California Supreme Court addressed several of these issues in a case involving a takings challenge to the City of San Jose's inclusionary housing ordinance, *Cal. Bldg. Indus. Assn. v. City of San Jose*, 61 Cal. 4th 435 (2015). The ordinance required that developers of residential projects with 20 or more new, additional, or modified dwelling units set aside 15 percent of on-site for-sale units as affordable, or meet one of the alternative performance requirements, such as providing affordable housing off-site or paying an in-lieu fee. The court concluded that the ordinance should be treated as a traditional land use control, not as an exaction, and should be reviewed under the deferential standard reserved for such controls. The court observed that the city's legitimate purposes in adopting the ordinance were to increase the supply of affordable housing and to distribute affordable housing across economically diverse neighborhoods. The court clarified that the "unconstitutional conditions" doctrine applies only in cases where the condition at issue, if imposed directly by the government, would amount to a taking because it required conveyance of a property interest. San Jose's inclusionary housing ordinance, the court determined, did not require the subject developer to convey property to the public, but instead operated as a *price control* on housing reviewable under *Penn Central*.

On-Site Performance Requirements

Citywide or neighborhood-wide inclusionary requirements, where properly drafted, should be entitled to great judicial deference as generally applicable exercises of the local government's authority to regulate land use under its police powers (*Euclid v. Amber Realty Company; Village of Belle Terre v. Boraas*). The legitimate purposes of inclusionary housing ordinances may include accommodating a community's projected needs for affordable housing, addressing the effects of prior exclusionary zoning, providing equal opportunity to all income levels, providing housing for the workforce, addressing the dwindling supply of land, and affirmatively advancing integration and other fair housing goals (California Affordable Housing Law Project/Public Interest Law Project 2010). Unlike a housing impact fee, for example, inclusionary housing ordinances are not principally intended to mitigate the impact of particular development projects and should not be described as such.

It is sometimes argued that inclusionary housing requirements should be evaluated under the *Nollan/Dolan* standard instead. The California Supreme Court's approach to the question of which standard to apply has been widely used in other states. Under that approach, generally applicable land use controls, even when applied to development through the mechanism of the land use approvals process, are considered police power legislation. The more rigorous *Nollan/Dolan* review is reserved for measures imposed on individual development projects on an ad-hoc basis (*Ehrlich v. City of Culver City*). It is thus advisable for local jurisdictions to adopt citywide or neighborhood-wide inclusionary requirements that are generally applicable, rather than those imposed ad hoc during the land use approval process.

A jurisdiction may want to undertake an economic feasibility study to support any contemplated inclusionary housing requirement. Such a study should aim to satisfy the *Penn Central* test by showing that the proposed requirements do not completely disrupt economic returns from the project in question. A feasibility study should factor in any subsidy or other economic value contributed by the local government to the projects through upzoning or other regulatory relief. Jurisdictions should not rely on a nexus study to support generally applicable on-site performance

requirements, because doing so might imply that the inclusionary requirements were intended to mitigate project impacts rather than advance legitimate police power objectives.

Local jurisdictions can take these additional steps to help strengthen the legal defensibility of their inclusionary housing requirements: (1) include a goal in the community's comprehensive or general plan that future growth of the community must include a specified percentage of affordable housing; (2) make clear that any on-site performance requirement is an exercise of the city's police power, advances a legitimate government interest, and is not intended to mitigate the impact of development; (3) make administrative waivers available; and (4) consider including a periodic review of the on-site performance affordable housing percentage in light of market conditions.

Linkage and Impact Fees

In general, federal and state courts have repeatedly upheld impact fees (and other similar development fees) against challenges maintaining that they are takings. However, courts are likely to apply the *Nollan/Dolan* standard in evaluating such fees.

In *Commercial Builders of Northern California v. City of Sacramento*, the ninth circuit court upheld Sacramento's commercial linkage fee ordinance against a takings challenge. The challengers argued that Sacramento failed to show that the nonresidential development on which the fee was imposed generated a need for affordable housing proportionate to the burden created by the fee. The court rejected this argument, reasoning that the ordinance "was implemented only after a detailed study revealed a substantial connection between development and the problem to be addressed" (*Id.* at 875).

Local jurisdictions contemplating adoption of linkage or impact fees would be well-advised to commission a nexus study, which demonstrates the relationship between a contemplated fee and the impact of the development that the fee is intended to mitigate. Commonly, these studies use well-established industry methodologies to calculate the contribution of a set of projects (residential or commercial) to worker in-migration and the ensuing need for new affordable housing. Such studies are designed to help localities meet the *Nollan/Dolan* test by establishing both the "essential nexus" and "rough proportionality" required by the court in those cases.

In-Lieu Fees

Is an in-lieu fee the kind of fee imposed in the development approval process that is subject to *Nollan/Dolan*? In development fee cases, courts have followed the California approach of distinguishing between legislative measures and those imposed on an ad hoc basis. "With near uniformity, lower courts applying *Dolan* . . . have expressly declined to use *Dolan's* heightened scrutiny in testing development or impact fees imposed on broad classes of property pursuant to legislatively adopted fee schemes" (*Rogers Mach. v. Wash. County*). As long as the in-lieu fee requirement is structured to allow for negligible discretion in calculation and application, the fee should not be subject to *Nollan/Dolan,* because it is not ad hoc or negotiated (*San Remo Hotel v. City and County of San Francisco*).

However, California courts have further determined that even a generally applicable formulaic development impact fee must still bear a "reasonable relationship" to the impacts the fee is intended to mitigate (*Ehrlich v. City of Culver City*), a standard somewhere between *Penn Central* and *Nollan/Dolan* in its deference to local authority. In the event that a court views an in-lieu fee as an impact fee (rather than as a land use control) and applies such a standard, the local government still has a strong defense available. An inclusionary in-lieu fee is customarily structured to cover the cost of developing affordable units that

would otherwise have been included on-site in the project. That "loss" of on-site units is precisely the impact the fee is intended to mitigate. Thus, where they follow conventional design, such fees are likely to be seen as meeting the California courts' "reasonable relationship" standard.

In *City of San Jose*, the court quickly dismissed the challengers' contention that the presence of an in-lieu fee option meant that the ordinance as a whole should be reviewed under a heightened standard appropriate for measures designed to mitigate impact. The court noted that no developer was required to pay the in-lieu fee and that a developer could always opt to satisfy the ordinance by providing on-site affordable housing units (61 Cal. 4th at 476).

There is every reason to believe that courts will continue to uphold the basic right of local governments to promote the welfare of their residents by ensuring the availability of housing that is affordable to lower-income households.

Variations Among State Laws

It is no coincidence that inclusionary housing programs are heavily concentrated in a few states. California, New Jersey, and Massachusetts all have (or had) state laws that strongly encourage or even require local inclusionary housing policies. Adopting inclusionary policies in other states often requires significant research into any special state constitutional provisions or statutes that might limit local authority.

In California, Colorado, and Wisconsin, state courts have interpreted laws relating to rent control to bar localities from using inclusionary housing measures to regulate rents, but not the price of ownership units. Local jurisdictions in all these states have, despite these legal limitations, successfully implemented at least one of the inclusionary housing strategies discussed in this report.

The National Association of Home Builders produced a summary of state laws that either support or impede local inclusionary housing ordinances. They found that 13 states (Connecticut, Florida, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and Virginia) have statutes that either explicitly or implicitly authorize local inclusionary policies. Two states (Texas and Oregon) have explicit prohibitions against inclusionary housing. In many of the remaining states, key state policy concerns shape the design of local inclusionary policies (Hollister, McKeen, and McGrath 2007).

In some cases, changes or clarifications to state law can help promote local adoption of inclusionary housing policies. Florida housing advocates managed a decade-long campaign that resulted in the passage of more than a dozen inclusionary ordinances. This campaign succeeded in large part due to a sustained legislative effort to pass two laws: one to ensure that price and rent control provisions in mandatory inclusionary programs were legal under state law, and one to support the creation of local community land trusts to manage inclusionary and other housing units (Ross 2014).

Conclusion

It is important for jurisdictions adopting inclusionary housing programs to pay close attention to the evolving case law on this issue. But there is every reason to believe that courts will continue to uphold the basic right of local governments to promote the welfare of their residents by ensuring the availability of housing that is affordable to lower-income households.

CHAPTER 7

Planning for Successful Implementation

Affordable homes at Mueller Austin are interspersed throughout various neighborhoods built by different developers. *Credit: Catellus Development*

The success of an inclusionary housing ordinance rests on the jurisdiction's ability to appropriately staff and fund ongoing program administration. Staff must have specialized skills to engage successfully with developers of complex real estate projects. Once inclusionary units are completed, monitoring and stewardship of rental units and especially homeownership units require dedicated staffing on an ongoing basis to ensure that units remain affordable and that the program is meeting its stated goals. The cost of this staffing is small relative to the value of the affordable housing being managed, but jurisdictions have to plan for this ongoing expense.

Case Study: Denver, Colorado

The case of Denver, Colorado, illustrates how staffing differences in two types of inclusionary housing programs made a big difference in preventing foreclosures.

In 2012, the city's 10-year-old inclusionary housing ordinance (IHO) faced an unprecedented challenge. Staff reported to the city council that the IHO had created 1,155 affordable homeownership units, but that 185 of those homes had been lost to foreclosures (Denver Office of Economic Development 2012). This news created enormous political pressure to reform or even repeal the program. Some were tempted to conclude that inclusionary housing could not work in Denver.

At the same time that Denver was developing a citywide inclusionary program in the early 2000s, the commission overseeing the reuse of Denver's Lowry Air Force Base established its own inclusionary housing policy. Developers at Lowry were required to make roughly 900 homes affordable to lower-income families (Webster 2005). Over the same period of time that 185 of the city's inclusionary units went into foreclosure, there were zero foreclosures at Lowry. What caused this difference?

Lowry had created a community land trust (CLT) to monitor and manage its affordable homes. While the city had a single staff person managing more than 1,000 affordable units, Lowry's CLT had two to three people working closely with only 186 homeowners. The CLT pushed for more affordable prices, prevented buyers from taking out adjustable-rate mortgages, and stepped in when homeowners got into trouble (Harrington 2013). In 2013, Denver established emergency measures that helped avoid further foreclosures. In 2014, the city council passed a comprehensive redesign of the program that included provisions to increase the staffing for administration and to outsource some capacities.

Roles for Program Staff and Contractors

Successful implementation of an inclusionary housing program requires staff with specialized skills necessary to coordinate and oversee complex real estate developments, screen buyers and tenants, and then monitor units over time. Table 2 summarizes some of the functions that staff or contractors typically perform.

SUPPORTING THE PRODUCTION OF AFFORDABLE UNITS

No matter how detailed and well-conceived an inclusionary housing ordinance is, some situations will call for human judgment to implement the program fairly and act in the best interest of the community. It is not sufficient to simply publish rules and expect developers to implement them successfully. City staff, or staff of some partner agency, must help developers interpret and apply the inclusionary policies. In many communities, staff has some discretion to waive certain requirements, approve alternatives, or bring additional resources such as fee waivers or housing funds to the table for projects to achieve high levels of public benefit.

However, achieving flexibility is no simple task. Staff has to work closely with developers to evaluate the impact of inclusionary requirements on a project's financial performance and to develop alternative proposals that benefit the developer and the community. This requires some level of technical skill, and cities sometimes struggle to find staff with the necessary experience. Occasionally, cities turn to outside consultants or other partners to perform these tasks.

Mammoth Lakes, California, is a ski resort town with very high housing costs. The town adopted affordable housing mitigation regulations that require developers of new housing, hotels, resorts, or commercial real

Table 2

Key Functions to Be Performed by Staff or Contractors

1 | Supporting the Production of Affordable Units

- Communicating program requirements to developers and property managers
- Reviewing development proposals for compliance with rules
- Negotiating certain requirements to maximize production (in some communities)
- Ensuring that affordable units meet appropriate design and location standards
- Ensuring timely payment of fees (if any)
- Planning and implementing reinvestment of fee revenue to produce affordable units

2 | Monitoring and Stewarding Rental Units

- Setting affordable rents
- Working with property managers to ensure fair marketing of units
- Monitoring eligibility screening for new tenants
- Recertifying annual incomes of tenants
- Enforcing requirements (as necessary)

3 | Monitoring and Stewarding Homeownership Units

- Setting initial prices at an affordable level
- Marketing homes to eligible buyers
- Ensuring that potential buyers receive homebuyer education
- Verifying that applicants understand program requirements and resale restrictions
- Screening applicants against eligibility requirements
- Working with lenders to ensure access to appropriate financing
- Monitoring homes for owner occupancy over time
- Managing resales to future income-eligible buyers at formula price
- Enforcing program requirements when necessary

estate to develop new affordable housing units as part of these projects. However, town leaders recognized that the community lacked the capacity to manage detailed negotiations with developers. They turned to a local nonprofit, Mammoth Lakes Housing (MLH), for assistance. The town contracts with MLH to provide a number of services, such as monitoring their entire portfolio of resale-restricted housing, collecting data on housing needs, working with private developers to ensure compliance with the housing mitigation ordinance, and assisting the town to address its housing goals (Hennarty 2013).

MONITORING AND STEWARDING RENTAL UNITS

The majority of inclusionary programs rely heavily on property management companies to ensure ongoing compliance of inclusionary rental units, but many administrators report significant challenges resulting from this approach (Hickey, Sturtevant, and Thaden 2014).

Programs frequently expect managers of rental properties with inclusionary units to market available

units, screen applicants for program eligibility, document and annually recertify tenant incomes, and take action to address noncompliance. Many cities provide ongoing training for property managers to help them understand the rules they are charged with enforcing, and most undertake some level of monitoring to ensure that managers are applying the rules appropriately and equitably. However, problems are still common.

Programs must plan ahead to cover administrative costs adequately in both high-growth and low-growth periods.

Most property management companies have no experience with affordable housing programs, and it can be challenging to rely on them to enforce potentially complex public agency rules. As a result, a growing number of programs are centralizing some of these responsibilities, often in-house. Hickey, Sturtevant, and Thaden (2014) describe how the City of San Mateo, California, centralized waiting lists and screening due to the high turnover of property managers. Now the city manages a single applicant pool and sends prescreened tenants to property managers to fill vacancies.

MONITORING AND STEWARDING HOMEOWNERSHIP UNITS

Ensuring long-term affordability for homeownership units is more challenging than it is for rentals and requires attention to a wider range of issues. Cornerstone Partnership and the National Community Land Trust Network led a yearlong process that engaged dozens of practitioners and several national homeownership organizations to create a set of "Stewardship Standards" to preserve long-term affordability. The standards include more than 41 independent program elements and policies that participants believed were essential for successfully preserving long-term affordability as well as resources such as sample documents and templates to facilitate the adoption of best practices (Cornerstone Partnership 2014a).

Ownership units require more active involvement, and property management companies do not offer the needed expertise for these activities. As a result, most cities with portfolios of inclusionary homeownership units have significant staffing dedicated to managing and monitoring those units.

NeighborWorks America and NCB Capital Impact reviewed the staffing levels among a wide range of affordable homeownership programs with long-term restrictions, including many inclusionary housing programs. They found that staffing levels varied significantly, with small programs managing fewer than 100 units per employee and some larger programs overseeing 500 or more units per employee. Their report said, "It seems prudent to plan on staffing at the level of one full-time staff person (or equivalent) focused exclusively on post-purchase monitoring and resale administration for every 150 to 300 affordable homeownership units" (Jacobus 2007b).

Many cities have turned to third-party administrators to assist with the tasks of monitoring and enforcing deed restrictions on homeownership units. These third-party partners are most often nonprofit organizations, but a number of private firms provide administrative services to dozens of local jurisdictions in New Jersey. One type of partnership showing particular promise is when jurisdictions work with community land trusts (CLTs) to implement inclusionary programs. For example, Community Home Trust, a CLT in Chapel Hill, North Carolina, plays a key role in the administration of the city's inclusionary housing program.

Funding Administrative Costs

Programs must plan ahead to cover administrative costs adequately in both high-growth and low-growth periods. PolicyLink documented the many sources

The Arbor Rose development in San Mateo, California, offers seven affordable town houses with either one or two bedrooms. *Credit: Sandy Council*

that inclusionary housing programs rely on to fund ongoing administration (Jacobus 2007a). The most common sources were local government general funds and federal housing block grant funds. However, many communities use a portion of inclusionary housing fee revenue to pay for program administration. A number of communities have developed fee structures that grow over time as administrative demands grow. A few charge tenants or homebuyers application fees, and a growing number charge significant fees when inclusionary homeowners resell or refinance their homes. In cases where the inclusionary program staff manages significant aspects of the resale, fees as high as 3 percent of the resale price may be appropriate.

Community land trusts typically charge homeowners a monthly ground lease fee to help defray administration costs, and a small number of cities including Chicago have included similar administration fees in deed covenants. Salinas, California, charges owners of inclusionary rental units an annual monitoring fee as well.

Measuring Impact

Too often, a lack of external compliance requirements results in literally no system for tracking outcomes of inclusionary housing programs. Schwartz and her colleagues at the RAND Corporation evaluated whether inclusionary programs were achieving significant economic inclusion. She reported that "no jurisdiction had all the information we requested, and . . . no jurisdiction regularly tracked demographic information and sales prices or rents across successive occupants of units" (Schwartz et al. 2012).

While it is not uncommon for academic researchers to conclude that more data is necessary to answer important questions, the question that Schwartz was

HomeKeeper Tracking System

Recognizing the need for better outcome tracking, Cornerstone Partnership brought together practitioners from multiple communities to develop a data system called HomeKeeper, which several inclusionary programs are using to monitor program outcomes. The City of Cambridge, Massachusetts, recently adopted HomeKeeper, and housing manager Anna Dolmatch reported that "it has eliminated multiple spreadsheets, and we no longer have to search through paper files for information" (Eng 2014, p. 1).

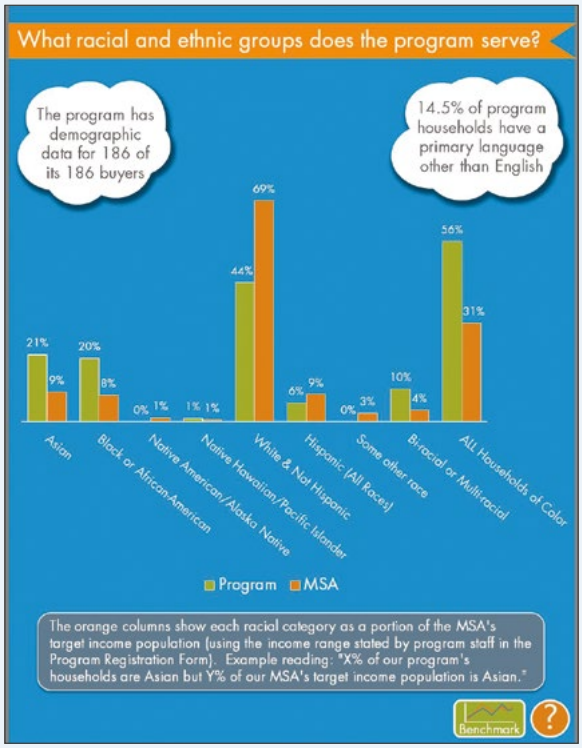
HomeKeeper captures demographic and income data from households at the time they are applying, enables management of waiting lists and lotteries, and automates screening for eligibility. Once units are occupied, HomeKeeper helps staff monitor ongoing activities. For homeownership units, HomeKeeper tracks all the financial data related to the sale and financing of a home, helps staff manage resales, and ensures ongoing affordability. As a by-product of automating these administrative systems, HomeKeeper captures the key data necessary to understand a program's impact.

HomeKeeper users receive an annual "Social Impact Report" that summarizes program performance and includes an overview of the type and location of units produced and the demographic and income characteristics of residents. The report also shows trends over time, such as how resident income compares with program income limits, the ongoing affordability of units, the difference between below-market-rate prices and market prices, the amount of equity earned by home buyers, and their annualized rate of return. Because more than 60 programs participate in the HomeKeeper project, these reports can not only present each program's outcomes, but they can also benchmark those outcomes against the performance of a national peer group (Cornerstone Partnership 2014b).

Figure 10 presents an example of the kind of information available from a HomeKeeper report. The chart compares the racial demographics of a program's buyers to a pool of income-eligible households in the local area. This particular program is reaching African American and Asian families but underserving Hispanic households. Without this benchmarking data, these trends would be hard to track.

Figure 10

Sample Metrics from a HomeKeeper Social Impact Report



Source: Cornerstone Partnership

The Sand River Cohousing development in Santa Fe, New Mexico, provides homes at below-market rates for senior citizens. *Credit: Angela Werneke*

researching was the very issue that most likely motivated the creation of many of these programs. In fact, the data she needed was exactly the same kind of data that the staff routinely provide for federally funded housing projects.

Some communities have begun to require annual reporting on program activities. Sacramento County, California, for example, includes inclusionary reporting as part of a broader biennial report. It must include the number of units produced, the amount of land dedicated and purchased, the amount of funds collected, and the levels of affordability among the units created.

These annual reports are not as common as they should be, but those that exist do not seem to address policy makers' need for analysis of program performance. One exception is Monterey County, California, where the inclusionary zoning policy requires both an annual report and a more in-depth five-year report. The annual report is a brief summary of the program's accomplishments over the previous years. The five-year report includes the number of units produced and households served, the amount of in-lieu fees collected and how those fees are used, and recommendations for policy revisions. This report is presented for public comment. Ultimately, all inclusionary housing programs—both individually and collectively—would benefit from significantly improving and standardizing data collection and performance metrics.

Conclusion

Inclusionary housing programs cannot be successful unless they are well run and adequately staffed, and they must secure sufficient funding for ongoing administrative costs. Communities also need to be able to track program data in order to evaluate outcomes and make needed changes over time.

CHAPTER 8

Conclusions and Recommendations

The Pacifica Cohousing Community maintains seven energy-efficient, permanently affordable units on its eight-acre property in Carrboro, North Carolina. *Credit: Community Home Trust*

The evidence summarized in this report strongly supports the idea that local inclusionary housing policies can fairly and effectively tie production of affordable housing to the construction of new market-rate real estate development.

Inclusionary housing offers a way to expand and preserve a supply of housing that is affordable to lower-income people. The responsibility for affordable housing is increasingly being devolved to states and localities as federal resources become scarce, and inclusionary housing programs offer an effective way for private-public partnerships to address this ongoing need.

Growing communities can implement inclusionary policies to generate significant amounts of affordable housing without negatively affecting market-rate development. Ultimately, inclusionary programs can impose meaningful costs on developers, but when they are coupled with incentives, the net impact on development is typically modest, neutral, or even occasionally positive. The affordable housing requirements that can be supported without overburdening development, however, differ from one community to another. Hence, effective policy design and program implementation are crucial for successful results.

Most importantly, inclusionary housing offers one of the only effective strategies for overcoming economic segregation and building sustainable mixed-income communities. The evidence suggests that economic integration is an important way to combat the negative effects of generational poverty. It also suggests that residents across all income levels benefit from (1) reducing sprawl (and the associated costs for taxpayers); (2) living in more sustainable cities; and (3) experiencing cultural, racial, and economic diversity.

While building-by-building integration is not always necessary, traditional publicly subsidized affordable housing programs have struggled and largely failed to achieve neighborhood-level economic integration. Ultimately, tying provisions of affordable housing directly to market-rate development removes the biggest obstacle to creating inclusive communities: access to desirable land for development.

What Can Local Governments Do to Maximize the Impact of Inclusionary Housing?

Research supports the premise that inclusionary housing programs must be designed with care. In order to maximize the impact of inclusionary programs, local sponsoring agencies should:

BUILD PUBLIC SUPPORT

1. Build consensus around the need for greater investment in affordable housing and the desirability of a housing strategy that emphasizes mixed-income communities.

2. Engage community stakeholders, including real estate developers, in the process of designing an inclusionary program.

3. Share program results with the public on a regular basis to build ongoing support.

USE DATA TO INFORM PROGRAM DESIGN

4. Conduct an economic feasibility study prior to implementation to ensure that proposed performance requirements or fees can be reasonably absorbed by development profits and land values.

5. For programs that rely on linkage or impact fees, conduct a nexus study prior to implementation to ensure that required fees are roughly proportional to the impact of new development on the need for affordable housing.

6. Track program activity to enable policy makers to understand the program's impact and make incremental improvements.

ESTABLISH FAIR, REASONABLE EXPECTATIONS FOR DEVELOPERS

7. Provide flexibility to developers to improve the rate of production.

8. Ensure that alternatives to on-site production are economically comparable.

9. Require developers to provide increased public benefits when they build off-site units.

10. Regularly adjust incentives and requirements to ensure that the number and types of units produced align more closely with local housing needs.

ENSURE PROGRAM QUALITY

11. Pay close attention to the geographic location of units to ensure economic integration.

12. Develop design standards to ensure that the affordable units are of appropriate size and quality.

13. Plan and budget for stewardship and monitoring to protect long-term affordability.

What Can States Do to Support Local Inclusionary Housing Policies?

State legislative leadership has been essential to the growth of inclusionary housing. New Jersey effectively mandates local inclusionary housing policies, and Massachusetts and California have developed statewide policy frameworks that grant real powers to overcome exclusionary zoning policies and encourage local cities and towns to adopt inclusionary housing ordinances.

States that want to encourage but not require local inclusionary housing policies could adopt legislation that makes the legality of local inclusionary housing explicit. Just as important, states can establish clear statewide planning frameworks that (1) explicitly allow local governments to implement inclusionary housing policies, just as they have the authority to regulate other land uses; (2) prohibit local exclusionary housing practices; and (3) require local communities to proactively plan for and build affordable housing.

Affordable housing puts minds and hearts at ease. *Credit: John Baker Photography*

Without specifically mandating the strategy each community will use, policies like these create an expectation that each community will manage its growth in a way that ensures that some portion of new housing is affordable to lower-income residents.

In most cities, the need for affordable housing has never been more urgent. For many jurisdictions across the country, now is the time to consider adopting robust inclusionary housing policies that build affordable housing stock and create inclusive communities.

What Can the Federal Government Do to Support Inclusionary Housing Policies?

Inclusionary housing is not and should not be a central part of the federal government's affordable housing strategy. Local inclusionary housing programs are not a substitute for a robust federal role in the production and preservation of affordable housing. In order to make a dent in the national housing problem, federal investment in public housing, block grant programs like HOME Investment Partnerships Program and Community Development Block Grants (CDBG), and the Low Income Housing Tax Credit program must continue and expand. Local inclusionary programs can offer a way to supplement and leverage the impact of that federal investment, particularly in areas that are experiencing growth.

The federal government could take the following steps to encourage and support local inclusionary housing:

1. Remove barriers for accessing FHA-insured mortgages and the secondary mortgage market for buyers of inclusionary homes.

2. Provide incentives or preferences for the allocation of federal transportation funding to communities that develop affordable housing in concert with new transit infrastructure.

3. Educate state and local housing agencies on why inclusionary housing can be an effective tool for their comprehensive affordable housing strategies.

4. Develop a platform for tracking and monitoring the location of affordable units created through local policies (including but not limited to inclusionary policies) and combining that information with public data on the locations of federally subsidized housing to enable comparison of the performance of various programs.

5. Allow local jurisdictions to use HOME and CDBG funds to support stewardship of affordable units with long-term affordability controls.

In most cities, the need for affordable housing has never been more urgent. For many jurisdictions across the country, now is the time to consider adopting robust inclusionary housing policies that build affordable housing stock and create inclusive communities.

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www.affordableownership.org

Cornerstone Partnership (Cornerstone) promotes strong, inclusive communities where all people can afford a decent place to live and thrive. Cornerstone is a national peer network for homeownership and inclusionary housing programs that preserve long-term affordability and community stability. Cornerstone provides expertise on policy and practice, offers technical assistance, tools, and resources to help its members build capacity and strengthen impact, and builds connections that help programs learn from each other and share what works. Cornerstone's work supports practitioners, advocates, elected officials, consultants, and other housing professionals dedicated to helping individuals and families access equity and opportunity.

ABOUT THE NATIONAL COMMUNITY LAND TRUST NETWORK

www.cltnetwork.org

The Network is a national nonprofit membership organization of community land trusts (CLT) and other organizations that promote strategic community development and permanently affordable housing to benefit lower income families throughout the United States. The Network supports our members by:

1. Raising public awareness of CLTs and permanently affordable housing,
2. Providing training, conferences, technical assistance, and capacity building resources for nonprofits and government organizations,
3. Researching best practices, innovations, and outcomes of membership organizations,
4. Promoting public policies and partnerships that enable growth and expansion, and
5. Developing the industry to advance its impact on families and communities.

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Inclusionary Housing

Creating and Maintaining Equitable Communities

Roughly 500 communities in the United States have developed inclusionary housing policies, which require developers of new market-rate real estate to provide some units that are affordable to low- and moderate-income residents. For cities struggling to maintain economic integration, inclusionary housing is one of the most promising strategies available to ensure that the benefits of development are shared widely. However, policies must be designed with care to suit local conditions and guarantee that requirements do not overburden development. Through a review of the literature and case studies, this report details how local governments are realizing the potential of inclusionary housing by building public support, using data to inform program design, establishing reasonable expectations for developers, and ensuring long-term program quality.

Inclusionary housing is likely to play a more significant role in our national housing strategy in the coming decade. Faced with declining federal and state resources for affordable housing and growing populations, communities need to take full advantage of every potential tool. The evidence summarized here suggests that inclusionary housing programs produce a modest yet steady supply of new affordable housing resources. Because programs generally preserve long-term affordability, the pool of local inclusionary units can grow steadily into a significant share of an area's housing stock.

As importantly, the data suggests that inclusionary housing is one of the few proven strategies for locating affordable housing in asset-rich neighborhoods where residents are likely to benefit from access to quality schools, public services, and better jobs. Increasingly, communities across the country are investing in the creation of new transit-oriented urban neighborhoods, and inclusionary housing policies are one of the only ways to ensure that these places develop in an equitable manner. Ultimately, equitable development benefits not only lower-income households; integrated, inclusive, and diverse communities enhance the lives and outcomes of all residents.

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Policy Focus Report/Code PF044

Grand County Housing Workshop

March 29, 2016

Zacharia Levine, MCMP
Community Development Directors

Topics Covered So Far (County Council)…

- October ‘15:
  - Housing market study and needs analysis

- January ‘16:
  - Reducing development review times: unnecessary public hearings

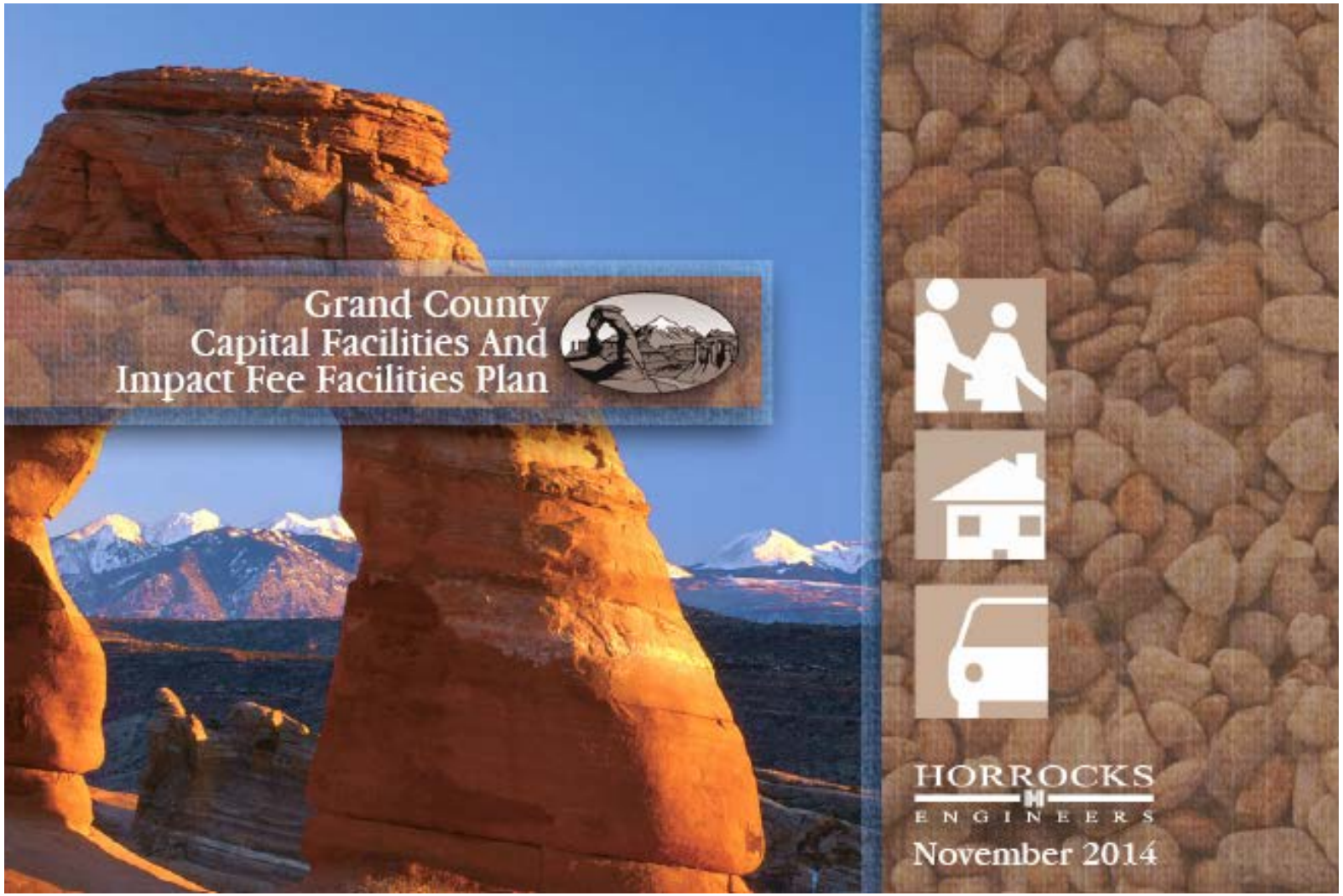
- February ‘16:
  - Overview of possible changes to Grand County’s Land Use Code (LUC)
  - Prioritization of LUC amendments and “division of labor”

- March ‘16:
  - Focused look at housing needs by income
  - Code Enforcement
  - Assured Housing

- April ‘16:
  - Density and future land use planning
  - Developing publicly owned parcels

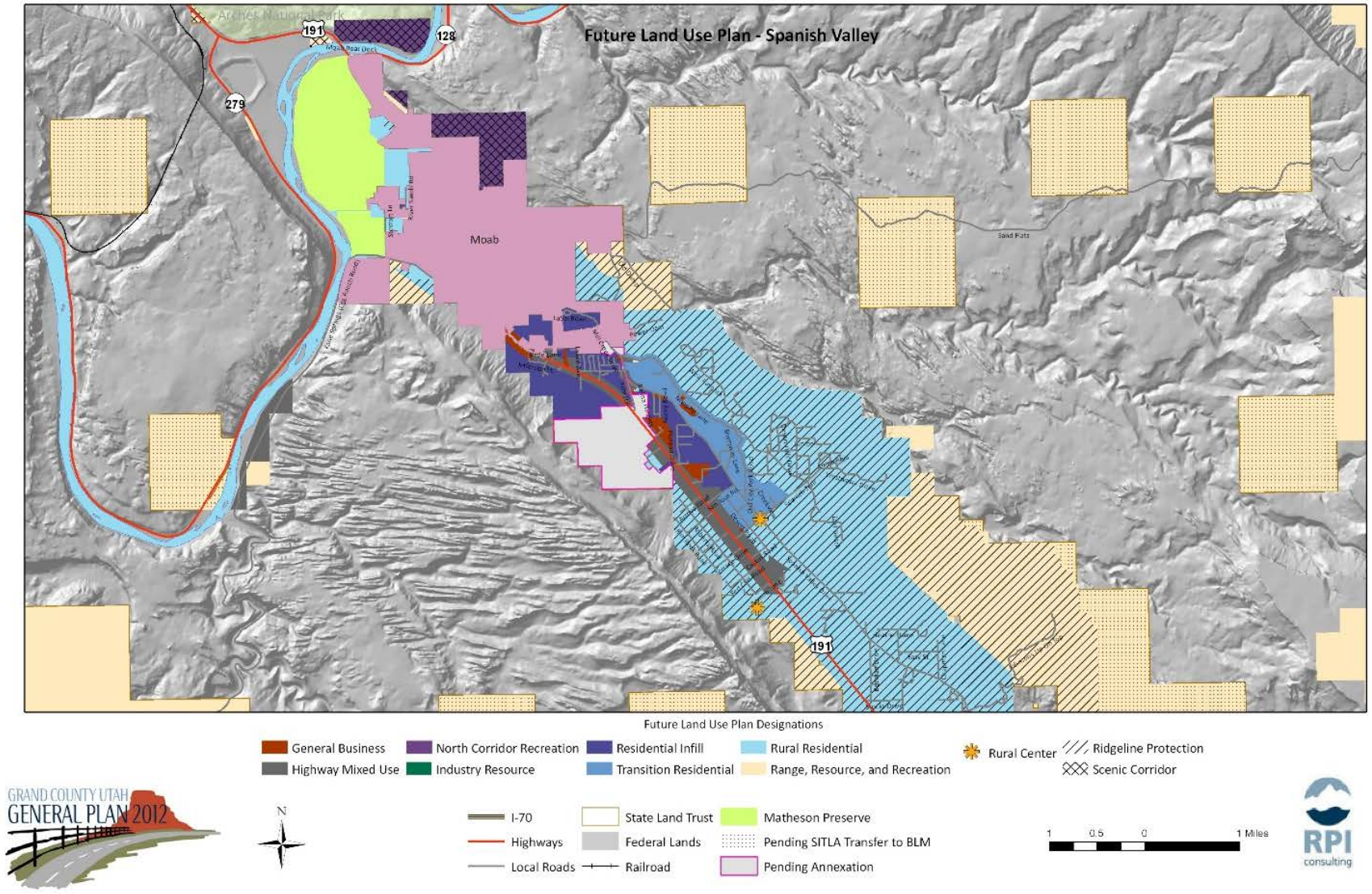
Critical Conversations…

Infrastructure



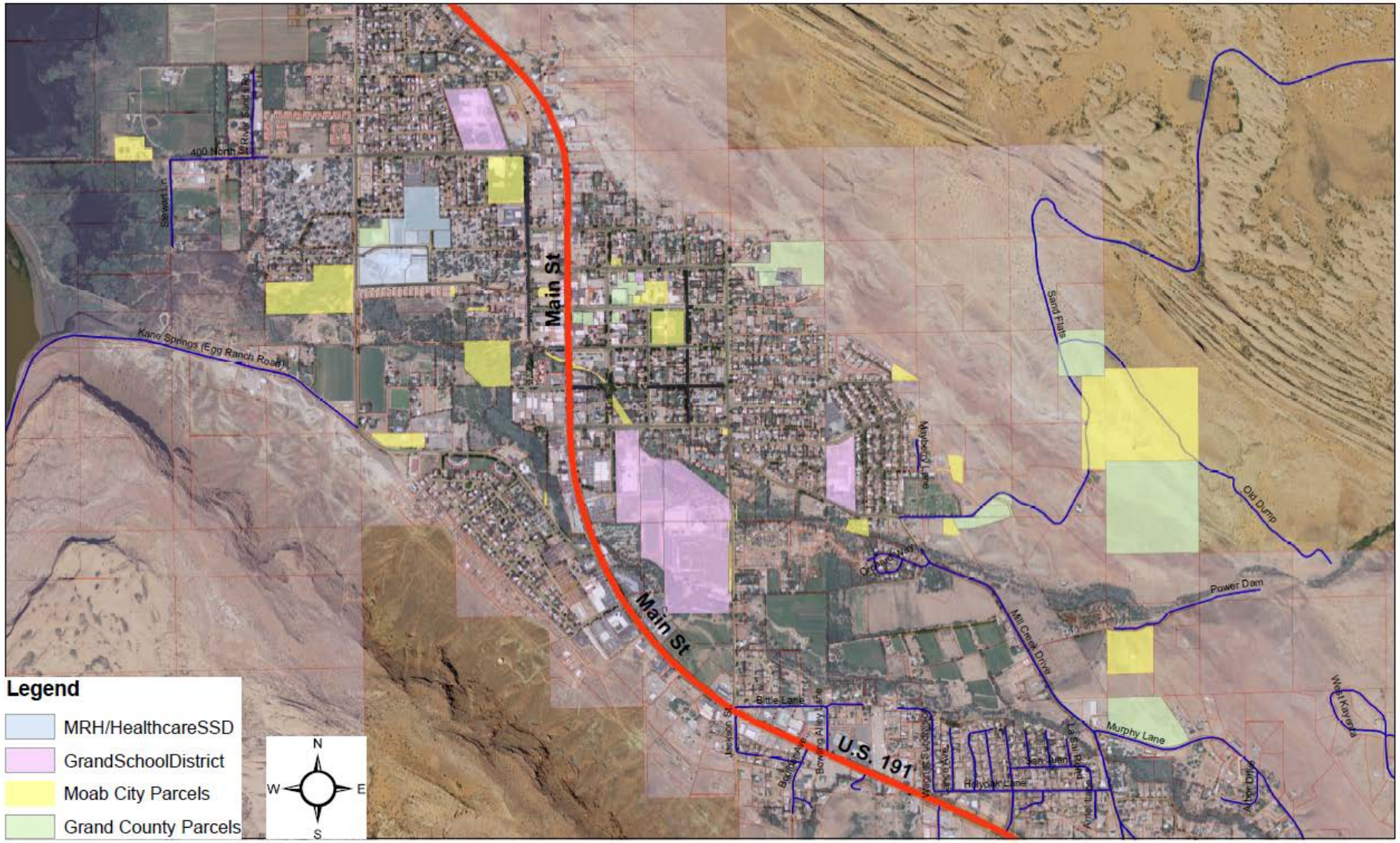
Critical Conversations…

Grand County Future Land Use Plan – Density!!!



Critical Conversations…

Developing Publicly Owned Parcels for Housing



Map prepared by Zacharia Levine, Grand County Community Development Director

Planning Commission: Code Amendments

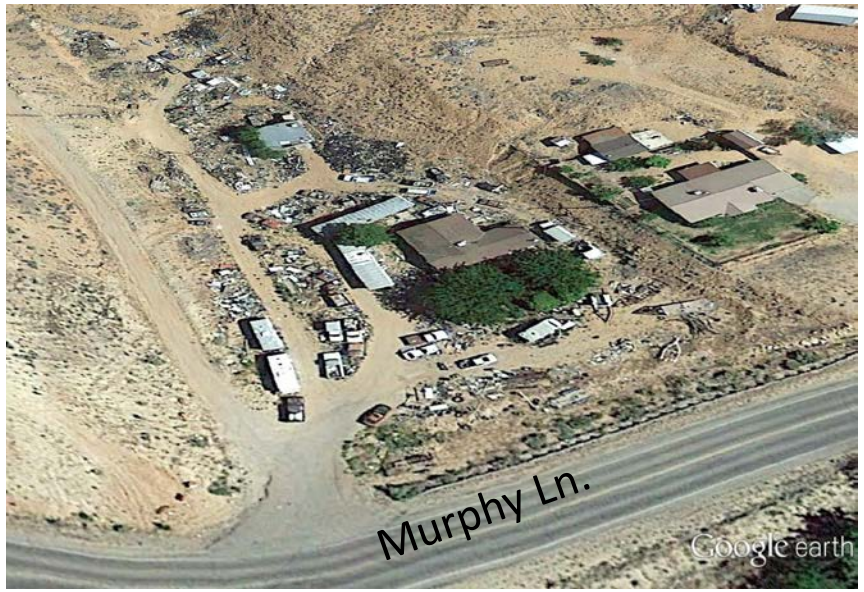
To Date:

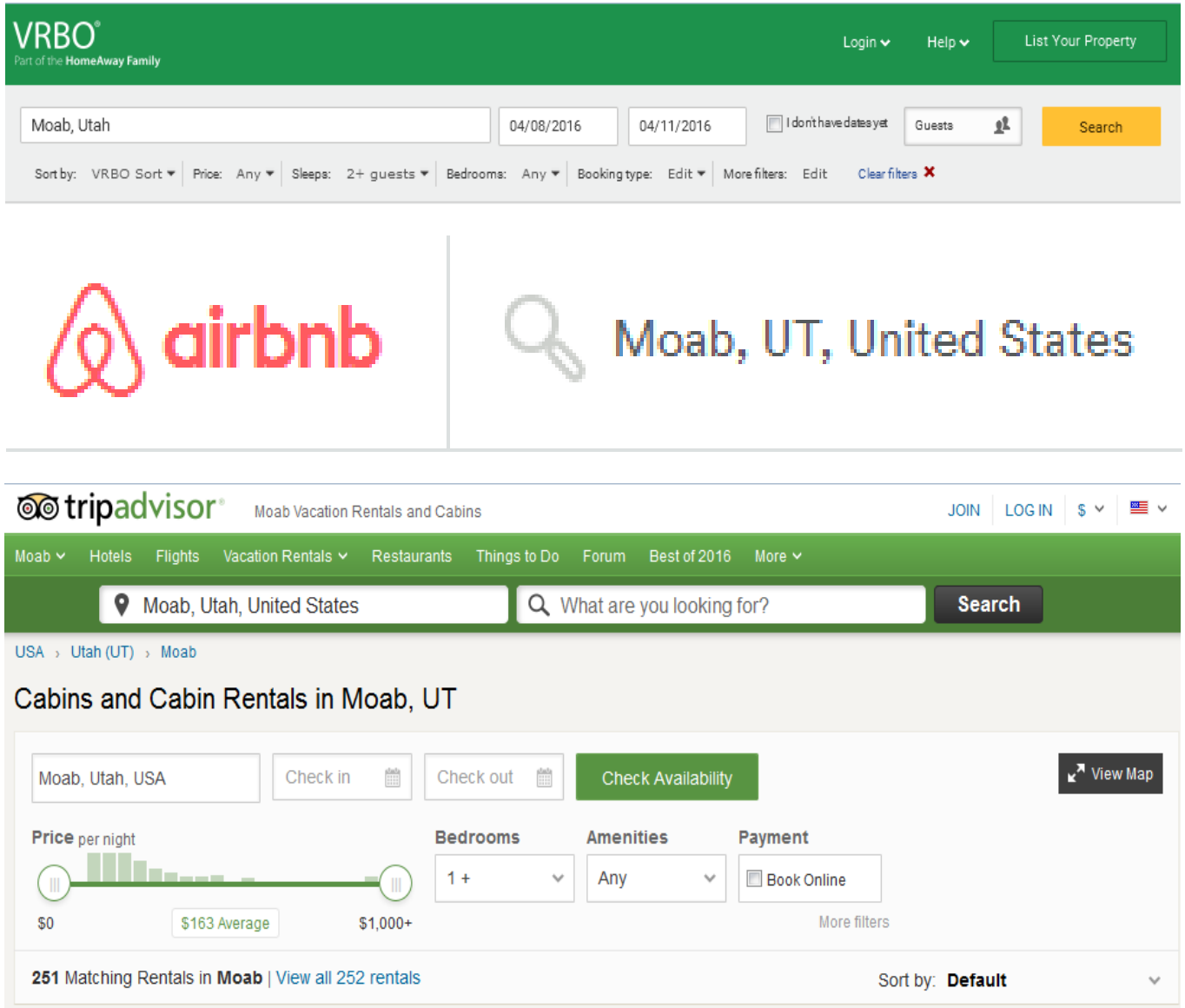
- Define affordable housing
- Remove open space requirements from PUDs
- Modify accessory dwelling unit (ADU) regulations
- Modify bed and breakfast (B&B) regulations
- “Tiny Homes”
  - International Residential Code (IRC) approved (i.e. density)
  - Non-IRC approved (i.e. commercial and non-commercial campgrounds)

Future:

- Site planning and dimensional requirements (land use efficiency)
- Parking requirements (TBD)

Code Enforcement





Photos: Google Earth

Common Complaints

- Trash/Debris/Junk
- Unpermitted structures used for housing (RVs, sheds, etc.)
- Illegal overnight rentals
- Parking issues
- Unpermitted construction
- Noise and odor
- Unpermitted land use development
- Illegal/unpermitted ADUs
- Temporary business licenses
- Special events

Solutions

- Council resolution affirming commitment to code enforcement
- Adopt a code enforcement protocol
- Code enforcement oversight
  - Outside consultant (Home Compliance, VR Compliance, or other…)
  - Internal staff (Community Development or Sheriff’s Department)
    - Could include administration of deed restrictions
  - Database

Solutions

- Public education
- Six month notice of intent to community
- Incentives and/or public assistance for large-scale issues
  - Inoperable and unregistered vehicles
  - Dilapidated Trailers
  - Junk

Duchesne County is doing it…can Grand?

DUCHESNE COUNTY

JUNK VEHICLE REMOVAL CONTEST IV

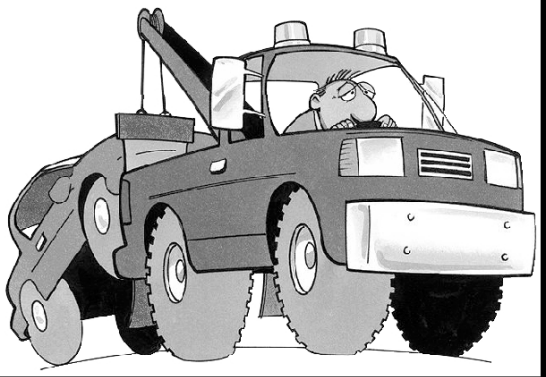
Receive one entry into the contest drawing for every junk vehicle hauled off your property by one of these participating businesses:

Basin Auto Wrecking.....724-5110
Basin Industries.....789-7111
Larry Farnsworth.....823-3224
Herbert's Auto Wrecking.....722-9107
Capps Auto Wrecking.....789-4793
Savon Auto.....789-8669
North Crescent Corp.....722-5064
A Tow Truck.....548-2121

Prize Drawing held after 150 cars are removed

The prize fund will increase by $10 for each vehicle collected. Prizes awarded will be a percent of the total amount collected.

First prize.....50%
Second prize.....20%
Third prize.....15%
Fourth prize.....10%
Fifth prize.....5%



DUCHESNE COUNTY MOBILE HOME REMOVAL PROGRAM 2008

We'll pay you to dispose of your junk mobile home!

Select a contractor or do it yourself!
Single wides: **$750.00**
Double wides: **$1,000.00**

For an application form, contact the Duchesne County Planning Dept. 738-1152.

Thanks for doing your part to beautify our county!

DO YOU HAVE THE POLITICAL WILL?

Break for discussion_30 minutes

Assured Housing

Photos: Lincoln Institute of Land Policy, Bryan Bowen Architects, Google

Assured housing

- What is it?
- Why is it important?
- How does it work?
- Where is it implemented?
- When should it begin?

What…

- Assured housing policies require developers of new market-rate real estate to develop affordable housing

Photo: Google Earth (Price, UT)

Photo: InclusionaryZoning.org
(unknown location)

Why…

- Grand County needs permanently affordable housing for its workforce and residents

- ~900 households are currently cost-burdened
- ~60% of renter HHs earning ≤ 50% of MFI are severely cost-burdened

- Land prices are extraordinarily high, and rising… it is a good time for AH

- In May 2015, the affordability gap was ~$150,000 for a family of four earning the Median Family Income in Grand County.

Why…

- Economic growth ≠ equitable economic development
  - Economic (and ethnic/cultural) integration is good for community resilience
- The “market” is not likely to self-correct
- Assured housing policies have proven successful in hundreds of communities, especially rural gateway and amenities-based areas
- Declining state and federal dollars allocated to other housing programs

How…

- Residential Development Considerations
  - Required set-aside percentage (aka “economic feasibility study”)
  - May or may not count against density limits
  - May or may not require utilization of incentives
  - Targeted zone districts or Countywide
  - Uniformly applied, or varying set-aside requirements
  - On-site or off-site requirements
  - Owner and/or renter
  - Design standards (compared to market-rate)
  - Energy efficiency standards
  - Fee in lieu options
  - Alternative proposal options
  - Deed restrictions written in MANY different ways

How…

- Commercial Development Considerations
  - Formula equating new development to job creation (aka “nexus formula”)
  - Targeted commercial areas or Countywide
  - Uniformly applied across businesses/areas, or varying requirements
  - Exemptions for creating higher wage positions
  - Fee-first program
  - Off-site development exemptions
  - Owner and/or renter
  - Design standards
  - Energy efficiency standards
  - Alternative proposal options
  - Deed restrictions written in MANY different ways

How (and who)…

- Facilitation, monitoring, and stewardship
  - Target populations
  - Restriction period
  - Deed restriction elements
    - Income, residency, employment, net worth, primary residence, sub-lease options, re-sale values, equity capture, etc.
  - Who will administer (oversee) the assured housing program and all of the restricted units?

Where…

- Over 500 communities nationwide
- Examples:
  - New York City, NY
  - New Jersey - Statewide
  - Montgomery, MD
  - Seattle, WA
  - Fairfax, VA
  - Santa Fe, NM
  - Ashville, NC
  - Durango, CO
  - Park City, UT
  - Jackson, WY
  - Crested Butte, CO
  - Ashland, OR
- Urban & rural, coastal & interior, “conservative” & “progressive”

Where… Park City, UT

- Mandatory for all new residential and commercial development
  - 20% mitigation of employment creation for commercial (nexus formula)
  - 15% set aside for residential (does not count against density)

- Several exemptions granted at PC council discretion
  - Impact fees up to $5,000/unit; other associated development fees
  - Reductions in employment creation for community service oriented buildings
  - Redevelopments or changes of use that do not increase employment

- Building permits withheld until final agreement signed

Where… Park City, UT

- Design standards
  - Affordable Unit Equivalent (AUE) = 900 sq. ft. of net livable space
  - Minimum size limits with provisions for dormitories
  - Distribution of multi-family and single-family must match market rate
  - PC Council grants credits for special needs and emergency housing provided
  - LEED certification required (energy efficiency)
  - Affordable unit amenities specified
- Timing of construction and occupancy must match market rate
- On-site, off-site, fee in-lieu, and land conveyance options
- Deed Restricted
  - 40 years w/10 year renewals; rent/sale prices; occupancy; income; appreciation/resale

Where… Park City, UT

- Deed restriction elements
  - Maximum occupancy
  - Maximum rent and sales prices
  - Appreciation limits
  - Income limits based on Park City Workforce Wage
  - 40 year term, with 10 yr. renewal periods

When…

- Assured housing policies take advantage of rising real estate prices

---

- If Grand County had adopted assured housing policies in 1990…

Residential growth between 1990 and 2010 could have provided…

Number of affordable units created by 2010 with an IZ policy adopted in 1990:	5% Required	92
	10% Required	183
	20% Required	367
	30% Required	550
	40% Required	734
	50% Required	917

Number of affordable units created per year (avg annual rate of construction '90-'10)	5% Required	5
	10% Required	9
	20% Required	18
	30% Required	28
	40% Required	37
	50% Required	46

Residential growth between 2013 and 2015 could have provided…

Using Building Dep't. Numbers 2013 - 2015: (231 res units total)	5% Required	12
	10% Required	23
	20% Required	46
	30% Required	69
	40% Required	92
	50% Required	116

Number of affordable units created per year (avg annual rate of construction '13-'15)	5% Required	4
	10% Required	8
	20% Required	15
	30% Required	23
	40% Required	31
	50% Required	39

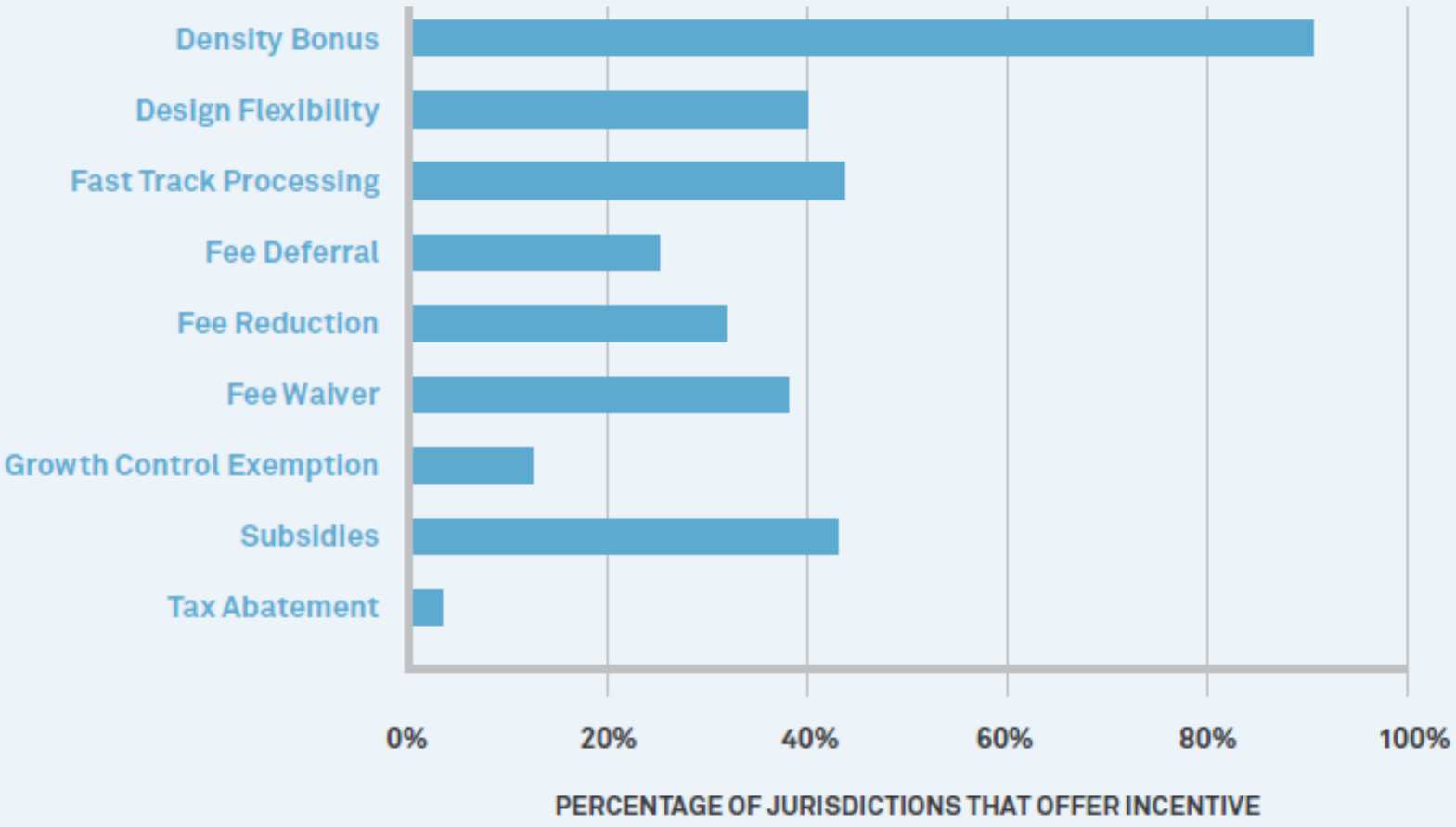
Additional perspectives…

- Assured housing policies, on their own, are not enough
- Filtration is also an important, but incomplete, concept
- Incentives alone are insufficient, but can (and should) play a role
- Market rate housing is needed as well
- Difficult balance between intent and overregulating development
- Public land and $ is the most effective way to address the needs of ELI households

Incentives…

Figure 8

Developer Incentives



Source: Non-Profit Housing Association of Northern California (2007).

Final considerations and next steps…

- Engage your constituents
- Economic feasibility and nexus analyses – let’s get the details right!
- Target populations and/or geographies
- Program administration requires staff time and resources
- Keep it simple!

Housing Affordability Work Plan

Planning Commission	County Council	Planning Commission, County Council, & Others	Moab City & Grand County
Definition of affordable housing	Code Enforcement	Target population groups	Trail & road infrastructure
FLUP/LUC: use table	Reducing development review time:	Deed restrictions: minimum content requirements	Water & sewer infrastructure
Removing open space requirements from PUDs	--Removing unnecessary public hearings	Deed restrictions: administration	Shared design guidelines: future City annexation area
Subdivision and site planning: minimum lot sizes and setback requirements	--Designating planning commission the land use authority for some applications	Assured housing policies: residential & commercial	Growth management
Accessory dwelling units (ADUs)		FLUP: base densities	Economic development strategic plan
Impact fee waiver: explicit language		Publicly owned parcels: to develop or not to develop?	
Parking requirements			
Road widths			
Dormitories, group housing, non-IBC structures			
Height restrictions			
Buffer requirements			

THANK YOU FOR YOUR ONGOING COMMITMENT TO HOUSING AFFORDABILITY