

ATTACHMENT 1:

Inclusionary Zoning Ordinance Drafting Tool

Inclusionary Housing Ordinance Drafting Tool (March 15, 2004)

Note to Inclusionary Housing Ordinance Drafting Tool

The attached document is intended to serve as a drafting tool for units of local government interested in crafting an inclusionary housing program. This drafting tool provides model provisions as well as options and comments about policy choices that communities will need to make. Please note that inclusionary housing and inclusionary zoning are terms that can be used interchangeably.

The model provisions originate from successful inclusionary housing ordinances around the country, including Highland Park, Illinois. The potential options within these model provisions allow a municipality or county to craft an ordinance to fit local preferences and conditions (Communities should of course consult legal counsel to ensure that options chosen are within their legal authority). The accompanying comments are meant to inform local communities as they choose between the options in the drafting tool.

The Basics

In an attempt to be as useful and instructive as possible, this document is thorough. However, an inclusionary housing ordinance does not need to be long or complicated in order to be effective. A number of the items covered in the drafting tool can be accomplished through rules and regulations. However, it is essential that five basic components be included in any inclusionary housing ordinance:

- 1) **The Threshold Coverage Level:** The number of housing units in a development that will trigger the coverage of the ordinance (e.g. 10 units).
- 2) **Percentage Affordable Housing:** The percentage of a covered development that must be affordable.
- 3) **Target Income Categories:** The target income categories for buyers and renters of the affordable units.
- 4) **Cost Offsets:** The number and type of benefits (such as flexible zoning, density bonuses, reducing parking requirements, etc.) that will be provided to developers to help offset the cost of producing the affordable housing units.
- 5) **In Lieu Of Alternatives:** The options provided to developers to comply with the requirements of the ordinance. In some situations, instead of building affordable units as part of the covered development, developers may be allowed to pay a fee, donate land, or build or rehab affordable housing units elsewhere in the community.

Reducing the Administrative Burden

Local governments may have concerns about the administrative burden that could come with operating a successful inclusionary housing program. However, local governments have some flexibility in determining how much administrative control and oversight is desired. The attached drafter's tool provides options for maximum municipal control; however, a municipality or county can lessen the bureaucratic burden by making specific policy choices and providing for

less discretion. Administering an inclusionary housing program does require staff time and resources, but the necessary commitment need not be overwhelming.

The administrative burden of an inclusionary housing program can be lessened in the following ways:

- (1) Contract with a qualified non-profit organization to manage the inclusionary zoning program.
- (2) Create clear requirements rather than requirements with built-in discretion.
 - Establish a consistent set-aside percentage for all developments (no sliding scale).
 - Establish a consistent and proscribed list of cost-offsets for all developments – this eliminates the need for negotiation on a development by development basis.
 - Establish simple income targets (e.g. 50% and 80% of the AMI).
- (3) Limit the types of developments covered by the ordinance (e.g. all new residential developments of a certain size)
- (4) Use monitoring agents to oversee and handle the resale of affordable, owner-occupied housing units.
- (5) Give developers the responsibility for following income eligibility requirements on rental affordable housing units and for providing substantial evidence to the local government that an income-eligible tenant resides in the affordable units.
- (6) Contract with a non-profit or academic institution to evaluate and track the progress of the inclusionary zoning program.

For additional resources to aid in the creation and implementation of an inclusionary housing program, communities may want to consult the following publications:

- *Opening the Door to Inclusionary Housing*. Published in 2003. 2004 Supplement now available. (This publication includes copies of actual ordinances from around the country.)
- *Opening the Door to Inclusionary Housing*. 2003 Condensed Edition.
- *Inclusionary Housing: A Policy That Works for the City That Works*.

These three publications and many others dealing with inclusionary housing issues can be accessed at www.bpichicago.org or by contacting Paula Kruger at Business and Professional People for the Public Interest (BPI) at 312-641-5570.

Interested local governments can also contact the Innovative Housing Institute (IHI), which is a non-profit organization that has assisted a number of local governments in designing inclusionary housing ordinances and pursuing mixed-income housing strategies. IHI Executive Director Patrick Maier can be contacted at 210-332-9939.

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Inclusionary Housing Ordinance Drafting Tool

An ordinance concerning Inclusionary Housing.

BE IT ORDAINED BY THE [insert governing body] OF THE [insert local government]:

SECTION ONE: A new chapter of the [insert relevant code] Code of [insert local entity] is hereby created as follows:

Chapter 10-10. Inclusionary Housing Ordinance.

10-10-010. Title.

This Chapter 10-10, Sections 10-10-010 through 10-10-170 shall be entitled and referred to as the “Inclusionary Housing Ordinance”.

10-10-020. Purpose and Intent.

(A) Purpose:

- (1) To achieve a diverse and balanced community with housing available for households of all income levels as a matter of basic fairness; and
- (2) To foster economic diversity in the interest of enhancing the health, safety and welfare of all the [local entity’s] residents; and
- (3) To promote the goal of increasing affordable housing as articulated in the [local entity’s] Comprehensive Plan and the Affordable Housing Plan, as defined by Public Act 93-0595; and
- (4) To reduce traffic, transit, and air quality impacts; and
- (5) To promote the integration of jobs and housing; and
- (6) To enhance the tax base; and
- (7) To fulfill the policy goal of the State of Illinois, as stated in Public Act 93-0595 that all communities “incorporate affordable housing within their housing stock sufficient to meet the needs of their county or community.”

[These are the types of purposes that are often included in ordinances, but the listed purposes should only be viewed as illustrative not comprehensive.]

(B) Intent:

(1) To require developers of [insert number of units for threshold – e.g. 10] or more Dwelling Units [*and Commercial Development*] to contribute a proportionate share of affordable housing, or fees in lieu thereof, to ensure that an adequate stock of affordable housing is available to residents of the [insert local entity].

[Comment: Commercial Development can be covered by an inclusionary zoning ordinance. Coverage of Residential Development can be limited to certain kinds of residential development e.g. new construction. Most ordinances require a threshold number of units in a residential development to trigger the affordable housing requirement. For example, a community may set a 5 or 10 unit threshold.]

10-10-030. Findings.

[Comment: Listed here are types of findings necessary to support this ordinance. Findings must specifically substantiate the purpose and intent of the ordinance. In other words, there should be a close pairing between findings and purposes. The findings listed below are examples. Each community will want to tailor findings to meet their needs.]

(A) The [insert source or study] has determined that there is a shortage of affordable rental units in [insert local entity] for households earning up to 50% of the Area Median Income; and, there is a shortage of affordable owner-occupied units in [insert local entity] for households earning up to 80% of the Area Median Income.

(B) As determined by the Illinois Housing Development Authority (IDHA) [or] the [insert local government's] affordable housing plan (required by Illinois law for all communities with less than 10% affordable housing), [insert percentage] of [insert local entity] total housing stock is affordable.

(C) As determined by [insert study or source], many public employees and key occupations that serve the community cannot afford to live in the [insert relevant community].

(D) The [insert source or study] has determined that an increasing number of persons in low and moderate income households live in overcrowded or substandard housing and devote an excessive percentage of their income to pay for housing;

(E) Based upon the review and consideration of reports and analyses of the housing situation in the [local entity] it is apparent that, with the exception of housing developed in partnership with [local, state or federal subsidies], the privately developed new residential housing being built in the [local entity] generally is not affordable to low- and moderate-income households.

(F) Furthermore, the [insert source or study] has established that federal and state funds for the construction of new affordable housing are insufficient to create an adequate amount of affordable housing.

(G) As a result, low and moderate income households are unable to live in many new neighborhoods, creating economic stratification in the City detrimental to the public health, safety and welfare.

(H) As determined by [insert studies], the spatial mismatch between jobs and affordable housing causes a strain on the transit system, increases traffic congestion, and decreases economic productivity. The strain on the transit system costs the [local government] [insert amount] dollars each year. Traffic and congestion diminishes air quality causing additional health care costs. [Insert Number] of man hours are lost every year.

[Comment: These are simply examples to illustrate that the more studies and data that support the purposes and intent of the ordinance the better.]

(I) As the [insert local government's affordable housing plan] illustrates, a limited amount of appropriate land remains for new residential development. Therefore, it is essential that a reasonable proportion of such land be developed into housing units affordable to low- and moderate-income households.

[Comment: This is a key finding. It provides a central rationale for choosing to enact inclusionary zoning as the correct policy option to address the shortage of affordable housing.]

10-10-040. Definitions.

(A) For the purpose of administering this Chapter:

“ADMINISTRATOR” or “COMMISSIONER” means [head of or Executive Director of] the “Department”.

“AFFORDABLE HOUSING” means decent, safe, and sanitary housing that is affordable to Eligible Households as defined below. The cost of such housing shall not exceed 30% of the Qualified Household’s gross income (the total income of all adults over eighteen years of age in said household).

“AFFORDABLE DWELLING UNIT” means any unit of affordable housing built to satisfy the requirements of this chapter.

“AFFORDABLE HOUSING TRUST FUND” means the fund created by [name of local government] pursuant to [insert name of relevant Code].

[Comment: If the local government does not have an affordable housing trust fund, one should be created by another ordinance.]

“APPLICANT” means any “Developer” who applies to the “Department” to receive approval of a “Covered Development” pursuant to this Chapter.

“AREA MEDIAN INCOME” means the median income level for the Chicago region, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.

“CERTIFICATE OF QUALIFICATION” means a certificate issued by the Department establishing a Qualified Household’s eligibility to purchase or rent an Affordable Dwelling Unit. Certificates of Qualification shall be valid for [insert time frame].

“COMMERCIAL DEVELOPMENT” means the construction of any commercial or industrial project, as defined by Section [insert relevant section] of the Zoning Code, for which a tentative site plan or building permit application was received after [insert effective date of ordinance].

“CONDOMINIUM CONVERSION” has the meaning established by the Code of [insert relevant code].

[Comment: If community has its own condominium ordinance, it should be cited here. If not, the community should cite to the state condominium law – Section 765 ILCS 605/30.]

“CONSUMER PRICE INDEX” has the meaning in the “Consumer Price Index for All Urban Consumers” (U.S. City Average, All Items: Base 1982-84=100) as published by the United States Department of Labor, Bureau of Labor Statistics.

“CONTROL PERIOD” means a [insert number]-year period [*or insert alternative time frame appropriate for the specific community*] during which the affordability restrictions for owner-occupied and rental housing imposed by this Chapter shall apply. The control period begins at the time of first occupancy of the affected unit.

[Comment: The length of the control period may vary according to local preference. Also, it can be different for rental and for-sale housing. For example in Highland Park, the for-sale affordable units must remain affordable in perpetuity whereas the rental units must remain affordable for 25 years.]

“COVERED DEVELOPMENT” means “Residential Development,” “Substantial Rehabilitation,” “Condominium Conversion”, or “New Use” including or resulting in [insert threshold number of units – e.g. 10] or more Dwelling Units on contiguous land under common ownership or control by an Applicant at one location within the [insert local entity]. All developments, including phased developments, shall be subject to the provisions of this Chapter.

[Comment: Thresholds for coverage in programs across the country can vary widely. Some communities (such as Highland Park) capture all development with five or more units. Other communities require a 10 unit threshold for coverage. Others require a threshold higher than 10.]

“DEPARTMENT” means, [whatever agency will be in charge of compliance with this Chapter].

“DEVELOPER” means any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops Dwelling Units, but does not include any governmental entity or a Housing Provider as defined herein.

“ELIGIBLE HOUSEHOLD” means, defined by the provisions of Section 10-10-090.

[Comment: A community may want to fully define an “eligible household” here within the definitions section. This model ordinance does not because different options for defining an “eligible household” are provided within the text of the ordinance. The percentages should largely depend on what can be substantiated in a nexus study and what populations the community wants to serve with this ordinance.]

“FINANCIAL ASSISTANCE” means any financial assistance provided or made available by the [local entity] including, but not limited to, grants, direct or indirect loans, tax increment financing, and allocation of tax credits for development of Dwelling Units, including whenever the City sells real property to any developer for the purpose of the development of [insert threshold number of units – e.g. 10] or more Dwelling Units, and the sale price is less than the fair market value of the property.

[Comment: The number of dwelling units identified as the threshold for coverage in the definition of “FINANCIAL ASSISTANCE” will be the same as the threshold number identified for “COVERED DEVELOPMENT.”]

“HOUSING PROVIDER” means a non-profit entity designated by the [local government]. A Housing Provider must manage at least ten units of rental housing.

[Comment: This drafting tool assumes that housing providers will be a part of the community’s inclusionary housing program. If the City does not want to include housing providers, simply eliminate wherever mentioned.]

“INCLUSIONARY HOUSING PLAN” has the meaning set forth in **Section 10-10-100** of this Chapter.

“MARKET RATE DWELLING UNITS” means all Dwelling Units in a Covered Development that are not Affordable Dwelling Units as defined herein.

“NEW USE” means the change of an existing building from non-residential to residential development.

“QUALIFIED HOUSEHOLD” means an Eligible Household that has received a Certificate of Qualification from the Department, as set forth in **Section 10-10-080** herein.

“SUBSTANTIAL REHABILITATION” means the reconstruction, enlargement, installation, repair, alteration, improvement or renovation of a building, structure, or portion thereof requiring a permit issued by the City that results in a change of occupancy; provided the cost for the project must be \$ [insert amount] or more (to be readjusted annually in accordance

with the Consumer Price Index) per rehabilitated Dwelling Unit, on an aggregate basis. Any rehabilitation in a building or structure performed within an [insert number] month period will be considered the same project for the purposes of this Chapter.

“RESIDENTIAL DEVELOPMENT” means new residential construction or new mixed-use construction with a residential component.

10-10-050. Applicability.

The provisions of this chapter shall apply to all development that result in or contain in [insert threshold number of units – e.g. 10] or more residential dwelling units. The types of development subject to the provisions of this Chapter, include the following;

- (A) A development that is a “Residential Development.”
- (B) A development that involves “Substantial Rehabilitation.”
- (C) A development that involves “New Use.”
- (D) A development that involves a “Condominium Conversion.”
- (E) The provisions of this chapter shall apply to all Commercial Development as defined herein.
- (F) Exemption: This Chapter does **not** apply to the rehabilitation of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or act of God; provided, however, no rehabilitation nor repair shall increase the density, bulk or size of any such building or structure which previously existed prior to the damage or destruction thereof without triggering the requirements of this Chapter.

[Comment: Inclusionary Housing Ordinances can be limited to cover only new construction or any combination of development types. Given the broad definition of development in the Affordable Housing Planning and Appeals Act, in order to meet the chosen goal in their Affordable Housing Plan, communities may wish to adopt as expansive a definition of covered development as possible. Similarly, to achieve the chosen goal, communities may adopt a lower threshold for coverage or higher percentage set-asides (See Section 10-10-070).]

10-10-060. Commercial Development.

[Comment: If the local government chooses to include Commercial Development, this is model language for how the ordinance might apply.]

- (A) Approval of a site plan or building permit for Commercial Development requires the payment of a fee to the Affordable Housing Trust Fund for each [insert amount] square feet of new commercial space within any 12-month period that is constructed or converted to a new use. The City Council may annually review the fee authorized by this Section, and may, based on that

review, adjust the fee amount by resolution. For any annual period during which the [insert local government entity] does not review the fee authorized by this subsection, fee amounts will be adjusted once by the City Manager based on the [insert appropriate cost index].

(B) **Alternative Housing Proposal.** In lieu of paying a fee to the Affordable Housing Trust Fund and to the extent permitted by the [insert local entity] General Plan, zoning ordinance and other applicable laws, a Developer may propose an Alternative Housing Proposal to build Affordable Dwelling Units on the site of the Commercial Development or on another site sufficiently close to the Commercial Development site to serve the housing demand created by the development. Developers making an Alternative Housing Proposal must do so by submitting an Affordable Housing Plan and entering into an approved Inclusionary Housing Agreement as provided by **Section 10-10-100(C)**.

10-10-070. Percentage of Affordable Dwelling Units Required in Covered Residential Developments.

(A) General requirement. Where a Covered Development receives Financial Assistance, [insert percentage of units] of the total number of Dwelling Units shall be Affordable Dwelling Units and shall be located on the site of the Covered Development. Where a Covered Development does not receive Financial Assistance, [insert percentage of units] of the total number of Dwelling Units shall be Affordable Dwelling Units and shall be located on the site of the Covered Development. Exceptions to this general requirement are set forth in **Section 10-10-140**.

*[Comment: Communities often require 20% affordable housing when a developer receives financial assistance --the City of Chicago requires a 20% affordable housing component when TIF funds are used. Communities across the country often require 15% affordable housing when a developer receives **no** financial assistance. (Highland Park requires 20%).*

Additional Options for this Section:

1) *It is also an option not to make a distinction between developers receiving financial assistance and developers **not** receiving financial assistance.*

2) *It is also an option to require a higher % for affordable housing on larger developments. For example, a development with 20 or fewer units could be required to include 10% affordable housing; a development with 20 to 100 units could be required to include 15% affordable housing; and a development with 100 or more units could be required to include 20% affordable housing.*

3) *It is also an option to provide an incentive for developers to set-aside more than the required amount. In other words, the ordinance could provide higher density bonuses for more affordable dwelling units, e.g. in Montgomery County, 12.5% affordable housing component = 17% density bonus; 15% affordable housing component = 22% density bonus. For a fuller discussion of cost-offsets, see Section 10-10-090.]*

(B) Calculation. To calculate the number of Affordable Dwelling Units required in a Covered Development, the total number of proposed Dwelling Units shall be multiplied by [insert percentage] or [insert percentage] as required in Subsection A. In the event that such requirement results in a fraction of a unit, the fraction shall be rounded up to the nearest whole number.

10-10-080. Eligible Households. *[Option 1: flat rate]*

- (A) Eligibility for rental or purchase of Affordable Dwelling Units shall be based on household size and income. The rental Affordable Dwelling Units shall be restricted to occupancy by households whose household income does not exceed 50% of the Area Median Income. The owner-occupied Affordable Dwelling Units shall be restricted to occupancy by Eligible Households whose household income does not exceed 80% of the Area Median Income.

[Comment: The income percentages listed above are suggestions. 50% of the AMI for a household of four in the Chicago region in 2003 was \$37,700 and 80% of the AMI for a household of four in the Chicago region in 2003 was \$56,500. Each community will need to determine which income levels it specifically wishes to serve.]

- (B) An Eligible Household must receive a “Certificate of Qualification” from the Department to become a Qualified Household for an Affordable Dwelling Unit.

[Comment: A community could design an alternative method for administration. See the cover memo to this Drafting Tool for ideas on reducing administrative burdens. Also, if desired, a community can simplify its inclusionary zoning ordinance by outlining administrative procedures in rules and regulations.]

10-10-080. Eligibility of Households for Affordable Dwelling Units. *[Option 2: two tiered]*

- (A) Eligibility for rental or purchase of Affordable Dwelling Units shall be based on household size and income. The rental Affordable Dwelling Units shall be restricted to occupancy by households whose household income does not exceed 80% of the Area Median Income. The owner-occupied Affordable Dwelling Units shall be restricted to occupancy by households whose household income does not exceed 100% of the Area Median Income.

- (B) An Eligible Household must receive a “Certificate of Qualification” from the Department to become a Qualified Household for Affordable Dwelling Units.

10-10-081. Target Income levels for Affordable Dwelling Units. *[Also part of Option 2]*

- (A) Rental of Affordable Dwelling Units. In a Covered Development that contains rental Dwelling Units, (i) at least one and no fewer than 50% *[this number can be changed]* of the Affordable Dwelling Units shall be rented to households with gross incomes not exceeding 50% of the Area Median Income at a price, as determined pursuant to **Section 10-10-110** of this Chapter, that, on average, is affordable to households with an annual income not exceeding 45% of Area Median Income; (ii) any remaining Affordable Dwelling Units shall be rented or leased to households with gross incomes between 51% and 80% of the Area Median Income at a price, as determined pursuant to **Section 10-10-110** of this Chapter, that, on average, is affordable to a household with an annual income that is 65% of Area Median Income.

(B) **Owner-Occupied Affordable Dwelling Units.** In Covered Developments that contain for-sale Dwelling Units, at least one and no fewer than 50% of the Affordable Dwelling Units shall be sold to Eligible Households with gross incomes not exceeding 80% of the Area Median Income at a price, as determined pursuant to **Section 10-10-110** of this Chapter, that, on average, is affordable to a household with an annual income that is 70% of the Area Median Income. Any remaining Affordable Dwelling Units shall be sold to households with gross incomes not exceeding 100% of the Area Median Income at a price, as determined pursuant to **Section 10-10-110** of this Chapter, which, on average, is affordable to a household with an annual income not exceeding 90% of the Area Median Income.

[Comment: The two-tiered option allows the community to serve the same income levels on average as the flat rate option, while at the same time guaranteeing a wider diversity of affordable housing at different price points. Under the flat rate option, the community will likely get all owner-occupied affordable at 80% of AMI. With the two-tiered approach, the community will get some affordable, owner-occupied housing at 65% of AMI and some at 90% of AMI. This two-tiered option thus also gives the developer some flexibility.]

10-10-090. Cost Offsets.

(A) **Density Bonus:** For all Covered Developments, a density bonus shall be provided equal to one Market Rate Dwelling Unit for each Affordable Dwelling Unit required under this Chapter.

[Comment: A density bonus can serve as a very attractive cost offset to developers. Many communities across the country have successfully used this cost offset to compensate developers, provide developers with certainty and predictability, and to cost-effectively produce affordable housing without the use of public tax dollars. Highland Park also provides a discretionary bonus in the PUD process.]

(B) **Additional Cost Offsets:** For all covered developments, an applicant may request and shall receive one or more of the following cost offsets. [Insert local governmental entity] will determine the specific package of cost offsets offered to the applicant. The goal of these cost offsets in conjunction with the density bonus in Subsection A is, to the extent feasible, to counterbalance the cost of providing affordable housing units required under this Chapter.

- (1) Reduction in the minimum lot area per Dwelling Unit requirement by __%.
- (2) An increase in maximum floor area ratio of __%.
- (3) An increase in maximum height of __% in areas zoned ___ and above and corresponding commercial areas.
- (4) A reduction in the required minimum rear setback of ___% or ___ feet, whichever is less.
- (5) A reduction in the required minimum front setback of ___ %.

- (6) A reduction in the minimum parking requirement to ___ parking spaces per Affordable Dwelling Unit.
- (7) A waiver of all or some percentage of development, zoning, building permit, or other permit review or impact fees levied by the [local entities] for the Affordable Dwelling Units in the Covered Development.
- (8) *Option: ability to build accessory unit.*
- (9) *Option: streamlined permitting.* The [insert relevant agent] shall issue special permits that will be given priority processing to the maximum extent feasible consistent with the public health, safety and welfare.

[Comment: Cost offsets can be packaged in a number of different ways to meet the twin goals of compensating developers and providing the community with control over its planning process. The outline above is just one option. Communities may also find other creative “offsets” to provide that better fit the local community while also providing compensation to a developer.]

10-10-100. Compliance Procedures.

[Comment: The following section provides one method for handling compliance and oversight. Communities can of course design alternative methods. To simplify an ordinance, all of almost all of these compliance and oversight procedures could be addressed through rules, policies, or regulations.]

(A) Application. For all Covered Developments, the Applicant shall file an application for approval on a form provided and required by the [local entity]. The application shall require, and the Applicant shall provide, among other things, general information about the nature and scope of the Covered Development, as well as other documents and information that the Department may require. The Application shall include, and the Applicant shall provide, the Inclusionary Housing Plan enumerated under Subsection (B) of this section.

(B) Inclusionary Housing Plan. As part of the approval of the Covered Development, the Applicant shall present to the Department for its approval an Inclusionary Housing Plan that outlines and specifies the Covered Development’s compliance with each of the applicable requirements of this Chapter. The Inclusionary Housing Plan shall specifically contain, at a minimum, the following information regarding the Covered Development:

- (1) A general description of the Covered Development, including whether the Covered Development will contain rental Dwelling units or owner-occupied Dwelling Units, or both.
- (2) The total number of Market Rate Dwelling Units and Affordable Dwelling Units in the Covered Development.

- (3) The number of bedrooms in each Market Rate Dwelling Unit and each Affordable Dwelling Unit.
- (4) The square footage of each Market Rate Dwelling Unit and each Affordable Dwelling Unit.
- (5) The location within any multiple-family residential structure and any single-family residential development of each Market Rate Dwelling unit and each Affordable Dwelling Unit.
- (6) The pricing schedule for each Market Rate Dwelling Unit and each Affordable Dwelling Unit.
- (7) The phasing and construction schedule for each Market Rate Dwelling Unit and each Affordable Dwelling Unit.
- (8) Documentation and plans regarding the exterior and interior appearances, materials, and finishes of the Covered Development and each of its Dwelling Units.
- (9) A description of the marketing plan that the Applicant proposes to utilize and implement to promote the sale or rental of the Affordable Dwelling Units within the Covered Development.
- (10) Any proposal to elect an Alternative to on-site Affordable Dwelling Units enumerated in **Section 10-10-140** shall be described.

(C) Agreement

Prior to issuance of a building permit for any Covered Development, the Applicant shall have entered into an agreement with the [insert local entity] regarding the specific requirements and restrictions on the Covered Development. The Applicant shall agree to execute any and all documents deemed necessary by the [local entity], including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the Affordable Dwelling Units in accordance with this Chapter. The Agreement shall set forth the commitments and obligations of the [local entity] and the Applicant, and shall incorporate, among other documents, the Inclusionary Housing Plan. The Agreement shall also contain the applicability of any one or more of the alternatives to the provision of on-site affordable housing units as set forth in **Section 10-10-140** of this Chapter. The Agreement may be modified by mutual consent of the Applicant and the Department, as long as the modified agreement remains in conformity with this Chapter.

10-10-110. Appropriate Rental and Sales Prices for Affordable Dwelling Units.

[Comment: This entire section could be included in regulations.]

(A) Pricing Schedule. The local government, through the [insert appropriate government official/agency], shall publish a Pricing Schedule of rental and sales prices for Affordable Dwelling Units in accordance with the following provisions.

- (1) In calculating the rental and sales prices of Affordable Dwelling Units, the following relationship between unit size and household size shall apply:

Efficiency units:	1 person household
One-bedroom units:	2 person household
Two-bedroom units:	3 person household
Three-bedroom units:	4 person household
Four-bedroom and larger units:	5 person household

- (2) With respect to owner-occupied Affordable Dwelling Units, prices shall be calculated on the basis of:

- (a) An available fixed-rate 30-year mortgage, consistent with the average rate published from time to time by Freddie Mac;
- (b) A down payment of no more than 5% of the purchase price;
- (c) A calculation of property taxes;
- (d) A calculation of homeowner's insurance; and
- (e) A calculation of condominium or homeowner association fees.

(3) With respect to rental Affordable Dwelling Units, monthly rents will be calculated on the basis of 30% of gross monthly income, adjusted for household size, minus an allowance for the monthly cost of utilities.

10-10-120. Integration of Affordable Dwelling Units.

[Comment: The following section could be handled through rules, regulations, or policies.]

(A) Location of Affordable Dwelling Units. Affordable Dwelling Units shall be dispersed among the Market Rate Dwelling Units throughout the Covered Development.

(B) Phasing of Construction. The Inclusionary Housing Plan shall include a phasing plan that provides for the timely and integrated development of the Affordable Dwelling Units throughout the Covered Development. The phasing plan shall provide for the development of the

Affordable Dwelling Units concurrently with the Market Rate Dwelling Units. Building permits shall be issued for the Covered Development based upon the phasing plan. The phasing plan may be revised by the Commissioner at the request of the Applicant when necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the Market Rate and the Affordable Dwelling Units. The phasing plan shall also provide that the Affordable Dwelling Units shall not be the last units to be built in any Covered Development.

(C) Exterior Appearance. The exterior appearance of the Affordable Dwelling Units in any Covered Development shall be visually compatible with the Market Rate Dwelling Units in the Covered Development. External building materials and finishes shall be substantially the same in type and quality for Affordable Dwelling Units as for Market Rate Dwelling Units.

(D) Interior Appearance and Finishes. Affordable Dwelling Units may differ from Market Rate Dwelling Units with regard to interior finishes and gross floor area provided that:

(1) The bedroom mix of Affordable Dwelling Units shall be in equal proportion to the bedroom mix of the Market Rate Dwelling Units.

(2) The differences between the Affordable Dwelling Units and the Market Rate Dwelling Units shall not include improvements related to energy efficiency, including mechanical equipment and plumbing, insulation, windows, and heating and cooling systems.

[Comment: Whether accomplished through the ordinance or regulations, the above provisions have proven crucial to ensuring the success of inclusionary housing programs around the country. Subsection A ensures that affordable housing is not concentrated in one part of the development. Subsection B helps to ensure that affordable housing actually gets built. Subsections C and D ensure that the basic quality and appearance of the affordable housing is no different than the quality and appearance of the market-rate housing.]

10-10-130. Affordability Controls.

(A) Control Period (or Period of Affordability): In covered developments that contain for-sale units, affordable dwelling units shall be resold to low- and moderate-income households for 30 years [*option: "in perpetuity or as long as permissible by law."*; *option: 15 years*] In covered developments that contain rental units, affordable dwelling units shall be rented to low- and moderate-income households for 30 years [*option: 15 years; option: 40 years*].

[Comment: This section could be addressed in regulations. The length of the control period varies in different ordinances around the country from 25 to 40 years to "in perpetuity." Some communities structure the control period to renew upon each resale. The control period can also be different for owner-occupied units than it is for rental units. These are local policy decisions.]

(B) Initial Sale or Rental to General Public.

(1) Every Affordable Dwelling Unit required to be established under this Chapter shall be offered for sale or rental to a Qualified Household to be used for its own primary residence, except for units purchased by Housing Providers.

(C) Initial Sale or Lease to Housing Provider.

Housing Providers shall have a [insert number]-day option to commence purchase or lease up to [insert either “all” OR “some percentage”] of the Affordable Dwelling Units. Housing Providers shall receive advance notification of available Affordable Dwelling Units by the Department. An interested Housing Provider shall have the pre-emptive option and right, but not obligation, to purchase each of the for-sale affordable housing units prior to any sale of any such unit. Housing Providers, upon taking possession of an Affordable Dwelling Unit, may subsequently lease or re-sell the Affordable Dwelling Unit to Eligible Households only.

[Comment: The Housing Provider component allows for the community to flexibly use the program to create affordable rental housing for workers earning less than 50% of AMI. Similar provisions in Montgomery County, Maryland and Fairfax County Virginia have been used to successfully create significant numbers of affordable rental units. Highland Park has this provision in its ordinance. Also, in order to reduce the administrative burden of this provision, housing provider(s) could be notified directly by the developers rather than by the administering governmental entity.]

(D) Control of resale prices.

(1) The maximum sales price, with the exception of foreclosure sales, permitted on resale of an Affordable Dwelling Unit shall be the lesser of:

(a) The original purchase price plus an inflation adjustment of the original purchase price calculated in accordance with the Consumer Price Index (using the year of the prior sale as the base year) and allowances for closing costs and sales commissions not paid by the seller. OR

(b) The affordable sales price as determined by **Section 10-10-110** of this Chapter.

[Comment: It is also possible to build in limited equity return for the affordable seller.]

(2) The owner of any Affordable Dwelling Unit shall notify the Department of his or her intent to offer the Affordable Dwelling Unit for resale [insert number] days before such offer is made. The Department shall determine the maximum allowable sale price of said Affordable Dwelling Unit, pursuant to **Subsection D(1)** of this Section. The Department shall then notify Housing Providers. The Affordable Dwelling Unit may be resold to any Qualified Household or Housing Provider.

[Comment: To reduce the administrative burden on the local entity, a third party can be assigned the duty of determining the affordable resale price (based upon the language in the ordinance) and administering and overseeing the resale of affordable, owner-occupied units. For example

in Massachusetts, a monitoring agent determines the affordable sales price and then works with the seller to execute a sale to an eligible household. The monitoring agent can be a non-profit or a for-profit entity. Monitoring services are paid for through closing costs as a percentage of the resale price.]

(E) First sale after control period ends

[Comment: Home Rule and Non-Home Rule communities should consult with legal counsel to determine whether they can require a seller to share the profit after the control period has ended. Also, this subsection could be included in regulations.]

(1) Upon the first sale of an Affordable Dwelling Unit after the Control Period ends, the seller shall pay to the Department a sum equal to half of the difference between the actual sales price and the affordable sales price as determined by the Department under **Section 10-10-130 (C)(1)**. Such sums shall be deposited into the Affordable Housing Trust Fund.

[Comment: This provision ensures that no one receives a complete windfall. This provision can be structured in a number of different ways to meet local preferences. The Affordable Housing Trust Fund mentioned in this subsection would need to be created by the local entity if one does not already exist.]

(2) The Department shall reasonably determine whether the price and terms of a resale covered by the preceding paragraph are bona fide. Upon a finding of compliance, the Department shall instruct the [local entity] to terminate the affordable housing controls and execute a release of all applicable restrictive covenants.

[Comment: As noted above, a monitoring agent can determine the appropriate sales price so as to lessen the amount of administration by the local entity.]

(3) If an Affordable Dwelling Unit is sold through a foreclosure or other court-ordered sale, any remaining net proceeds shall be returned to the Department and deposited into the Affordable Housing Trust Fund.

[Comment: The local community would need to form an Affordable Housing Trust Fund if one does not already exist.]

10-10-140. Alternatives to on-site Affordable Dwelling Units.

In lieu of the provision of affordable housing on the site of the Covered Development as otherwise provided in **Section 10-10-070**, the City Council, following consideration by and a recommendation from the [insert proper government agency], may approve one or more of the three alternatives for affordable housing. Applicants may establish Affordable Dwelling Units either in combination with onsite Dwelling Units or as alternatives to onsite Dwelling Units by any combination of the following:

(A) Developing or otherwise producing 1.5 times the number of required Affordable Dwelling Units at a site within the [insert local government or entity] other than the site of the Covered Development pursuant to Section **10-10-141**.

(B) Paying a fee in-lieu of developing Affordable Dwelling Units pursuant to Section **10-10-142**.

(C) Rehabilitating and preserving two times the number of required Affordable Dwelling Units in existing residential buildings, pursuant to Section **10-10-143**.

(D) Conveying land that is suitable in size, location and physical condition for the same or significantly more Affordable Dwelling Units, pursuant to Section **10-10-144**.

[Option: If a community chooses to include commercial development, it may want to list the in-lieu of option described in Section 10-10-060(B) in the “alternatives” section.]

[Option: Any or all of the alternatives to on-site development can be included in an ordinance. Any or all of the alternatives can be made discretionary and subject to the approval of the local government as set out above or can be provided as of right. This model assumes that the alternatives are allowed on a discretionary basis. The discretionary approach allows the community to encourage the creation of affordable units within the covered, market rate development. Another way to encourage developers to create units instead of paying the fee in-lieu is to provide the fee in-lieu as of right and then to set the fee at the true cost of what it takes to write down a market rate unit to an affordable level.]

10-10-141. Developing Units off-site.

Upon request, the Department may grant an Applicant the option to develop or otherwise produce 1.5 times the number of Affordable Dwelling units off-site. The Applicant must make the request in its Inclusionary Housing Plan submitted to the Department. To grant approval of this alternative, the Department must find that the Applicant has demonstrated that developing the Affordable Dwelling Units on-site would create a significant hardship or that the alternate means of compliance will further affordable housing opportunities in the [insert local government] to an equal or greater extent than compliance with the otherwise applicable on site requirements of this Chapter.

[Comment: Communities can make the “multiple” higher or lower than 1.5. It could be a one-for-one ratio. The higher the multiple is, the stronger the incentive is for the developer to build units on-site.]

10-10-142. Payment of a Fee In-Lieu.

(A) As of right, the Applicant may pay a fee-in-lieu, as described herein Subsection B (1), of developing Affordable Dwelling Units when the Covered Development contains 20 or fewer Dwelling Units.

[Comment: Subsection A provides the developer the opportunity to use the “fee in-lieu” option “as of right” on developments of 20 or fewer units. Communities also sometimes provide a limited “as of right” fee in-lieu option for specific “high cost” geographic areas, e.g. downtown areas. This of course risks the possible outcome that the community will receive a lot of fee in-lieu dollars and few affordable units. If preferred, the community could make the “fee in-lieu” option discretionary in all situations.]

(B) Upon request, the Department may grant an Applicant the option to pay a fee in-lieu of developing Affordable Dwelling Units where Covered Developments contain greater than 20 Dwelling Units. The “Applicant” must make the request in its “Inclusionary Housing Plan” submitted to the “Department.” In granting such approval, the Department must find that the Applicant has demonstrated that developing the Affordable Dwelling Units on site would create a significant hardship or that the alternate means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the otherwise applicable on site requirements of this Chapter.

(1) If an Applicant receives approval, the Applicant may pay a fee in-lieu of developing an Affordable Dwelling Unit. The fee shall be adjusted according to the Consumer Price Index on [insert date] of each year. For [insert year of enactment], the fee shall be [insert amount] per affordable residential unit.

[Comment: a community must determine an appropriate fee in-lieu amount. This amount usually estimates the actual cost of making a market rate unit affordable. Communities use a number of different methodologies for arriving at an appropriate fee. In the City of Chicago and Highland Park, the fee-in-lieu is \$100,000 per unit.]

(C) Use of Fee in-lieu.

(1) All fees collected pursuant to Subsection A shall be deposited into the Affordable Housing Trust Fund.

[Comment: The guidelines or regulations for an Affordable Housing Trust Fund will proscribe how the funds are used.]

(2) Fees may be used by Housing Providers to purchase Affordable Dwelling Units.

(3) Up to one percent (1%) of the fees may be used to administer the Affordable Housing Trust Fund.

10-10-143. Rehabilitating and Preserving.

(A) An Applicant may propose to rehabilitate and preserve [insert number or multiple here] times the number of Affordable Dwelling Units required under this Chapter in lieu of developing the same number of Affordable Dwelling Units. The Applicant must make the request in its Inclusionary Housing Plan submitted to the Department.

[Comment: Communities can make the “multiple” higher or lower for rehab of affordable housing, e.g. 2 times, 1.5 times, a one for one requirement, etc. The higher the multiple is, the stronger the incentive is for the developer to build units on-site.]

(B) To grant approval of this alternative, the Department must find that the Applicant has demonstrated that developing the Affordable Dwelling Units on-site would create a significant hardship or that the alternate means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the otherwise applicable on site requirements of this Chapter. If the Applicant is given permission to pursue this alternative, the designated Affordable Dwelling Units shall be:

- (1) in an existing occupied or vacant residential building;
- (2) occupied solely by Qualified Households, and maintained as decent, safe, and sanitary for the term of the Control Period; and
- (3) rehabilitated to meet applicable housing and building codes.

(C) The Applicant may enter into an agreement with a Housing Provider to fulfill the requirements of this Section.

10-10-144. Land Donation.

(A) Applicant may propose to convey land to the [local entity or local entity’s non –profit designee] that is suitable in size, location and physical condition for the purpose of developing significantly the same or more Affordable Dwelling Units than possible on the site of the Covered Development. The land must be suitable in size, location and physical condition for residential development.

[Comment: There are a number of ways to structure the land donation alternative. If this option is included, the community must be willing to ensure that donated land is suitable for and will provide affordable housing. Highland Park provides for a land donation option in its ordinance.]

10-10-150. Enforcement.

(A) The provisions of this chapter shall apply to all agents, successors and assignees of an Applicant.

(B) The [insert local government] may institute injunction, mandamus, or any other appropriate legal actions or proceedings for the enforcement of this Chapter. In addition, any person, firm, or entity, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by the payment of a fine of not more than [insert amount] dollars per day. Such person, firm, or entity shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this Chapter is commenced, continued, or permitted by such person, firm, or entity, and shall be punishable as herein provided.

(C) An owner of an Affordable Dwelling Unit governed by this Chapter who does not occupy the unit as his or her primary residence shall be required to offer the unit for resale under the provisions of **Section 10-10-130(C)**.

(D) A lessee of an Affordable Dwelling Unit governed by this Chapter who does not occupy the unit as his or her primary residence shall be required to vacate said unit.

10-10-160. Severable.

In the event any part or parts of this Ordinance shall be found to be unlawful or unconstitutional by a court of competent jurisdiction, such unlawfulness or unconstitutionality shall not affect the validity of the remaining parts of this Ordinance.

10-10-170. Effective Date.

This Ordinance shall be in force and effect [insert appropriate number] months after its passage by the [insert local governmental entity] and proper publication, but shall not apply to any development agreement or other agreement specifically authorized by the [insert local governmental entity] prior to that date.