

COUNCIL DECISION REQUEST

SUBJECT: Affordable Housing Task Force Report

MEETING DATE: 11-9-06

CSP ITEM: Yes No KRA#4

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: Bethany Beck
Housing Program Manager

AMOUNT BUDGETED: 0

SUBMITTAL TO AGENDA
APPROVED BY TOWN MANAGER

EXPENDITURE REQUIRED: 0

CONT. FUNDING REQUIRED: 0

EXHIBITS (If Applicable, To Be Attached): Affordable Housing Task Force Report

RECOMMENDED MOTION

I move to adopt the Affordable Housing Task Force Report as written.

SUMMARY OF THE BASIS FOR RECOMMENDED MOTION:

This report is the culmination of four months of input, discussion and research by the Affordable Housing Task Force. Adoption of the report is the first and necessary step for the Town of Payson to address its affordable and workforce housing needs as identified in the 2006/2007 Corporate Strategic Plan.

PROS: Adoption of the report will provide a framework for Town staff to develop housing policies and programs for consideration by the Mayor and Council. It will also allow the Town to demonstrate a public commitment to affordable/workforce housing.

CONS: None.

PUBLIC INPUT (if any): None.

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes): None.

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Town of Payson Affordable Housing Task Force Report



October 25, 2006

The Town of Payson's Affordable Housing Task Force first met on June 28, 2006. The Task Force members have diverse backgrounds and perspectives, but all are united in the belief that Payson's economic diversification, job creation and quality of life are directly linked to housing availability and quality. With that in mind, the Task Force proposes the following affordable housing mission statement:

The Town of Payson, in partnership with other public or private agencies, shall strive to maintain and foster an environment where a variety of housing opportunities are available for all socio-economic levels and age groups. The Town shall establish housing policies and goals, and shall aggressively pursue a combination of grants, funding mechanisms and technical assistance programs with the goal of creating a balanced mix of quality affordable housing and addressing the critical housing conditions of the community.

It's important to remember that there is no simple way or single solution to make this vision a reality. The mix and balance of Payson's housing stock has been declining for years, and the road to recovery will be long and complicated. Success in this endeavor will require patience, planning, perseverance and pliability.

Most people agree that additional affordable housing is needed, but what exactly is it and, more importantly, how can we make it reality in Payson? After much discussion and deliberation about these questions, the task force prepared this report to provide the following information:

- I. Define affordable housing and workforce housing
- II. Provide brief background information
- III. Identify the current housing situation in Payson
- IV. Outline potential solutions
- V. Recommendations to move forward
- VI. Conclusion

I. DEFINITIONS

What is affordable housing? According to the U.S. Department of Housing and Urban Development (HUD), a home is affordable if the occupants spend no more than 30% of annual income on housing, including utilities and—if there's a mortgage—on taxes and insurance. In Gila County, the 2006 Area Median Income (AMI) for a family of four is \$42,700, which means that a family with the median income would have affordable housing if they're paying \$1,068 or less per month for rent and utilities or for a mortgage (including taxes and insurance) and utilities.

For a two-person household, the median income is \$34,125 and an affordable monthly rent/mortgage is \$853. The median income for a one-person household is \$29,900 and that person could spend up to \$748 per month for housing costs and still be considered to have affordability.

Federal and state grants and housing programs are usually restricted to people whose incomes are 60% or less than HUD's established AMI. Occasionally, these funds are used to assist people who earn 80% or less of AMI, but there are no established funding sources for anyone who earns more than that.

What is workforce housing? Workforce housing can be rented or owned and includes

single-family homes, townhouses, condominiums and apartments that are affordable to area workers. This includes workers who provide vital services in our community including but not limited to: teachers, firefighters, law enforcement, nurses and healthcare, food service, retail, manufacturing and government employees.

No uniform income guidelines have been set to characterize workforce housing. One definition of workforce housing is any housing that is affordable to households that earn incomes that are 80% - 180% of area median income. Using that definition and HUD’s 2006 Gila County income figures, four-person households earning \$34,160 to \$76,860 would fall into the workforce-housing category. They could afford monthly rent/mortgage payments ranging from \$854 to \$1,921, respectively, which is still not enough to buy the median-priced home in Payson at this time.

Figure 1: 2006 Area Median Income for Gila County:

Household Size	Area Median Annual Income	Affordable Monthly Housing Cost (30%)	Approximate Affordable Home Price
1	\$29,900	\$748	\$106,000
2	\$34,100	\$853	\$120,000
3	\$38,400	\$960	\$136,000
4	\$42,700	\$1,068	\$150,000
5	\$46,100	\$1,153	\$164,000
6	\$49,500	\$1,238	\$176,000
Needed to Buy Median Payson Home as of 10/17/06	\$102,000	\$2,550	\$363,250

**Includes taxes and insurance and assumes 10% down, 6.5% interest and no other debt obligations.*

II. BACKGROUND

As land and home values have outpaced wages and income, the cost of living in Payson has become increasingly difficult for many citizens to manage. To some degree, this has happened across the country, but Payson faces even greater challenges. Like other tourism-driven communities, the topographical constraints and strong second-home demand have combined with our water development policies and land-use and zoning regulations to set the stage for higher than normal housing costs and more displaced local residents and workers. The result is that existing free-market units are increasingly purchased by second-home buyers, thus decreasing the available homes for people with average incomes who reside and work in the community (Hettinger, 2005).

The problem is complex and has been years in the making. In fact, the Town Council identified it as an item of concern nearly a decade ago. The Town’s existing Affordable Housing Plan was published in February 1998 and in January 2000 the Housing Advisory Ad Hoc Committee used the information outlined in the plan to prepare a list of recommendations for

Council. Although the ad hoc committee was disbanded in 2001, some progress was made:

- Using Community Development Block Grant funds, the Town initiated a housing rehabilitation program that assists income-qualified homeowners with repairs and rehabilitation of their homes via deferred forgivable loans.
- The non-profit Payson Regional Housing Development built two low-income rental complexes: the Canal Senior Apartments (62 units) and Green Valley Apartments (39 units).
- And, last but certainly not least, Payson Area Habitat for Humanity continues to thrive, currently developing its 13th Payson-area home.

III. PAYSON'S HOUSING SITUATION

Based on a preliminary survey of the town's three largest apartment complexes, there are fewer than 200 market-rate apartments. Of the 173 units, 16% are 1-bedroom, 83% are two-bedrooms and only 1% (a mere two units) have three bedrooms. Rents range from \$630 to \$825 and all of the complexes have waiting lists.

Among income-assisted units (which serve people who earn 60% or less of area median income) there are 151 apartments for senior citizens and disabled renters and 93 for families. As with the market units, there are waiting lists for all seven income-assisted apartment complexes. The number of private rentals, such as duplexes, homes and mobile homes, is not known.

A review of the Real Estate MLS for Payson on October 17, 2006 showed that 80% of all homes on the market are priced above \$250,000. There were 10 site built homes, 27 manufactured homes and 7 mobile homes listed at \$200,000 or less. An additional 9 site built and 6 manufactured homes were listed between \$200K and \$225K. In total, 59 homes were listed at or below \$225K. With the use of a conventional 30-year loan at 6.5% interest, 10% down payment, no other monthly debt obligations and a good credit score, the annual household income required to buy a \$225K home would be about \$63,000. That translates to a \$30 per hour wage for someone working year-round and full-time.

Figure 2: Results from Payson MLS on October 17, 2006

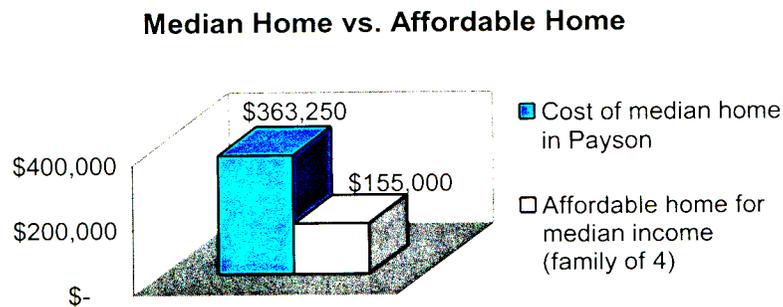
	\$100K to \$125K	\$126K to \$150K	\$151K to \$175K	\$176K to \$200K	\$201K to \$225K	\$226K to \$250K	\$251K and up
Site Built	1	1	3	5	9	15	228
Manufactured	4	6	4	13	6	4	3
Mobile	3	4	0	0	0	0	1
TOTAL	8	11	7	18	15	19	232

Please note that although the commonly accepted threshold for housing affordability is housing that consumes no more than 30% of household income, many lenders will allow higher debt-to-income ratios. Current FHA guidelines allow 41% to 61% debt-to-income ratios, including all debt and contingent upon credit rating. The debt-to-income ratio for manufactured home loans is about 36%. For comparison's sake, we'll use the standard 30% figure.

In September 2006 Payson's average MLS home price, including all homes on the market, was \$523,661. The median home price was \$363,250. Assuming a conventional loan as

previously described, a median-priced home would require a minimum annual household income of approximately \$102,000 in order for payments to be within 30% of annual income. To put this in perspective, please note that as previously mentioned on page 1, the 2006 Gila County median household incomes are \$29,900 for a 1-person household and \$42,700 for a 4-person household, the latter of which could afford to buy a home priced at \$155,000.

Figure 3



Expensive land and infrastructure costs make new affordable housing at low density very difficult, if not impossible. The Town’s Land Use Map (2003) identifies few vacant parcels for multi-family use that are appropriate for affordable housing. Two of these have proposed projects in the pipeline (Bison Cove and Rumsey Ridge). These projects, and others like them, represent Payson’s last and best opportunities for housing rental and ownership that is within reach for those who earn their living in Payson.

IV. POTENTIAL SOLUTIONS

The good news is that a broad spectrum of remedies has been tested in other places. The challenge before us is to choose which ones best fit Payson. Below is a brief list of potential solutions that, if used in the right combination, may help to address our affordable housing crisis. Based on success in other communities, Payson will need to embrace a variety of these. As you read them, please remember that they are general descriptions and will require additional research and review by Town staff and Council prior to policy development. Items with an asterisk are linked in some way to the 1998 Affordable Housing Plan. Specific examples may be found in the Appendices.

A. Review and revise ordinances to promote affordable housing*: Change ordinances that discourage or prevent construction of affordable housing. For example, the Town currently has an ordinance that prohibits mass grading, which effectively requires custom grading on all lots and increases home costs. Additionally, changes to the accessory dwelling unit (guesthouse) ordinance could expand the number of affordable rentals, as could more attached housing products and small-lot residential projects. (Appendices A.1 and A.2)

B. Examine zoning and development standards*: Make a commitment to approve the maximum allowable number of units by the zoning district and consider density bonuses for projects that are well planned and that include an affordability component. The Town could also allow higher density zoning or setback variances in exchange for

developments that agree to reserve a percentage of units for people with a pre-determined income. The Town may also adopt a policy that requires or encourages new developments to create or contribute to a specific percentage of affordable units. (Appendices B.1, B.2 and B.3)

C. Initiate housing trust fund*: Create a dedicated local fund that can be used to create or preserve affordable housing. Funds may come from fees paid by developers (see Item F) private donations or other sources. Common uses are to provide grants or deferred loans for new construction, gap financing for homebuyers and rehabilitation of existing homes. (Appendices C.1, C.2 and C.3)

D. Create community land trust: Create a legal vehicle to hold or own land to be used for affordable housing. Land trusts can be used to develop home ownership opportunities or to bank land for future projects. In some cases, the municipality or others donate the land. In others it is purchased with funds obtained from other Housing Trust Fund or other sources. For home ownership, trusts often separate ownership of the land from ownership of the home on the land. Trusts may lease land to the homebuyer and sell the home at an affordable price, and have resale provisions that ensure long-term affordability. Trusts may also set land aside and then, at a later date, solicit or accept affordable housing proposals for its use. The trust is typically administered by a non-profit, but is occasionally administered by a municipality. (Appendix D.1)

E. Use development agreements: Use a recorded development agreement with each developer that specifies the affordable housing components required for the project's approval. This enforceable document can be used to custom-fit each project to identify which Affordable Housing tools will be most effective. (Appendix E.1)

F. Implement new fees: Require proposed developments to pay fees based on the number of rezoning "steps" that are requested, or to pay fees via the platting process for a specified price per unit. Such developments could also be allowed to provide the equivalent value of the fees via a donation of land or other methods. All fees or contributions would be held in the housing trust fund or community land trust (See Items C & D above) and would be earmarked for affordable housing purposes.

G. Education*: Implement a public information campaign to explain and promote the benefits of maintaining quality housing opportunities for all socio-economic levels and age groups.

H. Link buyers to other programs or funding*: Provide resources to connect buyers with gap-financing or project assistance with federal money. (Appendix H.1)

I. Foster local partnerships*: Collaborate with Payson Area Habitat for Humanity, Payson Regional Housing Development or other non-profit organizations to build or manage affordable housing (either rentals or ownership).

J. Regional partnership: Collaborate with Gila County and the Payson Regional Economic Development Corporation to promote and develop regional affordable housing opportunities.

K. Assist Low-Income Housing Tax Credit (LIHTC) projects*: If a market study establishes demand, consider providing the land or other contributions to assist developers of LIHTC developments, such as Green Valley Apartments or Canal Senior Apartments. (Appendix K.1)

L. Encourage pre-marketing: Ask developers to establish a local pre-marketing plan for new affordable housing units. This plan would give local buyers the option to buy before those from Phoenix or other places.

M. Use targeted infrastructure improvements: Invest in larger water lines and street improvements in areas with R-3 zoning. These areas, such as Green Valley Redevelopment Area, are primed for affordable, infill housing but often lack the proper infrastructure to support more homes. Currently, the cost burden falls on the individual property owner, who is responsible for an area-wide infrastructure improvement. Possible funding sources include Town capital street and water improvement funds and grant funds from the Arizona Department of Housing (CDBG, SHF and SSP).

N. Create manufactured home replacement program: Possibly use grant funds to replace mobile homes or dilapidated homes for income-qualified owners, with provisions to ensure long-term affordability.

O. Encourage employer-assisted housing programs: Use the tools outlined above to encourage local employers to develop their own programs. Some communities offer financial incentives as well. (Appendices O.1 and O.2)

P. Continue owner-occupied rehab program*: Currently operated by the TOP. This program uses grant funds to assist income-qualified homeowners (those who earn 80% or less than AMI) with repairs of their primary residence.

V. RECOMMENDATIONS

- A. Appoint a permanent Affordable Housing Commission to serve in an advisory capacity to the Mayor and Council.
- B. Adopt the affordable housing mission statement in paragraph 1 of this report.
- C. Take the necessary steps to establish a housing trust fund and a community land trust so these mechanisms are in place to accept and utilize contributions and fees.
- D. Create a broad menu of affordable housing policies and programs that can be combined via customized development agreements to achieve a mix and variety of affordable housing.
- E. Allocate General Fund revenue to the Housing Trust Fund as part of the Town's budget process.
- F. Authorize Town staff to negotiate affordable housing components with developers of proposed new projects.
- G. Require that long-term affordability is a high priority for any and all affordable housing solutions that are considered.
- H. Based on Council input, authorize the Affordable Housing Commission to produce a Town of Payson Strategic Housing Plan that will be used to guide Town policies.
- I. Hire a consultant, when needed, to analyze the economic and demographic viability of proposed affordable housing projects.

VI. CONCLUSION

A variety of housing opportunities is crucial to the vitality of our community. Payson's housing stock should include a mix and balance of options at varying price levels.

The Affordable Housing Task Force is optimistic that Payson can achieve this through effective housing policies and programs. However, long-term success will require a strong commitment from Mayor and Council, as well as from community leaders, developers, businesses and citizens. We must establish a vision and act now. The health and future of our Town depend on it. 

Affordable Housing Task Force Members

Rick Croy, Chairman
Bob Charameda
Susan Connell
Larry Cornell
Ross Hage
Jerry Holland
Michael Hughes
Julie Ruttle
Donovan Thornhill
Sue Yale

Town of Payson Staff

Jerry Owen, Community Development Director
Bethany Beck, Housing Program Manager

Ranking of Payson's Housing Priorities		
	<i>Based on a survey of the Town of Payson Affordable Housing Task Force</i>	
Ranking		Total Score
1	Rentals for families 80 to 150% AMI	940
2	Homeownership for households 80-150% AMI	790
3	Rentals for seniors 80-150% AMI	620
4	Homeownership for households up to 80% AMI	620
5	Government-assisted rentals for families up to 60% AMI	610
6	Market rentals for families	600
7	Market rentals for seniors	530
8	Government-assisted rentals for seniors up to 60% AMI	490
9	Other (write in): Build dorms for GCC	20

EXAMPLES OF WELL-DESIGNED AFFORDABLE HOUSING



Issaquah, WA



Santa Rosa, CA



Santa Cruz, CA



Flagstaff, AZ

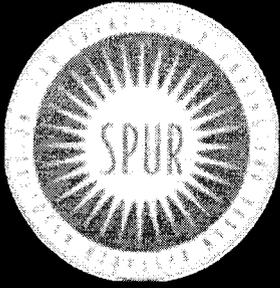


Flagstaff, AZ

Town of Payson
Affordable Housing Task Force Report
Appendices

Topic and Source

- A.1 Secondary Housing Units, *San Francisco Planning and Urban Association*
- A.2 Accessory Dwelling Unit Ordinance, *City of Santa Cruz, CA*
- B.1 Flexible Zoning Standards, *A Community Guide to Creating Affordable Housing, Business and Professional People for the Public Interest*
- B.2 Model Affordable Housing Density Bonus Ordinance, *Model Smart Land Development Regulations, American Planning Association*
- B.3 Inclusionary Housing Tools, *A Community Guide to Creating Affordable Housing, Business and Professional People for the Public Interest*
- C.1 What Are Housing Trust Funds, *Center for Community Change*
- C.2 Housing Trust Funds, *A Community Guide to Creating Affordable Housing, Business and Professional People for the Public Interest*
- C.3 City of Flagstaff's Community Land Trust Program, *City of Flagstaff*
- D.1 FAQs about Community Land Trusts, *Institute for Community Economics*
- E.1 Achieving Land Use Planning Objectives Through Development Agreements, *Institute for Local Self Government*
- H.1 Summary of ADOH Housing Programs, *Arizona Department of Housing*
- K.1 Low Income Housing Tax Credit Program, *Danter Company*
- O.1 Employer Assisted Housing, *The Housing Partnership Inc.*
- O.2 Employer Assisted Housing, *Winning Workplaces*



SPUR Report Secondary Units: A Painless Way to Increase the Supply of Housing

OVERVIEW

Allowing homeowners to add secondary rental units to their property is one of the most promising strategies we have for increasing the supply of housing in San Francisco without significantly changing the aesthetic character of our neighborhoods.

A secondary unit (also known as an "in-law unit") is an additional, self-contained dwelling on the same lot as an existing residential building. It is usually built within a pre-existing structure but sometimes is an addition to the structure or is in a separate carriage house or storage unit in the rear yard. Secondary units require no additional land or governmental funding. Because they use existing structures and most components and infrastructure (e.g., water, sewer, utilities, landscaping) are in place, and owners can often do some of the work themselves, they are cheaper to build than ordinary housing.

The community advantages of secondary units are numerous. They distribute less expensive housing throughout a community and enable the city to expand the housing supply by modest increases in many areas rather than concentrating new housing in just a few. They have the least

neighborhood visual impact of all housing sources. And they are true life-cycle housing, supporting flexibility and family stability over time. The extra income from secondary units can help make mortgage payments possible for new homeowners. It can give housing to childcare or in-home health care workers. It can supply extra income when the economic shifts of divorce, untimely death, or illness intervene. And a secondary unit can offer safe, semi-independent, and inexpensive housing for elderly or disabled relatives, as well as returning adult children.

Currently, the city makes it hard for property owners to add secondary units. Overly rigid code requirements get in the way, and most residential zoning definitions prohibit secondary units even if the codes can be met. SPUR believes that public scrutiny is the best assurance that the city's housing stock will remain healthy and safe. Regulations that make the legal addition of secondary units difficult, if not impossible, will either lead to units that lack enforcement of health and safety standards or will deprive the city of much-needed housing.

SPUR proposes that the creation
continued on page 3

continued on page 12

"Secondary Units" from page 1

of code-complying secondary units be encouraged in four ways:

1. By allowing secondary units without parking, in areas near transit and shopping, where living without a car is often feasible.
2. By making it easier to create secondary units without parking designed for occupancy by the elderly and handicapped in all residential areas.
3. By promoting the reclassification of single family neighborhoods which are supportive of secondary units to "RH-1 S" zoning, which allows secondary units with parking.
4. By allowing secondary units without parking in architecturally and historically significant buildings and in historic districts.

None of these proposals would result in enlargement of building envelopes beyond what the codes currently allow, thus assuring that secondary units will not change the visual appearance and character of the neighborhoods in which they are located. Also, SPUR is not proposing an amnesty or other legal action regarding existing illegal units.

HISTORY OF SECONDARY UNITS IN SAN FRANCISCO

The traditional pattern of residential development in San Francisco included secondary units. They were created based on need and demand, often as housing for the working poor, household help, and family members. A great number of illegal units were created in World War II to meet the housing demand generated by the boom in defense jobs. It was estimated by the then Bureau of Building Inspection that by 1960 there were between 20,000 and 30,000 secondary units in San Francisco, 90% of which had been built without the proper permits. Those built without permits usually have some substandard conditions with respect to light and air, bath or cooking facilities, ingress or egress, plumbing, electrical or heating

systems. They typically exceed the allowable density for the zoning area and usually do not provide required parking.

In 1959, the city began a series of housing upgrade programs in various neighborhoods as part of its urban renewal program. The programs involved systematic inspection of all buildings to bring them up to the standards of the newly adopted Housing Code. Long-term, low interest (3%) loans were made available to property owners to make the necessary building repairs, install new plumbing and electrical systems, etc. The city carried out various physical improvements to the neighborhood, such as the planting of street trees, the installation of parking and introduction of traffic mitigation measures.

Many illegal secondary units were discovered through this comprehensive inspection. Bringing them up to minimum standards of the Housing Code and keeping them in the housing stock, if there was any potential of doing so, soon became a major objective of the city. A list was developed that differentiated between lifesafety and non-lifesafety code items and, through an appeals process, some units were allowed to remain if conditions threatening to health and life were corrected. Parking was not required if the owner could demonstrate that the unit existed prior to 1955, when the parking requirements of the Planning Code were first enacted.

In 1978, the city adopted a comprehensive revision of the zoning controls for all residential districts. It created more districts that would allow for variation in some of the requirements for side and rear yards but, for the most part, it did not change the allowable density in the lower density districts. Most of the city's 120,000 single-family homes were placed in RH-1 (Residential-House, One-Family) and RH-1-D (Residential-House, One Family Detached) districts in which density was limited to one unit per standard lot. However, some were placed in RH-2 districts, where

two units were permitted, resulting in a number of new legal units being added to these properties in the 1980s and '90s.

The 1978 rezoning also created an RH-1-S (Residential-House, One Family with Minor Secondary Unit) district, which permitted a two-family dwelling, with the second dwelling limited to 600 square feet of net floor area. One parking space, which could be compact and tandem rather than independently accessible, was required. At the initiative of property owners, the RH-1-S district was subsequently mapped in four small areas, covering some 40 parcels, as a means of permitting legalization of unauthorized units.

The 1978 code revision also permitted dwellings specifically designed for elderly or handicapped occupants to be counted as half a unit. Only one parking space was required for every five elderly/handicapped units. This meant that in the RH-1 or RH-1-D single family districts, a secondary elderly or handicapped unit could be installed without parking, but only if the primary unit was also designed for elderly and handicapped. Very few units have been built in response to this zoning because of the requirement that both units be elderly/handicapped. This is a classic example of legislation that looked good in the newspapers, but failed to actually fulfill its stated purpose.

In 1982, the State adopted SB1534, the "Mello Act," to promote the development of secondary units as a source of affordable housing. It directed that secondary units be permitted in all California jurisdictions. The means of implementation were left to local discretion, provided that local agencies did not create requirements "so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create second units...." In response, a number of cities in the Bay Area simply allowed secondary units in all residential districts without regard to density limitations. The California

continued on page 4

"Secondary Units" from page 3

Department of Housing and Community Development studied 15 Bay Area jurisdictions in 1992 that had enacted secondary unit ordinances. The Department found that 13 of the 15 jurisdictions (Piedmont and Newark were the exceptions) had enacted ordinances that permitted secondary units citywide, in both single and multi-unit zones.

In 1981, the San Francisco Chamber of Commerce developed a Strategic Plan which, among other things, called for development of secondary housing units as a means to

create affordable housing. After passage of the Mello Act, the Chamber proposed changes in the Planning Code to encourage secondary units in portions of the city that did not have severe parking constraints, modification of the Building Code to ease construction while protecting health and safety, and amnesty for existing units meeting the revised codes. The proposal was supported by five supervisors as well as a number of housing advocacy and business groups, plus a few neighborhood associations. The Residential Builders Association was (and is) a strong supporter of secondary units. However, it was not supported

by former Mayor Dianne Feinstein, the Planning Commission and its staff, and six members of the Board who, because of the strong opposition of most neighborhood associations, supported instead adoption of Section 207.2 of the Planning Code. This section stated the reasons why the city believed it was already in compliance with the Mello Act without a more liberal allowance of secondary units. It argued that the 1978 zoning provisions cited above, the existing high density in the city, and the extensive zoning of areas for multiple unit buildings, together with the city's relatively aggressive affordability programs,

Examining Illegal Secondary Units

The following table shows the number of illegal secondary units and the percentage of total housing units in the city that are illegal. The Planning Department conducted a sample survey of 1,000 units in the city to determine the number of units in the Building Code's mailbox doorway, doorbell or separate address, with the number of units authorized as reported in official city records. It concluded the following:

Building Type	Number of Residential Buildings Citywide	Percent of total residential buildings in sample that are illegal units	Estimated citywide number of illegal buildings with one illegal unit
Single family homes	18,372	24%	13,500
Two family dwellings	19,200	26%	5,100
Other	2,000	28%	1,600
Total	40,000	25%	20,200
Additional buildings with one or more illegal units			500
Total Unauthorized Units			20,700

The sample survey did not cover the RUCD districts. If there were the same incidence of illegal units there as in RUCD districts, there would be 2,000 additional illegal units, bringing the total to 22,700, or 6% of the total housing units in the city. This number is probably low because many unauthorized units cannot be detected from the street and would not have been included in the sample. In the mid-1980s, a survey of the sales records of single family dwellings indicated that approximately 10% of the dwellings had an illegal secondary unit.

Given the current housing shortage and high rents, it is quite likely that the creation of new unauthorized units is continuing to grow rapidly.

satisfied the Mello Act requirements. The state did not challenge this response to its mandate.

In the 1980s and '90s, many new buildings were constructed with ground floor spaces (e.g. a recreational room, a wet bar, a bathroom, and a separate entrance) that were easily convertible to a secondary unit. As secondary units, they would lack the off-street parking and exceed the allowable density. Therefore, as a deterrent to conversion, owners of these new structures (over 10,000 mostly one-unit buildings) were required to record a Notice of Special Restriction (NSR) indicating the number of legal units in the building. How many have since been converted in violation of the Planning Code and the NSR is not known.

In 1992, Supervisor Terence Hallinan and, in 1996, Supervisors Mabel Teng and Tom Ammiano proposed amnesty programs with provisions that would have allowed, in varying degrees, legalization of secondary units. These measures were abandoned when the necessary support on the Board could not be obtained.

In 1997, the Planning Department developed a compromise to allow legalization of existing unauthorized units and creation of new units by rezoning to RH-1-S those portions of RH-1 and RH-1-D districts located within a five minute walk of both transit and neighborhood shopping. Restriction to these areas was intended to address homeowners' fear of losing on-street parking. A mapping study showed that about 75% of all estimated illegal units were within the transit/shopping zones. The owners of illegal units were to pay the normal costs of zoning reclassification plus contribute to the cost of a citywide environmental analysis that would probably be required. All neighbors of the amnesty homes would automatically receive the benefit of the reclassification, and the option for future in-law unit addition, without having to pay for the rezoning. This proposal also failed to gain sufficient support

and the effort was abandoned.

The city is currently pursuing a rather benign "don't ask, don't tell" attitude toward unauthorized secondary units. Even so, many units are being removed every year. Housing inspectors currently perform periodic internal inspection of buildings with three or more units. While they do not search for unauthorized secondary units, they must deal with them when they are discovered. The city does not do periodic internal inspections of one- and two-unit buildings, but inspectors are obliged to respond to complaints, mainly from neighbors, and deal with any illegalities that are found. Approximately 50 to 100 units are eliminated yearly through code-enforcement. Removing these units from the housing stock leads to displacement of the tenants, often elderly and lower-income.

It is clear that there is a strong demand for secondary units and that many building owners are prepared to create them, whether they meet code requirements or not. Because of the important role they play in providing inexpensive housing, it might be counter-productive for the city to take aggressive measures at this time to eliminate illegal secondary units. Therefore, SPUR's proposals are aimed at encouraging new, legal secondary units.

RECOMMENDATIONS

In this era of soaring rents and low vacancies, few new legal secondary units, which could relieve some of the pressure on the housing supply, are being created under the current restrictive rules. The greatest deterrents to the creation of code-complying secondary units are the density limits and parking requirements of the Planning Code and, to a lesser extent, the strict application of certain Building Code rules. Given the need for housing and the inequity of denying law-abiding homeowners the ability to add secondary units while seeming to look aside at scofflaws installing unauthorized units, SPUR believes

code changes should be made to facilitate the creation of code-complying units of certain types and in areas where their impacts can be minimized. The following proposals are intended to do that.

Modify the Planning Code to Encourage Secondary Housing

1. Allow Secondary Units without Parking in Areas Close to Transit and Shopping

Proximity to major transit lines and shopping facilities makes it feasible for certain areas of the city to absorb somewhat higher densities with lower levels of off-street parking.

The requirement of parking is a major deterrent to the creation of legal secondary units. In many cases it is physically difficult, if not impossible, and very expensive to provide parking—particularly independently accessible parking—without consuming the space for the secondary unit, being prohibitively expensive and/or detrimentally altering the appearance of the building.

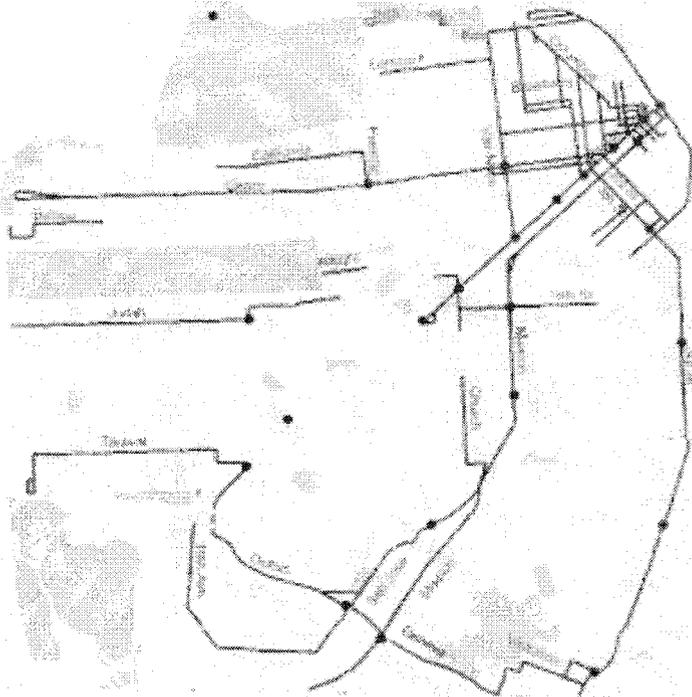
In fact, secondary units actually have little impact as generators of cars and car trips. Smaller in size than most apartments, secondary units tend to house either one or two persons and often persons of lesser means, who statistically tend to own fewer cars. Living carless is the lifestyle of many San Francisco households. In 1990, almost one-third (31%) of San Francisco's households did not have an automobile. Many of these households live in secondary units in neighborhoods that are close to major transit lines and neighborhood shopping that make it convenient to get around without a car.

SPUR proposes that the Planning Code be amended to allow a secondary unit of up to 600 square feet of living space in residential districts, without restriction to elderly and handicapped occupancy and without an off-street parking space, on any lot which is within easy walking distance (defined

Areas Highly Accessible to Transit and Shopping

Areas permitting residential use that are within 1/4 mile of a major transit street or transit center and within 1/4 mile of a commercial district.

- Major open space
- Transit Preferential Streets
- Transit Nodes



San Francisco Planning Department, March 2001

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as 1/4 of a mile—approximately a five minute walk at a slow pace) of both a “major transit street or transit center” and a “shopping area.” The areas that fall within these walking distances are shown above.

Less open space is needed for a smaller secondary unit than is needed for the larger primary unit. In the RH-1-S zoning district, which permits secondary units, the open space requirement for the secondary unit is one-third of the requirement for the primary unit. That ratio should apply in other districts as well, provided it is not less than 36 square feet. Because it is not possible to provide additional open space when the secondary unit is

being constructed within an existing structure, there should be a simple administrative procedure by which the open space requirement could be waived.

The owner may choose to provide a parking space (which should be permitted to be tandem and compact) but should not be required to do so if they can ensure that occupants of units without off-street parking will not use on-street parking. Shortage of off-street parking is one of the main sources of neighborhood opposition to in-laws, and it needs to be taken seriously.

The issue should be addressed by having building owners installing a

secondary unit without parking record a “notice of special restriction” stating that the units may be rented only to tenants who agree not to own or possess a motor vehicle which is parked on a San Francisco public street while the tenants are at home or at work. Examples of somewhat similar enforcement tools exist in both Concord and Oakland, which require that one of the two units in this situation be owner-occupied, codified as a permanent deed restriction. In case of a violation, enforcement is achieved through removal of the certificate of occupancy. San Francisco could enforce the special restriction if the owner fails to include and enforce a “no on-street parking” provision in the lease of the occupant of the secondary unit. Typically, enforcement would be initiated by complaint from a neighbor.

A different potential enforcement tool is available in the city's preferential parking program. If the secondary unit is located in a neighborhood preferential parking area (where only a neighborhood resident is permitted to park for longer than two or, in some cases, four hours) occupants at the address of such a unit could be made ineligible for a neighborhood parking permit.

2. Allow More Elderly/Handicapped Units

SPUR also proposes that the Planning Code text be changed so that the first unit designed for elderly or handicapped would not count against the unit limitation (the Code now provides that such units count as half a unit). This would permit the addition of this kind of unit to existing and new family houses in RH-1 and RH-1-D districts, as well as in higher density districts which already have the maximum number of standard units. Many of these units would be located on the ground floor where they are more easily accessible. These specialized units, many of which would accommodate older family members, would usually generate few auto trips and would fill a

specialized housing need with minimal impact on the neighborhood.

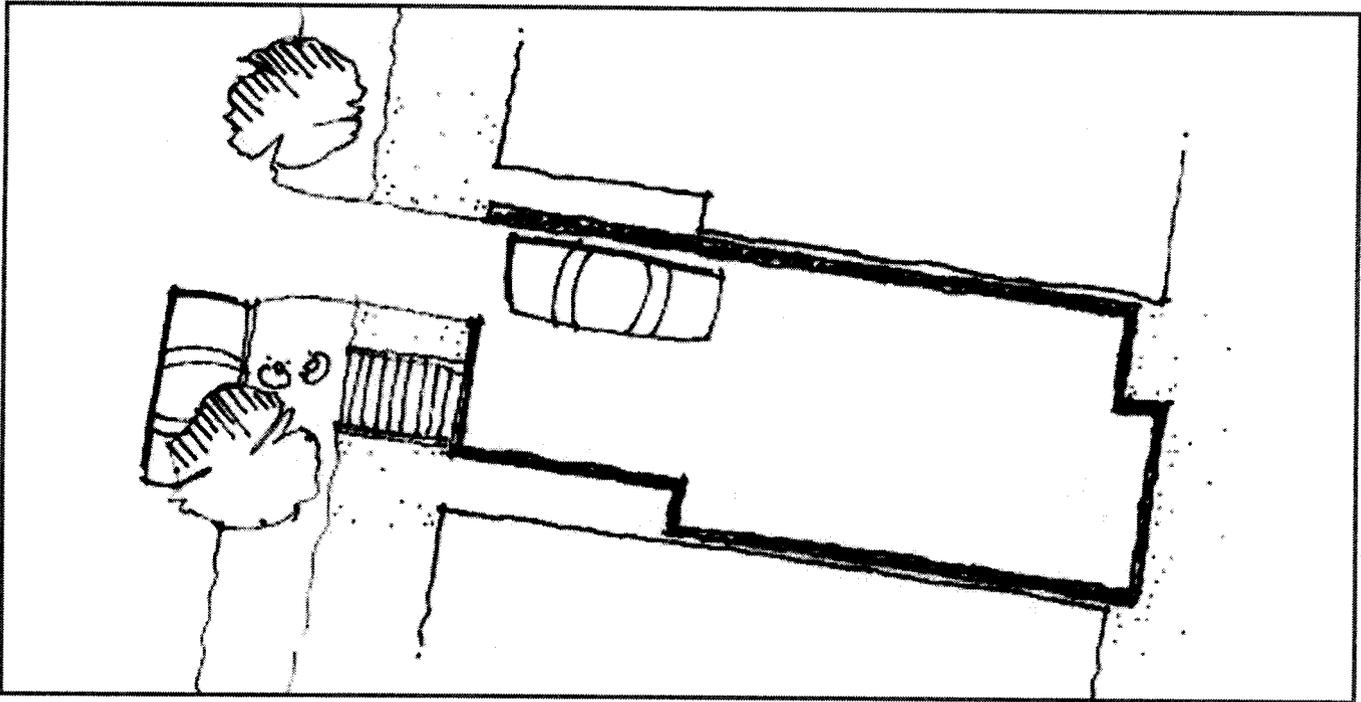
3. Reclassify Some Single Family Areas to the RH-1-S Secondary Housing District

Some neighborhoods or parts of neighborhoods zoned single family

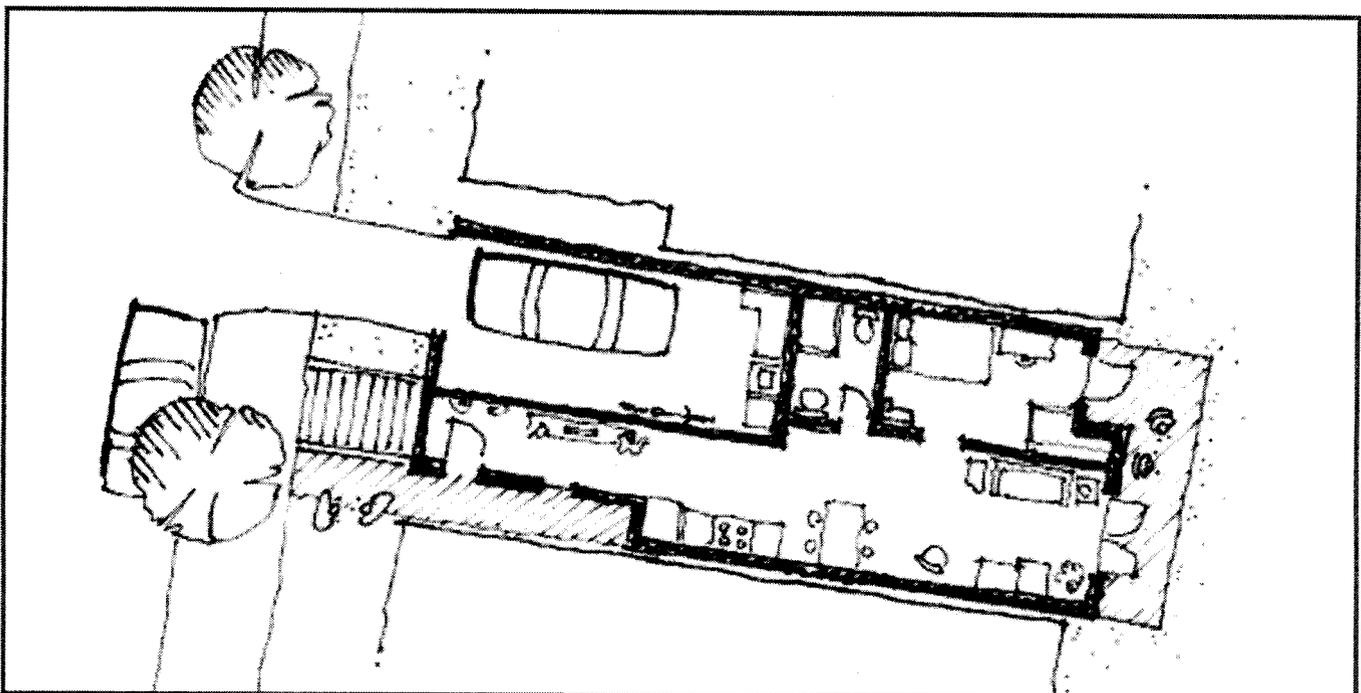
(RH-1 and RH-1-D) may welcome secondary units with parking; others may not. The Planning Code currently provides a mechanism, the RH-1-S district, in which secondary units up to 600 square feet are permitted without restriction to elderly/handicapped design but with compact, tandem

parking. SPUR recommends that reclassifications be undertaken in those areas where there is support for the introduction of secondary units. Supervisorial districts may provide the focus for such reclassifications.

continued on page 8



The typical ground floor of a San Francisco building is home to an automobile and junk.



What a ground floor could become—garage, storage, and a garden apartment. This design solution never changes the exterior of the building, has minimal impact on the neighbors, and provides much needed housing.

4. Allow Secondary Units in Architecturally and Historically Significant Buildings

Many architecturally significant buildings, which provide so much of the charm and character of San Francisco, are at risk of demolition or incompatible alteration. Allowing secondary units without parking may provide the revenue needed to make preservation of these buildings financially feasible. SPUR proposes that "qualified historical buildings or properties" be allowed to have a secondary unit without a parking space on condition that the owner agree to restrictions on demolition or alteration.

Building Code Impediments to the Creation of Secondary Housing

Adding a secondary unit to a single-family house is relatively straightforward and presents few building code problems. Although somewhat costly, and in some cases somewhat arbitrary, the requirements are usually not prohibitively expensive to meet (see sidebar, "Building Code Issues"). Concerns that make legalization of illegal units difficult, such as fire resistant construction, safe plumbing and electrical services (often behind finished walls in existing illegal units), present little problem with new units. These concerns can easily be avoided at little or no additional cost and will be addressed in the course of normal building inspection as the unit's construction occurs.

Similarly, it is not unreasonably difficult to add another unit to a three- or four-unit building. However, conversion of a two-unit building to a three-unit building is a significant building code change from R-1 (Dwelling) to R-3 (Apartment Building) which triggers all of the requirements for apartment buildings, such as fire rating upgrade of the entire building and possibly fire sprinklers throughout the building. Complying with these requirements will usually make the addition of a

Building Code Issues

The Chief Building Inspector of the Technical Services Section of the Department of Building Inspection indicates that the following building code issues arise when adding a secondary unit to a single-family house. These issues are often minimum standards that in various situations should not be lowered and are not unreasonably costly.

a. Ceiling Height. Ceiling heights are required to be seven feet, six inches in all areas except bathrooms, bedrooms, and hallways where they may be only six and a half feet. The cost of raising a floor by six inches to a foot and providing the necessary foundation, including new foundation walls not typically required by these minor ceiling height changes, typically ranges between \$1,000 and \$1,500 for an in-law unit. A major difficulty here is that ceiling wood trim at least along the foundation walls should be interior trim and plaster.

The State Historical Building Code, which provides that rooms used for sleeping purposes may have an average ceiling height of seven feet, is currently being expanded in its application in San Francisco to apply to more buildings, and it may apply to all buildings over 50 years old in which there is historic fabric to be protected.

b. Windows in Sleeping Rooms. All bedrooms or rooms used for sleeping purposes must have a window or door that leads directly to the outside, having windows or doors which lead to light wells or other enclosed spaces do not meet the current requirements of the code, although the Building Department is issuing an administrative ruling (AB-074) which allows certain such windows to exit to a light well or court if various conditions are met. This is not an obviously obvious architectural problem.

c. Light and Ventilation. Windows need to be provided, which often requires creative architectural solutions to allow exterior light and air to all habitable rooms. Often this necessitates the opening of one room to another to share the light from a large window or door. Under the current building code, 50% of the floor area must be a window, half of which must be operable. The State Historical Building Code allows 60%.

d. Fire Rating. A new building in a single-family house must be separated from both a unit above or adjoining unit from a garage by one-hour rated construction. There can be no openings between the garage and a bedroom.

e. Egress. Each unit must have an exit to the street. An exit through a garage is permitted, while it is not advisable. In some cases it may be the only feasible solution.

f. Heating. Heat must be provided to all habitable areas, and dwelling units are not permitted to share a boiler as a fire hazard unless carefully controlled. One source of heat is a gas furnace (unit). It is not unreasonably difficult to provide very small natural heating systems or to provide electrical or gas heat to individual rooms or open areas.

g. Energy Code Compliance. The State Energy Code requires that newly created spaces that are best to be insulated from the energy structures of insulation and of appliance and lighting efficiency. The code also provides a way to travel to units created from law- established walls.

h. Seismic Upgrades. The addition of a second unit in the empty lower story area of a single-family home does not trigger a seismic upgrade.

i. Minimum Room Area. No room except a kitchen may have a dimension of less than seven feet in any direction and no room may have a floor area of less than 70 square feet. The State Historical Building Code provides some relief from this requirement.

j. Mechanical Venting. No openings are permitted along property lines venting of bathrooms and kitchen rooms must typically be carried to the exterior, front or rear of a building. This often means venting through the roof.

k. Adequate Light and Ventilation. Open garage levels open to a rear yard where there is a deck or other structure ordered at the second floor level beyond the rear two of the building. The Building Code indicates that required light and ventilation may not be obstructed by any wall and that spaces may then be fast from the back of the wall above the window or door opening. Possible solutions include the use of bay windows to extend the wall face, expansion of the window with a bay, and cutting back deck extensions.

third unit to a two-unit building cost prohibitive. At this time, there seems to be no clear way to solve this problem.

SPUR supports the Department of Building Inspection's proposed expansion of the use of the State Historic Building Code to apply to more buildings and urges that it apply to all buildings over 50 years old in which there is historic fabric to be protected. This will facilitate the construction of secondary units.

SPUR also recommends that the Code Advisory Committee of the

would vary according to quality and location. Because secondary units are smaller and cheaper to build than standard units, their rents will tend to be lower and many of them will provide viable housing opportunities to those with modest incomes.

When a new secondary unit is installed, the unit will be subject to rent control if it is in a structure which is itself subject to rent control (as would be the case for a building built prior to the 1979 effective date of the rent ordinance that contains a rental unit or units). Thus, a secondary unit

ble benefits for the neighborhood.

The rent control status of currently illegal units which could be made legal if SPUR's proposals are adopted will remain unchanged; if the unit is currently subject to rent control it would remain rent-controlled after it is brought into code compliance. If an illegal unit is legalized and the tenants of the unit are displaced by the work, the tenants would have the right to reoccupy the unit at the old rent after legalization. If needed, amendments to the rent ordinance should be adopted to guarantee this result.

Secondary units, requiring no public funds or additional land and no change in the appearance of the neighborhood, provide an economical, quickly created and neighborhood-compatible solution.

Department of Building Inspection undertake a review of the code provisions governing the creation of new legal secondary units to determine whether any modifications to the provisions or their interpretation which would facilitate the creation of secondary units are warranted. In particular, the public health danger presented by low ceiling heights should be reassessed in light of the cost of lowering floors to comply with the 7'6" requirement, the pervasiveness of the problem (inspectors estimate that 40% of existing illegal units have ceiling heights lower than the requirement), and the recognition that there is no minimum ceiling height code requirement for any use other than residential.

Applicability of Rent Control

Under SPUR's proposals, rents of newly constructed secondary units would be based on market value. Rents

added to a single-family home which has been rented out would be subject to rent control, but a secondary unit added to an owner-occupied single family home would not be.

Application to Existing Illegal Units

SPUR is not proposing an amnesty or any other action regarding existing illegal units. However, SPUR believes that the owner of an illegal unit should be allowed to apply for a permit to legalize the unit by meeting all applicable code requirements and paying applicable penalties for the illegal installation of the unit. Currently the maximum penalty is ten times the amount of the permit fees required to legalize the unit. If necessary, this penalty could be increased. It may be a good idea to dedicate revenues collected from in-law legalization fees to a neighborhood improvement fund, so that increased housing leads to tangi-

Taking Action

San Francisco's chronic housing shortage continues unabated. Production is hampered by lack of public funding for subsidized housing and neighborhood opposition to housing of all types. Secondary units, requiring no public funds or additional land and no change in the appearance of the neighborhood, provide an economical, quickly created and neighborhood-compatible solution.

The Association of Bay Area governments (ABAG) has indicated that in order to meet its share of regional housing needs San Francisco should add some 2,700 housing units a year, 62% of which should be low and moderate income. Meeting that goal will require many actions. Adoption of SPUR's proposals to facilitate the creation of secondary units is one action that could provide modest but invaluable additions to the housing stock that San Francisco so urgently needs.

*This paper was developed by the SPUR Housing Committee, George Williams, Chair. It was debated and adopted by the full SPUR Board on April 18, 2001. It constitutes the official policy of SPUR. **

ORDINANCE 2002-25

AN ORDINANCE OF THE CITY OF SANTA CRUZ
AMENDING VARIOUS SECTIONS OF TITLE 24 OF THE
SANTA CRUZ MUNICIPAL CODE PERTAINING TO
ACCESSORY DWELLING UNITS (ADUs)

The City Council of the City of Santa Cruz ordains as follows:

Section 1. Chapter 24.16 Part 2 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

Part 2: ACCESSORY DWELLING UNITS*

*Prior Ordinance History: Portions of Ord. 85-05, formerly codified in Ch. 24.16, Part 2, as amended by Ord. 86-51 § 1; Ord. 89-34 §§ 1, 2.

24.16.100 Purpose.

The ordinance codified in this part provides for accessory dwelling units in certain areas and on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings are allowed because they can contribute needed housing to the community's housing stock. Thus, it is found that accessory units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities that are compatible with single-family development.

To ensure that accessory units will conform to General Plan policy the following regulations are established.
(Ord. 94-31 § 1 (part), 1994).

24.16.110 Findings Required.

Before approval or modified approval of an application for an accessory dwelling unit, the decision making body shall find that:

1. Exterior alterations are held to the minimum necessary, blending with the existing residence on the lot and neighborhood residences by architectural use of building forms, height, materials, colors, landscaping, etc.
2. Exterior design is in harmony with, and maintains the scale of, the neighborhood; construction materials and methods conform to acceptable construction practices.
3. The accessory unit will not result in excessive noise, traffic or parking congestion.
4. The property fronts on an adequate water main and sewer line each with the capacity to serve the additional accessory unit.
5. The site plan shall provide adequate open space and landscaping that is useful for both the accessory dwelling unit and the primary residence. Open space and landscaping shall provide for privacy and screening of adjacent properties.
6. The location and design of the accessory unit will not significantly impact the privacy, light, air, or parking of adjacent properties.
7. If the accessory dwelling unit is located in a one and one half to two story structure, the following finding must also be made: The structure generally limits the major access stairs, decks, entry doors, and major windows to the walls facing the primary residence, or to the alley if applicable. Windows that impact the privacy of the neighboring side or rear yard

ORDINANCE NO. 2002-25

have been minimized. The design of the accessory unit shall relate to the design of the primary residence and shall not visually dominate it or the surrounding properties.

8. The site plan shall be consistent with physical development policies of the General Plan, any required or optional element of the General Plan, any area plan or specific plan or other city policy for physical development. If located in the Coastal Zone, a site plan shall also be consistent with policies of the Local Coastal Program.

9. The exterior design and appearance of buildings and structures and the design of the site plan shall be compatible with design and appearance of other existing buildings and structures in neighborhoods which have established architectural character worthy of preservation.

10. The orientation and location of buildings, structures, open spaces and other features of the site plan shall be such as to maintain natural resources including heritage or significant trees and shrubs to the extent feasible, maintain a compatible relationship to, and preserve solar access of, adjacent properties, and minimize alteration of natural land forms. Building profiles, location and orientation must relate to natural land forms.

11. The site plan shall be situated and designed to protect views along the ocean and of scenic coastal areas. Where appropriate and feasible, the site plan shall restore and enhance visual quality of visually degraded areas.

12. The site plan shall incorporate water-conservation features where possible, including in the design of types of landscaping and in the design of water-using fixtures. In addition, water restricting shower heads and faucets shall be used, as well as water-saving toilets utilizing less than three gallons per flush.

(Ord. 99-11 § 1, 1999; Ord. 94-31 § 1 (part), 1994).

24.16.120 Locations Permitted.

Accessory dwelling units are permitted in the following zones:

1. RS-5A, RS-10A: On lots of five acres or more.
2. RS-1A, RS-2A: On lots of one acre or more.
3. R-1-10: On lots of ten thousand square feet or more.
4. R-1-7: On lots of seven thousand square feet or more.
5. R-1-5: On lots of five thousand square feet or more.
6. R-L, R-T(A), (B), and (D): On lots of five thousand square feet or more.

(Ord. 94-31 § 1 (part), 1994).

24.16.125 Annual cap.

No more than sixty-five new accessory units shall be issued building permits during any one calendar year. Permits shall be approved on a first-come, first-served basis.

(Ord. 94-31 § 1 (part), 1994).

24.16.130 Design and Development Standards.

In addition to meeting applicable requirements of this title, all accessory dwelling units must conform to the following standards:

1. Parking. One parking space shall be provided on-site for each studio and one bedroom accessory unit. Two parking spaces shall be provided on site for each two bedroom accessory unit. Parking for the accessory unit is in addition to the required parking for the primary residence. (See Section 24.16.180 for parking incentives.)

2. Unit Size. The floor area for accessory units shall not exceed five hundred square feet for lots with 100%-150% of the lot area for the district in which it is located. However, when

ORDINANCE NO. 2002-25

a lot exceeds 150% of the minimum lot area required by the district, then a unit may be up to 640 square feet and, when a lot exceeds 200% of the minimum lot area required by the district, then a unit may be up to 800 square feet. In no case may any combination of structures occupy more than thirty percent of the required rear yard for the district in which it is located.

3. Existing Development on Lot. A single-family dwelling exists on the lot or will be constructed in conjunction with the accessory unit.

4. Number of Accessory Units Per Parcel. Only one accessory dwelling unit shall be allowed for each parcel.

5. Setbacks for Detached Accessory Dwelling Units. The side-yard and rear-yard setback for detached single story structures containing an accessory dwelling unit shall not be less than three feet in accordance with the Uniform Building Code, and the distance between buildings on the same lot must be maintained as set forth by the district regulations. Accessory units higher than one story shall provide side yard setbacks of five feet and rear yard setbacks of ten feet. [Accessory dwelling units are not eligible for variances to setbacks.]

6. Setbacks for Attached Accessory Dwelling Units. Attached accessory dwelling units shall meet the same setbacks as a principally permitted building in the district.

7. Other Code Requirements. The accessory unit shall meet the requirements of the Uniform Building Code.

8. Occupancy. The property owner must occupy either the primary or accessory dwelling.

9. Building Height and Stories.

a. A one story detached accessory dwelling unit shall be no more than fifteen feet in height measured to the roof peak.

b. A one and one-half to two story detached accessory dwelling shall be no more than twenty-two feet in height measured to the roof peak.

c. An attached accessory unit may occupy a first or second story of a main residence if it is designed as an integral part of the main residence and meets the setbacks required for the main residence.

d. If the design of the main dwelling has special roof features that should be matched on the detached accessory unit, the maximum building height of the accessory dwelling unit may be exceeded to include such similar special roof features subject to review through the use permit process.

10. Alley Orientation. When an accessory dwelling unit is adjacent to an alley, every effort shall be made to orient the accessory dwelling unit toward the alley with the front access door and windows facing the alley. Parking provided off the alley shall maintain a twenty-four foot backout which includes the alley. Fences shall be three feet six inches along the alley. Higher fencing up to six feet can be considered in unusual circumstances subject to review through the use permit process.

(Ord. 99-11 § 2, 1999; Ord. 94-31 § 1 (part), 1994).

24.16.140 Repealed by Ord. 94-31 § 1.

24.16.150 Permit Procedures.

Application for accessory dwelling units shall be made by administrative use permit at a public hearing before the zoning administrator.

(Ord. 99-11 § 3 (part), 1999; Ord. 94-31 § 1 (part), 1994).

ORDINANCE NO. 2002-25

24.16.160 Deed Restrictions.

Before obtaining a building permit for an accessory dwelling unit the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:

1. The accessory unit shall not be sold separately.
2. The unit is restricted to the approved size.
3. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.
4. The above declarations are binding upon any successor in ownership of the property; lack of compliance shall be cause for revoking the conditional use permit.
5. The conditional use permit and restrictive conditions shall lapse upon removal of the accessory unit.

(Ord. 99-11 § 3 (part), 1999; Ord. 94-31 § 1 (part), 1994).

24.16.170 REPEALED BY Ord. 99-11 § 4.

26.16.180 Zoning Incentives

The following incentives are to encourage construction of accessory dwelling units.

1. **Affordability Requirements for Fee Waivers.** Accessory units proposed to be rented at affordable rents as established by the city, may have development fees waived per Part 4 of Chapter 24.16 of the Zoning Ordinance. Existing accessory dwelling units shall be relieved of the affordability condition upon payment of fees in the amount previously waived as a result of affordability requirements, subject to an annual CPI increase commencing with the date of application for Building Permit.

2. **Covered Parking.** The covered parking requirement for the primary residence shall not apply if an accessory dwelling unit is provided.

3. **Front or Exterior Yard Parking.** Three parking spaces may be provided in the front or exterior yard setback under this incentive with the parking design subject to approval. The maximum impervious surfaces devoted to the parking area shall be no greater than the existing driveway surfaces at time of application. Not more than 50% of the front yard width shall be allowed to be parking area.

4. **Tandem Parking.** For a parcel with a permitted accessory dwelling unit, required parking spaces for the primary residence and the accessory dwelling unit may be provided in tandem on a driveway. A tandem arrangement consists of one car behind the other. No more than three total cars in tandem may be counted towards meeting the parking requirement.

5. **Alley Presence.** If an accessory dwelling unit faces an alley as noted in the design standards in this chapter, the limitations on rear yard coverage as specified in Section 24.12.145 do not apply.

6. **Historic Buildings.** A single family dwelling designated as a city landmark, a contributing building within an historic district, or a building listed on the City of Santa Cruz Historic Building Survey may be allowed accessory dwelling units not to exceed 800 square feet in size attached to or detached from the historic structure. An historic alteration permit is required.

ORDINANCE NO. 2002-25

Section 2. Chapter 24.12 Part 3 of the Municipal Code of the City of Santa Cruz shall be amended to read as follows:

Part 3: OFF-STREET PARKING AND LOADING FACILITIES*

*Editor's Note: This part was originally adopted as a part of the underlying zoning ordinance, Ord. 85-05. It was revised in its entirety by Ord. 85-46, adopted 5-25-85, effective as of 6-27-85.

24.12.200 Purpose.

The purpose of the regulations contained herein is to reduce street congestion and traffic hazards and to add to the safety and convenience of citizens, by providing adequate, attractively designed, and functional facilities for off-street parking and loading as an integral part of every use of land in the city. A further purpose is to promote non-auto transportation and transportation/parking management. This section of the Zoning Ordinance is also part of the Local Coastal Implementation Plan.

(Ord. 94-33 § 59, 1994; Ord. 85-46 § 1 (part), 1985).

24.12.210 General Provisions.

At the time any building or structure is constructed, erected or modified, or a use established, there shall be provided on the same site, for the use of the occupants, guests, clients, customers or visitors thereof, off-street parking spaces for vehicles in accordance with the requirements herein. Alternatives in lieu of or in addition to parking may be required.

(Ord. 85-46 § 1 (part), 1985).

24.12.220 Exceptions.

Off-street parking and loading requirements set forth in this part shall not apply to agricultural uses.

(Ord. 85-46 § 1 (part), 1985).

24.12.230 General Requirements.

A design permit is required for a new facility or an existing facility proposed for modification, containing five or more spaces.

(Ord. 85-46 § 1 (part), 1985).

24.12.240 Number of Parking Spaces Required.

Where the computation of required parking spaces produces a fractional result, fractions of one-half or greater shall require one full parking space.

Use		Spaces Required
a.	Automobile or machinery sales and service garages	1 for each 400 square feet floor area
b.	Banks without automatic teller machines	1 for each 400 square feet floor area
c.	Banks with automatic teller machines	1 for each 400 square feet floor area; plus 1.5 for each machine
d.	Business and professional offices, excluding medical and dental offices	1 for each 300 square feet floor area

ORDINANCE NO. 2002-25

e.	Billiard parlors	1.5 for each table.
f.	Boarding homes for the aged	1 for each 5 beds, plus 1 for each employee
g.	Children's homes	1 for each 5 beds, plus 1 for each employee
h.	Houses of worship	1 for each 3.5 seats in the sanctuary
i.	Dancehalls and assembly halls without fixed seats, exhibition halls, except church assembly rooms in conjunction with auditoriums	1 for each 3 persons of design occupancy load
j.	Family daycare and foster family homes	1 for every 5 guests, plus 1 for the resident owner or manager
k.	Funeral homes, mortuaries	1 for each 5 seats of the aggregate number of seats provided in all assembly rooms
l.	Furniture and appliance stores, household equipment	1 for each 800 square feet of sales floor area
m.	Community care residential facilities	1 for each 5 guests, plus 1 for the manager, plus 1 for each employee on the shift with the maximum number of personnel
n.	Hospitals	1 for each bed, plus 1 for each employee on the shift with the maximum number of personnel
o.	Hotels, motels	1 for each unit intended for separate occupancy, plus 1 for the resident owner or manager
p.	Institutions for the aged	1 for every 5 guests, plus 1 for each employee on the shift with the maximum number of personnel
q.	Manufacturing plants, bottling plants, processing plants, packaging plants, furniture repair	1 for each 500 square feet of floor area
r.	Medical and dental clinics and offices	1 for each 200 square feet of floor area
s.	Medical (or convalescent) hospitals	1 for each 5 beds, plus 1 for each employee on the shift with the maximum number of personnel
t.	Nursing homes	1 for every 5 guests, plus 1 for the resident manager, plus 1 for each employee on the shift with the maximum number of personnel

ORDINANCE NO. 2002-25

Uses		Spaces Required				
u.	Physical fitness facilities					
	<p>Multi-program:</p> <p>Single-program:</p> <ul style="list-style-type: none"> • Aerobics: • basketball; volleyball • lap pool: • weightlifting <p>Physical fitness facilities with more than 15,000 square feet of floor area shall provide an additional 10 percent of the total number of required parking spaces</p>	<p>1 space for each 100 square feet of floor area</p> <p>1 space for each 50 square feet of floor area</p> <p>1 space for each 3 persons of occupancy</p> <p>2 spaces per lane plus 1 space for each 300 square feet of non-pool floor area</p> <p>1 space for each 250 feet of floor area</p>				
v.	Physical therapy	1 space per 200 square feet of floor area. In addition, 1 space per 50 square feet of pool (water) area				
w.	Residential Uses					
Number of Bedrooms						
Type		Efficiency	1	2	3	4 or more
Single-family *(including townhouses)		1.0	1.0	2.0	2.0	3 + 1 for ea. addl. Bedroom
Houseboat, duplex, triplex, multiple mobilehome.		1.0	1.5	2.0	2.0	3 + .5 for ea. addl. Bedroom
Lodging, rooming houses and bed-and-breakfast inns			2 spaces, plus 1 for each bedroom			
Residence halls, dormitories			.75 space for each guest or occupant			
Senior housing development			1 for each 3 dwelling units or rooms intended for separate occupancy, plus an area of land equal to the required off-street parking for apartments, not including required open space, which could be converted to parking should the retirement center change to a multifamily residential use.			
Single-room occupancy dwelling unit, less than 220 square feet.			.5 for each dwelling unit			
Single-room occupancy dwelling unit, 220 square feet or more.			1 parking space, covered or uncovered shall be provided on site for each bedroom in addition to the required			

ORDINANCE NO. 2002-25

		parking for the primary residence.
Accessory dwelling unit **		1 parking space, shall be provided on site for each bedroom in addition to the required parking for the primary residence.
Community housing projects.		In addition to meeting above residential parking requirements, 1 additional parking space for each 4 dwelling units shall be provided.
<p>Covered Parking. At least 1 of the required parking spaces for each dwelling unit shall be covered, within a carport or a garage. Each standard-size parking space required to be located in a garage or carport for a residential unit shall be not less than nineteen feet in length by eight and one-half feet in width (19 ft. x 8½ ft.). If a parcel has a permitted accessory dwelling unit with a recorded deed restriction, then no covered parking is required for the primary dwelling nor the accessory dwelling unit on said parcel.</p>		
<p>Covered Parking Exception. Exceptions to parking requirements may be granted to publicly subsidized units where such requirements are in conflict with state or federal regulations or funding policies.</p>		
<p>* Tandem parking may be utilized for the required uncovered parking spaces pursuant to Section 24.12.280, subsection (4).</p>		
<p>** Accessory Dwelling Units Only Refer to Section 24.16.180 2, 3, 4</p>		
Use		Spaces Required
x.	Restaurants and other establishments selling food and beverages on the premises (including bars and nightclubs without live entertainment)	1 for each 120 square feet of floor area
y.	Restaurants with counter and/or take-out service or drive-in facilities	1 for each 120 square feet of floor area, plus 1 for each 50 square feet of floor area devoted to counter/take-out service
z.	Research and development facilities	1 for each 325 square feet of floor area, or 1 for every 2 employees (maximum shift), whichever is greater
Use		Spaces Required
aa.	Retail stores, shops, service establishments, including shopping centers other than furniture and appliance stores	1 for each 250 square feet of floor area
ab.	Schools: <ul style="list-style-type: none"> • Elementary and junior high • High schools 	1 for each employee 1 for each employee, plus 1 for each 10 students
ac.	Colleges (business, beauty, etc.) and universities	1 for each employee, plus 1 for each 3 students
ad.	Self-service laundry and dry cleaning establishments	1 for each 200 square feet of floor area

ORDINANCE NO. 2002-25

ae.	Service stations	3 for each lubrication or service bay, plus 1 for each employee on the day shift
af.	Sports arenas, auditoriums, assembly halls, and meeting rooms	1 for each 3.5 seats of maximum seating capacity
ag.	Theaters	1 for each 3.5 seats for the first 350 seats; plus 1 for each 5 additional seats
ah.	Wholesale establishments, warehouses, service and maintenance center, communications equipment buildings	1 for each 1,000 square feet of floor area
ai.	Recycling collection facilities <ul style="list-style-type: none"> • Independent • In conjunction with other uses that provide required parking 	2 spaces 0 spaces
aj.	Unspecified uses of buildings structures, or premises	Where the parking requirement for a particular use is not specifically established in this section, the parking requirements for each use shall be determined by the zoning administrator, and such determination shall be based upon the requirements for similar uses. Public uses not specifically established in this section shall meet the parking requirement as established by the zoning board. The board shall take into account the proposed use and parking availability in the vicinity of the use

(Ord. 2002-02 § 2 (part), 2002; Ord. 91-14 § 5, 1991; Ord. 90-38 § 1, 1990; Ord. 89-38 § 1, 1989; Ord. 87-22 § 10, 1987; Ord. 85-46 § 1 (part), 1985).

Section Three. Section 24.10.230 of Part 3: R-S Residential Suburban District of Chapter 24.10 is hereby amended to read as follows:

24.10.230 Use Permit Requirement.

1. The following uses are subject to approval of an administrative use permit and a design permit:

- a. Family animal farm.
- b. Temporary structures and uses.
- c. Young farmer projects on sites of twenty thousand square feet or more on which a child may be permitted to raise one kid, lamb, or calf for a one-year period.
- d. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.
- e. Accessory dwelling units subject to the provisions of Chapter 24.16 Part 2, except that Accessory Dwelling Units are not subject to approval of a Design Permit.

2. The following uses are subject to approval of a special use permit and a design permit:

- a. Bed-and-breakfast inns, subject to requirements contained in Part 9, Chapter 24.12.

ORDINANCE NO. 2002-25

- b. Community care facility including daycare and retirement homes (seven or more persons).
 - c. Off-street parking facilities accessory to a contiguous commercial property not to exceed one hundred feet from the boundary of the site it is intended to serve.
 - d. Plant nurseries and greenhouses.
 - e. Noncommercial recreation areas, buildings and facilities such as parks, country clubs, golf courses, and riding, swimming and tennis clubs.
 - f. Educational, religious, cultural, or public utility or public service buildings and uses; but not including corporation yards, storage or repair yards, and warehouses.
 - g. Riding stables on parcels at least five acres in size for the boarding of horses to serve the neighborhood.
- (Ord. 93-19 § 3, 1993; Ord. 88-60 § 3, 1988; Ord. 88-25 § 1, 1988; Ord. 85-66 § 2, 1985; Ord. 85-05 § 1 (part), 1985).

Section Four. Section 24.10.330 of Part 4, R-1 Single Family Residential District of Chapter 24.10 is hereby amended to read as follows:

24.10.330 Use Permit Requirement.

1. The following uses are subject to approval of an administrative use permit and a design permit:

- a. Family animal farm.
- b. Temporary structures and uses.
- c. Young farmer projects on sites of twenty thousand square feet or more on which a child may be permitted to raise one kid, lamb, or calf for a one-year period.
- d. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.
- e. Accessory dwelling units subject to the provisions of Chapter 24.16 Part 2, except that Accessory Dwelling Units are not subject to approval of a Design Permit.

2. The following uses are subject to approval of a special use permit and a design permit:

- a. Bed and breakfast inns, subject to requirements contained in Part 9, Chapter 24.12.
- b. Community care facilities including nursing homes, retirement homes, daycare and foster homes (seven or more persons).
- c. Health facilities for inpatient and outpatient psychiatric care and treatment.
- d. Off-street parking facilities accessory to a contiguous commercial property not to exceed one hundred feet from the boundary of the site they are intended to serve.
- e. Plant nurseries and greenhouses.
- f. Noncommercial recreation areas, buildings and facilities such as parks, country clubs, golf courses, and riding, swimming and tennis clubs.
- g. Educational, religious, cultural, or public utility or public service uses and buildings; but not including corporation yards, storage or repair yards, and warehouses.
- h. Two-family dwellings (duplexes) on corner lots having an area of seven thousand five hundred square feet or more, and subject to the following limitations:
 - (1) The area is characterized by mixed residential uses;
 - (2) Such uses shall be permitted in entirely new structures only;
 - (3) Duplexes will not be approved on properties within five hundred feet of existing duplexes or approved duplex locations;

ORDINANCE NO. 2002-25

(4) Such duplexes shall maintain at least two thousand square feet of usable open space, one thousand square feet of which shall be directly accessible to each unit within the duplex;

(5) The units shall be designed so that each faces on one of the streets forming the intersection;

(6) Setbacks from the street shall be the same as for a single-family dwelling, i.e., the setback from one street shall be considered a front yard setback and the setback from the other street shall be considered an exterior side yard setback; however, garages or carports shall be arranged so that at least one faces each of the intersecting streets, and in all cases shall be set back at least twenty feet from the property line.

(7) There shall be a differential of at least twenty percent in the total floor area of the individual units.

i. Riding stables on parcels at least five acres in size for the boarding of horses to serve the neighborhood.

(Ord. 93-19 § 7, 1993; Ord. 88-60 § 5, 1988; Ord. 88-25 § 2, 1988; Ord. 85-66 § 4, 1986; Ord. 85-05 § 1 (part), 1985).

Section Five. Section 24.10.430 of Part 5 of R-L Multiple Residential – Low Density District of Chapter 24.10 is hereby amended to read as follows:

24.10.430 Use Permit Requirement.

1. The following uses are subject to approval of an administrative use permit and a design permit:

a. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.

b. Temporary structures and uses.

2. The following uses are subject to approval of a special use permit and a design permit:

a. Bed-and-breakfast inns, subject to requirements in Part 9, Chapter 24.12.

b. Community care facilities including daycare, retirement home, foster home, and nursing home (seven or more persons).

c. Accessory dwelling units subject to the provisions of Chapter 24.16 Part 2, except that Accessory Dwelling Units are not subject to approval of a Design Permit.

d. Dormitories, fraternity/sorority residence halls, boardinghouses.

e. Health facilities for inpatient and outpatient psychiatric care and treatment.

f. Off-street parking facilities accessory to a contiguous commercial property not to exceed one hundred feet from the boundary of the site it is intended to serve.

g. Noncommercial recreation areas, buildings, and facilities such as parks, country clubs, golf courses, and riding, swimming and tennis clubs.

h. Educational, religious, cultural, public utility or public service buildings and uses; but not including corporation yards, storage or repair yards, and warehouses.

i. Social halls, lodges, fraternal organizations, and clubs, except those operated for a profit.

(Ord. 93-19 § 9, 1993; Ord. 88-60 § 7, 1988; Ord. 88-25 § 3, 1988; Ord. 85-66 § 6, 1985; Ord. 85-05 § 1 (part), 1985).

ORDINANCE NO. 2002-25

Section Six. Section 24.10.604 of Part 7A: R-T(A) Subdistrict A – Medium Density Residential of Chapter 24-10 is hereby amended to read as follows:

24.10.604 Use Permit Requirement.

1. The following uses are subject to approval of an Administrative Use Permit and a Design Permit and other requirements of the Municipal code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Further refinement of uses within these categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.):

- a. Single-family dwellings; (810)
- b. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.
- c. Multiple dwellings, townhouses, and condominiums (4-9 units); (830)
- d. Accessory dwelling units subject to the provisions of Chapter 24.16 Part 2, except that Accessory Dwelling Units are not subject to approval of a Design Permit.

2. The following uses are subject to approval of a Special Use Permit and a Design Permit and other requirements of the Municipal code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Further refinement of uses within these categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.):

- a. Bed-and-breakfast inns, subject to the requirements contained in Part 9, Chapter 24.12; (300c)
- b. Large community care facilities; (850e)
- c. Large family daycare facilities; (510a)
- d. Group care homes; (850e)
- e. Multiple dwellings, townhouses, townhouse and dwelling groups, and condominiums, ten units or more; (840)
- f. Public and private commercial parking;
- g. Public and private noncommercial recreation areas, buildings and facilities such as parks; (710)
- h. Public and quasi-public buildings and uses including recreational, educational, religious, cultural or public utility or service nature; but not including corporation yards, storage or repair yards, and warehouses; (500, 510, 530, 540, 570)
- i. Retirement homes or centers. (850b)

(Ord. 2000-18 § 4 (part), 2000: Ord. 96-39 § 7, 1996: Ord. 88-60 § 10, 1988; Ord. 88-25 § 5, 1988; Ord. 85-66 § 9, 1985: Ord. 85-05 § 1 (part), 1985).

Section Seven. Section 24.10.612 of Part 7B: R-T(B) Subdistrict B – Motel Residential of Chapter 24.10 is hereby amended to read as follows:

24.10.612 Use Permit Requirements.

1. The following uses are subject to approval of an Administrative Use Permit and a Design Permit and other requirements of the Municipal code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Further refinement of uses within these categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

- a. Multiple dwellings, townhouses, townhouse and dwelling groups, and condominiums, nine units or fewer (830).

ORDINANCE NO. 2002-25

- b. Single-family and duplex dwellings (800, 810).
- c. Single-room occupancy (SRO) housing, fifteen units or fewer (860).
- d. Storage and equipment structures.
- e. Temporary structures and uses.
- f. The providing of board and room for not more than two paying guests per dwelling unit, when located within principal building.
- g. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.

h. Accessory dwelling units subject to the provisions of Chapter 24.16 Part 2, except that Accessory Dwelling Units are not subject to approval of a Design Permit.

2. The following uses are subject to approval of a Special Use Permit and a Design Permit and other requirements of the Municipal code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Further refinement of uses within these categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

- a. Coffee shops. (280g)
- b. Large community care facilities. (850e)
- c. Large family daycare facilities. (510a)
- d. Motel, hotel and bed-and-breakfast inn uses subject to annual business license review. (300)
- e. Multiple dwellings, townhouses, townhouse and dwelling groups, and condominiums, ten units or more. (840)
- f. Public and private commercial parking. (940, 950)
- g. Public and private noncommercial recreation areas, buildings and facilities such as parks. (710)
- h. Public and quasi-public buildings and uses of an administrative, recreational religious, cultural or public utility or service nature; but not including corporation yards, storage or repair yards, and warehouses. (500, 510, 530, 540, 570)
- i. Retirement homes or centers. (850b)

(Ord. 2002-02 § 1 (part), 2002: Ord. 2000-18 § 5 (part), 2000: Ord. 96-39 § 8, 1996: Ord. 93-21 § 1, 1993; Ord. 88-60 § 11, 1988; Ord. 88-25 § 6, 1988; Ord. 85-66 § 10, 1985: Ord. 85-05 § 1 (part), 1985).

Section Eight. Section 24.10.628 of Part 7D: R-T(D) Subdistrict D – Beach Residential of Chapter 24.10 is hereby amended to read as follows:

24.10.628 Use Permit Requirement.

1. The following uses are subject to approval of an Administrative Use Permit and a Design Permit and other requirements of the Municipal Code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Further refinement of uses within these categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.):

- a. Small community care residential facilities.
- b. Temporary structures and uses.
- c. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.
- d. Accessory dwelling units subject to the provisions of Chapter 24.16 Part 2, except that Accessory Dwelling Units are not subject to approval of a Design Permit.

ORDINANCE NO. 2002-25

2. The following uses are subject to approval of a Special Use Permit and a Design Permit and other requirements of the Municipal Code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Further refinement of uses within these categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

- a. Bed-and-breakfast inns, subject to the requirements contained in Part 9, Chapter 24.12. (300c)
 - b. Community care facilities. (850e)
 - c. Large family daycare facilities. (510a)
 - d. Multiple family dwellings, townhouses, and condominiums, three units or more. (840)
 - e. Public and private noncommercial recreation areas, buildings and facilities such as parks. (710)
 - f. Public and quasi-public buildings and uses including administrative, recreational, educational, religious, cultural, public utility or public service uses; but not including yards, storage or repair yards, and warehouses. (500, 510, 530, 540, 570)
 - g. Retirement homes or centers. (850b)
- (Ord. 2000-18 § 1 (part), 2000: Ord. 85-05 § 1 (part), 1985).

Section Nine. This ordinance shall be in force and take effect thirty (30) days after its final adoption.

PASSED FOR PUBLICATION this 25th day of June, 2002, by the following vote:

- AYES: Councilmembers: Reilly, Fitzmaurice, Sugar, Kennedy, Porter; Mayor Krohn
- NOES: Councilmembers: Primack.
- ABSENT: Councilmembers: None.
- DISQUALIFIED: Councilmembers: None.

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

ORDINANCE NO. 2002-25

PASSED FOR FINAL ADOPTION this 24th day of July, 2002, by the following vote:

AYES: Councilmembers: Reilly, Fitzmaurice, Sugar, Primack, Kennedy, Porter;
Mayor Krohn.

NOES: Councilmembers: None.

ABSENT: Councilmembers: None.

DISQUALIFIED: Councilmembers: None.

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2002-25 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk

FLEXIBLE ZONING STANDARDS

Massachusetts's 40B Program



The Developments:

Chase Estates • Westwood, Massachusetts

**Avalon at Newton Highlands •
Newton, Massachusetts**

Avalon at Newton Highlands, a luxury rental community located in Newton, Massachusetts, rents 74 affordable apartments at prices nearly one-third the market-rate level. As the first rental development in Newton in nearly 20 years, construction of the apartments was strongly supported by the community. The development took advantage of the state comprehensive permit process, which allowed local negotiations over the proposal to proceed effectively and efficiently.

The Tool: Massachusetts's 40B Program Encourages Flexibility in Zoning

Chapter 40B is a Massachusetts zoning statute enacted in 1969 to address the statewide shortage of affordable housing. Its goal is to encourage production of affordable housing by reducing the unnecessary barriers created by local approval processes, local zoning, and other regulatory restrictions. The program encourages the production of affordable units at little or no public cost because in most 40B developments, the sale of the market-rate units subsidizes the reduced prices of the affordable units.¹

The statute establishes two tools to create affordable housing. First, developers of affordable housing may apply for a comprehensive permit from the local Zoning Board of Appeals rather than having to seek separate approvals from various municipal bodies. To qualify for Chapter

40B, a state or federal housing program, such as MassHousing, MassDevelopment, the Department of Housing and Community Development, or the U.S. Department of Housing and Urban Development, must review the development proposal and confirm that it meets the affordability requirements.² At least 25% of the housing in the development must be affordable to households that earn no more than 80% of area median income (AMI),³ and affordability restrictions must be maintained for at least 15 years.⁴ Towns are allowed to establish a preference for local residents for up to 70% of the units. Private developers must agree to restrict their profit on the development.⁶

Once a project is eligible, the developer submits an application for a comprehensive permit to the local Zoning Board of Appeals. The Board may grant all local approvals necessary for the project after consulting with other relevant agencies, resulting in a more streamlined review process. The Zoning Board of Appeals is also authorized to apply flexible zoning standards. For example, local zoning codes may limit development to one house per acre. Under Chapter 40B, the local Zoning Board of Appeals can approve higher-density development

projects (e.g., one house per 1/4 acre), making it financially feasible to develop affordable housing.

FLEXIBLE ZONING STANDARDS

Allow communities to negotiate with developers for affordably priced units
Massachusetts's 40B law provides comprehensive permit process and state Housing Appeals Committee to reduce regulatory barriers

In most developments, sale of market-rate units subsidizes lower price of affordable housing

Flexibility may be exercised in zoning changes or variations or through the Planned Unit Development process

Top photo: Chase Estates; lower photo: Avalon at Newton Highlands; photo courtesy of Bill Horvath Photography



remain affordable for 40 years. If an affordable unit is resold during that period, the unit must first be offered to the state of Massachusetts, the town of Westwood, or the Westwood Housing Authority, which will resell it to a qualified home-buyer.¹⁵ If the state or Westwood does not purchase the property or the bank forecloses on the property and it is sold to an unqualified buyer, the seller will be able to keep only a portion of the selling price. The amount that the seller is entitled to keep is determined by a formula that allows a seller to retain a portion of the selling price equal to the original affordable price divided by the original market-rate value, multiplied by the current market value of the home.¹⁴

The total cost of constructing Chase Estates was approximately \$22 million. No public subsidy was provided; the construction was completed using entirely private financing. The state provided approximately \$250,000 in funding for infrastructure improvements, including sewer, sidewalks, and street lights. (Funding for the infrastructure improvements came from federal CDBG and Community Development Action grants.)

The town of Westwood received over 1,300 applications for the 25 affordable homes for sale at Chase Estates. Seventy percent of the units were filled with residents who received a "local preference": they were either born in Westwood, had immediate family who lived in the town, or worked there. Since the homes were completed, none of the affordable units have been resold.

Chase Estates is noteworthy for the proactive role taken by the town of Westwood in managing the negotiations with the developer to create affordable homes. For example, when the developer requested a modification in the comprehensive permit to change the home style from ranch to colonial, the town seized another negotiating opportunity. Because the modification created a larger profit for the developer, the town responded to the request by negotiating an additional \$6,000 payment to the town for the sale of each market-rate home to be used for the creation of affordable housing.

This additional payment generated \$450,000 that

Newton Highlands

- ◆ 294-unit luxury rental development
- ◆ 74 apartments deed restricted to remain affordable in perpetuity to families at or below 80% of AMI
- ◆ Market-rate rents from \$2,400/month, and affordable rents from \$670-\$1,100/month
- ◆ Strong rental market supported construction with no public subsidy

Westwood used to create a Housing Trust Fund. The accumulation of these funds has allowed the town to acquire nine rental units in four duplexes and one affordable home built in another 40B development. These units are primarily rented to Housing Choice Voucher holders by the Westwood Housing Authority. Thus, by skillfully negotiating with the developer, the town gained not only the 25 affordable single-family homes, but also an additional nine rental units of affordable housing, all at no

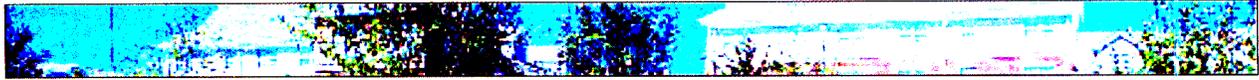
cost to the municipality.

Newton Highlands: Efficiency of the Comprehensive Permit Process Helps Create Affordable Housing in a Luxury Development

Avalon at Newton Highlands is a 294-unit luxury rental community that contains 74 affordable apartments. It is located in Newton, Massachusetts, along a major town corridor in the Boston suburb. The site of the development was formerly the subject of a proposal for a large retail store. That proposal generated significant community opposition due to the high amount of vehicular traffic the store would generate, and the proposal was rejected.

Instead of building a large retail store, the community focused on building more affordable housing. Newton had a number of young professionals, retirees, and empty-nesters who wanted to remain in the community. AvalonBay, a large residential developer, proposed a rental development for the site called Avalon at Newton Highlands that would include 25% of the units as affordable apartments.¹⁵ The community was supportive of the proposal, in particular because it included much-needed affordable housing for the area.

Because less than 10% of Newton's housing stock was affordable, the developer was able to take advantage of an expedited comprehensive permit process for its project. First, the AvalonBay proposal was determined to comply with 40B standards by MassHousing, and it received its letter of financing.¹⁶ Next, the developer presented the project to the local Zoning Board of Appeals, which held a public approval process. After requesting slight modifica-



tions in the kinds of services that would be offered on site,¹⁷ the Zoning Board of Appeals granted AvalonBay a comprehensive permit that allowed the construction of the development to begin.

AvalonBay's comprehensive permit included exemptions from the underlying zoning characteristics of the land. It received an exemption to develop multi-family housing on land zoned for industrial/ mixed use and also exemptions for signage, height, set backs, and parking. Normally, the land would have had to be re-zoned at the city council level. Instead, under the comprehensive permit process, the application for Newton Highlands was submitted to the Zoning Board of Appeals in April 2001, and it was approved eight months later in January 2002. Construction began in June 2002 and concluded in December 2003.

In response to community requests that the affordable apartments at Newton Highlands serve a diverse population, half of the affordable units are reserved for families making less than 80% of AMI; 15% of the units are reserved for families making less than 65% of AMI; and 35% of the units are reserved for families making less than 50% of AMI. Rents for the affordable one-bedroom units range from \$670-\$1,100, compared to market-rate units starting at \$2,100. Two-bedroom units rent for \$800-\$1,300 for affordable families, while market-rate units start at \$2,400. Similarly, three-bedroom units for affordable renters range from \$920-\$1,500, and they start at \$3,100 for market-rate renters. The affordable apartments are deed restricted to remain affordable in perpetuity.

The developer received over 2,000 applications for the 74 affordable apartments, and it chose to exercise a local preference for those who reside or work in Newton. Of the 2,000 applications for the affordable units, over 350 came from applicants with connections to the city of Newton. The development has been so successful that it maintains a wait list for its apartments, and it was one of the developer's strongest lease-ups in many years.

All of the apartments at Newton Highlands are comfortably appointed and include amenities such as nine-foot ceilings, granite counter tops, private balconies, and washers and dryers. The clubhouse and leasing office includes a billiard room, community kitchen, lounge, fitness room, and concierge-staffed lobby. The eight-acre community also includes five

special-feature courtyards: an outdoor pool, an esplanade, a putting green, a children's playground, and a reading garden.

The total cost of the project was approximately \$58 million, privately financed by the developer.¹⁸ As part of the development, AvalonBay agreed to improve some of the infrastructure supporting the development, including sidewalks and street lights. The strong market for the market-rate rental units allowed the developer to support the construction of the affordable units. This kind of development is nothing new to AvalonBay, which has successfully completed 10 mixed-income communities with a total of 1,978 units and has 525 affordable units in service or currently under construction in the Boston metro area alone.

Conclusion

Under pre-existing zoning regulations, only 25 single-family homes would have been constructed in the Chase Estates development. Instead, because of the town's proactive negotiations for affordable housing, the community received 100 single-family homes, with 25% of them affordable to families at 80% of AMI. Moreover, the market-rate homes nearby doubled in value in four years.

The ability of AvalonBay to seek a comprehensive permit allowed it to complete its much anticipated rental development more efficiently, while generating valuable community input in the process. With flexibility in the local approval process, the developer was able to capitalize on a strong rental demand to create 74 affordable units at no public cost. Even without a comprehensive permit process, municipalities can engage in similar planning by providing flexibility in their zoning regulations, through granting zoning changes or variations to allow developers to include affordable homes while still earning a reasonable return, or through negotiating with developers for the creation of affordable units during the Planned Unit Development process.¹⁹

¹⁷ Citizens' Housing and Planning Association, *Fact Sheet*, http://www.chapa.org/40b_fact.html.

¹⁸ In addition to meeting affordability requirements, a potential Chapter 40B developer must have legal control over the proposed development site and must be eligible, as a non-profit or limited dividend organization, to receive funding from a state or federal housing program.

¹⁹ Alternatively, the development can provide 20% of the units to households earning below 50% of AMI. Massachusetts Department of Housing and Community Development, *Fact Sheet on Chapter 40B*.



<http://www.mass.gov/dhcd>.

* "Area median income" is determined based on income levels in the primary metropolitan statistical area (PMSA). The Boston PMSA includes parts of Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester counties. HUDUSER. <http://www.huduser.org>.

* Developers establish "limited dividend" organizations that restrict aggregate profit to less than 20% of the total development costs. Massachusetts Department of Housing and Community Development, *Fact Sheet on Chapter 40B*, <http://www.mass.gov/dhcd>.

* The local Zoning Board of Appeals is empowered by Massachusetts law to approve zoning changes, variances, and concessions that would otherwise have to be approved by a 2/3rd vote at the annual "town meeting," during which all residents of a town meet and vote on public issues. Given the onus of the town meeting process, in many situations town officials and the developer find that it is in their interest to use the Zoning Board of Appeals process.

* Citizens' Housing and Planning Association, *The Record on 40B: The Effectiveness of the Massachusetts Affordable Housing Zoning Law*, 2005, at 40-41.

* Massachusetts Department of Housing and Community Development, *Fact Sheet on Chapter 40B*, <http://www.mass.gov/dhcd>.

Id.

* 2000 U.S. Census Data, adjusted for inflation to 2004 dollars.

* Citizens' Housing and Planning Association, *The Homes of 40B: Case Studies of Affordable Housing Using the Comprehensive Permit*, 2001, at 10-11.

* Interview with Michael Jäillet, Town of Westwood, July 2004. A significant portion of the information about Chase Estates was provided by Michael Jäillet.

* The Westwood Housing Authority may rent the unit to a qualified family.

* The resale formula has changed for more recent developments. Rather than reflecting the rate of change in the appraised housing value, the selling price may only increase at the rate of inflation. This new resale formula keeps the price of the resold unit affordable to families earning 80% of AMI.

* Interview with Liz Smith, AvalonBay, August 2004. Liz Smith provided a significant amount of information about the Newton Highlands development.

* The letter of financing denotes approval under 40B standards and does not imply the receipt of public funds for the development.

* AvalonBay originally proposed an on-site day care center as part of the Newton Highlands development. After the community expressed its opinion that the center was not the best fit for the development, the day care center was removed from the plans.

* Following construction, AvalonBay took out a term-limited permanent loan with MassHousing in order to comply with the requirements of Chapter 40B.

* The Planned Unit Development process allows a community to authorize plans for the mixed-use development of a large parcel in order to flexibly meet the community's needs.

creation of an affordable housing trust fund that can be used for a variety of purposes, including waivers of permit and tap-in fees.

Primary Smart Growth Principle Addressed: Range of housing choices.
Secondary Smart Growth Principle Addressed: Not applicable

101. Purpose

The purposes of this ordinance are to:

(a) Require the construction of affordable housing [or payment of fees-in-lieu] as a portion of new development within the community;

[Or]

(a) Create incentives for the provision of affordable housing as a portion of certain new development within the community;

(b) Implement the affordable housing goals, policies, and objectives contained in the [insert name of local government's] comprehensive plan;

(c) Ensure the opportunity of affordable housing for employees of businesses that are located in or will be located in the community; [and]

(d) Maintain a balanced community that provides housing for people of all income levels [; and]

[(e) Implement planning for affordable housing as required by [cite to applicable state statutes]].

102. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

“Affordable Housing” means housing with a sales price or rental amount within the means of a household that may occupy moderate- and low-income housing. In the case of dwelling units for sale, affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question. In the case of dwelling units for rent, affordable means housing for which the rent and utilities constitute no more than [30] percent of such gross annual household income for a household of the size that may occupy the unit in question.

“Affordable Housing Development Agreement” means a written agreement between an applicant for a development and the [name of local government] containing specific requirements to ensure the continuing affordability of housing included in the development.

“Affordable Housing Dwelling Unit” means any affordable housing subject to covenants or restrictions requiring such dwelling units to be sold or rented at prices preserving them as affordable housing for a period of at least [30] years.

“Affordable Housing Development” means any housing subsidized by the federal or state government, or any housing development in which at least [20] percent of the housing units are affordable dwelling units.

“Affordable Housing Development Plan” means that plan prepared by an applicant for an Affordable Housing Development under this ordinance that outlines and specifies the development’s compliance with the applicable requirements of this ordinance.

“Affordable Housing Trust Fund” means the fund created by the [name of local government] pursuant to Section 109 of this ordinance.

“Affordable Housing Unit” means either a housing unit subsidized by the federal or state government or an affordable dwelling unit.

Comment: *Note that an “Affordable Housing Unit” can either be federally or state subsidized or subject to covenants and deed restrictions that ensure its continued affordability.*

“Conversion” means a change in a residential rental development or a mixed-use development that includes rental dwelling units to a development that contains only owner-occupied individual dwelling units or a change in a development that contains owner-occupied individual units to a residential rental development or mixed-use development.

“Density Bonus” means an increase in the number of market-rate units on the site in order to provide an incentive for the construction of affordable housing pursuant to this ordinance.

“Development” means the entire proposal to construct or place one or more dwelling units on a particular lot or contiguous lots including, without limitation, a planned unit development, site plan, or subdivision.

“**Lot**” means either: (a) the basic development unit for determination of area, width, depth, and other dimensional variations; or (b) a parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or recorded map, and is recognized as a separate legal entity for purposes of transfer of title.

“**Low-Income Housing**” means housing that is affordable, according to the U.S. Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that does not exceed 50 percent of the median gross household income for households of the same size within the [insert name of housing region or county] in which the housing is located.

“**Median Gross Household Income**” means the median income level for the [insert name of housing region or county], as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, adjusted for household size.

“**Moderate-Income Housing**” means housing that is affordable, according to the federal Department of Housing and Urban Development, for either home ownership or rental, and that is occupied, reserved, or marketed for occupancy by households with a gross household income that is greater than 50 percent but does not exceed 80 percent of the median gross household income for households of the same size within the [insert name of housing region or county] in which the housing is located.

“**Renovation**” means physical improvement that adds to the value of real property, but that excludes painting, ordinary repairs, and normal maintenance.

103. Scope of Application; Density Bonus

[Alternative 1: Mandatory Affordable Units]

(1) All of the following developments that result in or contain five or more residential dwelling units shall include sufficient numbers of affordable housing units in order to constitute an Affordable Housing Development as determined by the calculation in paragraph (2) below:

- (a) New residential construction, regardless of the type of dwelling unit

- (b) New mixed-use development with a residential component

- (c) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure

(d) Conversion of an existing single-family residential structure to a multiple-family residential structure

(e) Development that will change the use of an existing building from nonresidential to residential

(f) Development that includes the conversion of rental residential property to condominium property

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

(2) To calculate the minimum number of affordable housing units required in any development listed in paragraph (1) above, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next higher whole number, and a fraction of less than 0.5 shall be rounded down to the next lower whole number.

(3) Any development providing affordable housing pursuant to paragraph (1) above shall receive a density bonus of one market-rate unit for each affordable housing unit provided. All market-rate units shall be provided on site, except that, in a development undertaken in phases, stages, or otherwise developed in distinct sections, such units may be located in other phases, stages, or sections, subject to the terms of the Affordable Housing Development Plan.

(4) Any development containing four dwelling units or fewer shall comply with the requirement to include at least 20 percent of all units in a development as affordable housing by:

(a) Including one additional affordable housing dwelling unit in the development, which shall constitute a density bonus;

(b) Providing one affordable housing dwelling unit off site; or

(c) Providing a cash-in-lieu payment to the [name of local government's] affordable housing trust fund proportional to the number of market-rate dwelling units proposed.

Comment: Under (3)(c), the proportion of the in-lieu fee would be computed as follows. Assume an affordable unit in-lieu fee of \$120,000. In a four-unit development, the fee would be 4/5s of the \$120,000, or \$96,000, in a three-unit development, the fee would be 3/5s, or \$72,000, and so on.

[Alternative 2: Incentives for Affordable Units]

Any Affordable Housing Development or any development that otherwise includes one affordable housing dwelling unit for each four market-rate dwelling units shall receive a density bonus of one market-rate unit for each affordable housing dwelling unit provided on-site.

104. Cash Payment in Lieu of Housing Units

Comment: *This section would be required only under a mandatory affordable housing alternative.*

(1) The applicant may make a cash payment in lieu of constructing some or all of the required housing units only if the development is a single-family detached development that has no more than [10] dwelling units. In the case of an in-lieu payment, the applicant shall not be entitled to a density bonus.

(2) The [legislative body] shall establish the in-lieu per-unit cash payment on written recommendation by the [planning director or city or county manager] and adopt it as part of the [local government's] schedule of fees. The per-unit amount shall be based on an estimate of the actual cost of providing an affordable housing unit using actual construction cost data from current developments within the [local government] and from adjoining jurisdictions. At least once every three years, the [legislative body] shall, with the written recommendation of the [planning director or city or county manager], review the per-unit payment and amend the schedule of fees.

(3) All in-lieu cash payments received pursuant to this ordinance shall be deposited directly into the affordable housing trust fund established by Section 109 below.

(4) For the purposes of determining the total in-lieu payment, the per-unit amount established by the [legislative body] pursuant to paragraph (1) above shall be multiplied by 20 percent of the number of units proposed in the development. For the purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more of the required units, the calculation shall be prorated as appropriate.

105. Application and Affordable Housing Development Plan

(1) For all developments [in which affordable housing is required to be provided *or* in which the applicant proposes to include affordable housing], the applicant shall complete and file an application on a form required by the [local government] with the [name of local government]

department responsible for reviewing applications]. The application shall require, and the applicant shall provide, among other things, general information on the nature and the scope of the development as the [local government] may determine is necessary to properly evaluate the proposed development.

(2) As part of the application required under paragraph (1) above, the applicant shall provide to the [local government] an Affordable Housing Development Plan. The plan shall be subject to approval by the [local government] and shall be incorporated into the Affordable Housing Development Agreement pursuant to Section 106 below. An Affordable Housing Development Plan is not required for developments in which the affordable housing obligation is satisfied by a cash payment in lieu of construction of affordable housing units. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development:

- (a) A general description of the development, including whether the development will contain units for rent or for sale
- (b) The total number of market-rate units and affordable housing units
- (c) The number of bedrooms in each market-rate unit and each affordable unit
- (d) The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit and including heated and unheated areas
- (e) The location in the development of each market-rate and affordable housing unit
- (f) If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase
- (g) The estimated sale price or monthly rent of each market-rate unit and each affordable housing unit
- (h) Documentation and plans regarding the exterior appearances, materials, and finishes of the Affordable Housing Development and each of its individual units
- (i) A marketing plan the applicant proposes to implement to promote the sale or rental of the affordable units within the development to eligible households

106. Criteria for Location, Integration, Character of Affordable Housing Units

An Affordable Housing Development shall comply with the following criteria:

- (a) Affordable housing units in an Affordable Housing Development shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

- (b) If the Affordable Housing Development Plan contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an Affordable Housing Development.

- (c) The exterior appearance of affordable housing units in an Affordable Housing Development shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.

Comment: Some of the affordable housing ordinances reviewed by APA contained minimum-square-footage requirements for dwelling units or suggested that there be a mix of units with different numbers of bedrooms, especially to ensure that for-rent projects contain sufficient numbers of bedrooms for larger families. While minimum-square-footage requirements, especially for bedroom sizes, are customarily found in housing codes, rather than zoning codes, it is possible to amend this model to include such minimums.

107. Affordable Housing Development Agreement

Comment: A development agreement between the local government and the developer of the affordable housing project is necessary to reduce to writing the commitments of both parties, thus eliminating ambiguity over what is required regarding maintaining the affordability of the units and establishing and monitoring the eligibility of those who purchase or rent them.

(1) Prior to the issuance of a building permit for any units in an Affordable Housing Development or any development in which an affordable unit is required, the applicant shall have entered into an Affordable Housing Development Agreement with the [local government]. The development agreement shall set forth the commitments and obligations of the [local government] and the applicant, including, as necessary, cash in-lieu payments, and shall incorporate, among other things, the Affordable Housing Plan.

(2) The applicant shall execute any and all documents deemed necessary by the [local government] in a form to be established by the [law director], including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the affordable housing units in accordance with this ordinance.

(3) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall only be transferred with prior written approval by the [local government].

108. Enforcement of Affordable Housing Development Agreement; Affordability Controls

(1) The director of [*name of responsible local government department*] shall promulgate rules as necessary to implement this ordinance. On an annual basis, the director shall publish or make available copies of the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the local government's jurisdiction, and determine an inflation factor to establish a resale price of an affordable unit.

(2) The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(a) Customary closing costs and costs of sale

(b) Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed

(c) Consideration of permanent capital improvements installed by the seller

(d) An inflation factor to be applied to the original sale price of a for-sale unit pursuant to rules established pursuant to paragraph (1) above

(3) The applicant or his or her agent shall manage and operate affordable units and shall submit an annual report to the [local government] identifying which units are affordable units in an Affordable Housing Development, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable units, and other information as required by the [local government], while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether tenants of for-rent units qualify as low- or moderate-income households.

(4) For all sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall maintain the affordability of such affordable housing units for eligible households.

(5) In the case of for-rent affordable housing units, the owner of the Affordable Housing Development shall execute and record such document as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing units shall be leased to and occupied by eligible households.

(b) The affordable housing units shall be leased at rent levels affordable to eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(c) Subleasing of affordable housing units shall not be permitted without the express written consent of the director of [*name of responsible local government department*].

109. Affordable Housing Trust Fund

[This section establishes a housing trust fund into which monies from cash in-lieu payments and other sources of revenues will be deposited. Because of the variation as to how such funds could be established and the differences in state law, no model language is provided.]

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I. INCLUSIONARY HOUSING TOOLS

Overview

A municipality can use its zoning code in a variety of ways to ensure that moderately priced housing is constructed within the community. It may amend its zoning code to officially require that a certain percentage of units be priced affordably in all new developments – called a mandatory inclusionary zoning ordinance. A similar but more flexible approach may be used by adopting an informal policy or preference for developments that include such housing. In many instances, a community will use the presence of an informal policy or a voluntary program to aggressively negotiate with developers for the creation of some affordable homes or apartments within market-rate developments. Or, a municipality may simply offer flexibility in existing zoning provisions such as density limits, set-back requirements, or use designations that would remove barriers to creating affordable housing. Hundreds of communities across the country now use some form of inclusionary zoning at the local level in order to address affordable housing needs.¹

Communities that establish more formal inclusionary housing policies will enjoy more consistent and predictable affordable housing development. Nevertheless, communities may also consider more flexible approaches to address an urgent need for affordable housing.

The case studies in this section illustrate different kinds of municipal approaches, both voluntary and mandatory, that involve the use of zoning powers to ensure the development of affordable housing:

• **Mandatory Inclusionary Zoning**

The Moderately Priced Dwelling Unit Program in Montgomery County, Maryland, requires that between 12.5% and 15% of the housing units in new developments with more than 35 units be priced affordably. The Potomac Glen case study

demonstrates that, with municipal pressure, developers can create moderately priced, attractive homes at no public cost. Even communities that do not adopt mandatory inclusionary zoning ordinances will see this as an effective example of the ability to use private market activity and the zoning code to create affordable housing.

• **Voluntary Inclusionary Zoning**

The Magnolia Gardens development clearly shows how, with encouragement from local officials, developers can create attractive, moderately priced housing without the use of public dollars. In this example of the Chicago Partnership for Affordable Neighborhoods program, the attractive market of a gentrifying neighborhood, coupled with the political will of the local alderman, ensured that the developer would sell 10% of the homes at an affordable price while still earning a reasonable return. This informal program depends on the commitment and will of local officials to negotiate the inclusion of affordably priced units in new developments, and provides purchase price assistance, zoning relief, or other assistance in many cases.

• **Flexible Zoning Standards**

These Massachusetts case studies demonstrate how a committed community can negotiate with a developer to construct affordable housing, again without the use of public dollars. In the Chase Estates development, the community of Westwood even negotiated for additional fees from the developer in order to create the city's first Housing Trust Fund. Even without benefit of the 40B law that exists in Massachusetts, local communities can negotiate the terms of a new development with potential developers as illustrated in these examples.

¹ Business and Professional People for the Public Interest, *Inclusionary Housing: A Policy that Works for the City that Works*, 2005, at 9.

MANDATORY INCLUSIONARY ZONING

Moderately Priced Dwelling Unit Program



Potomac Glen

The Development: Potomac Glen • Montgomery County, Maryland

Potomac Glen is a 240-acre development in Montgomery County, Maryland, that priced 80 of its 660 homeownership units as affordable, in accordance with the county's mandatory inclusionary zoning ordinance. When the development was completed in 1996, market-rate homes at Potomac Glen sold for up to \$330,000, and the affordable units sold for about \$90,000. The project was financed using entirely private equity; no public dollars were used.

The Tool: Mandatory Inclusionary Zoning

Inclusionary zoning ordinances require new residential developments over a certain size to price a particular percentage of their units affordably. In exchange, municipalities may give developers certain benefits such as a density bonus, where the developer is permitted to construct the affordable units and additional market-rate units beyond that allowed under the current zoning ordinance. Other incentives may include expedited permit processes, relaxed design standards, reduced parking requirements, and waivers of certain municipal fees, all designed to decrease the developer's cost of construction. Developers may also seek other funding sources, including tax-exempt bonds, federal funds such as HOME or CDBG, or state and local subsidies, depending on the development's composition. Because almost all new developments are subject to the terms of an inclusionary zoning ordinance, the responsibility is shared by all and affordable housing units are integrated throughout a community, rather than concentrated in a few areas.

Some communities have adopted voluntary or ad hoc inclusionary zoning policies, but mandatory programs

offer the most predictability and have resulted in the largest production of affordable units.¹ Mandatory inclusionary zoning ordinances have been passed by localities across the country, including Madison, Wisconsin; San Diego, California; Newton, Massachusetts; Denver, Colorado; Santa Fe, New Mexico; Davidson, North Carolina; and many others.

Montgomery County's Moderately Priced Dwelling Unit (MPDU) Program

MPDU

Requires 12.5%-15% of new units to be priced affordably

Affordable units targeted to 65% of AMI

Over 11,500 affordable units created since 1974

Density bonus provided if more than 12.5% of units are affordable

Montgomery County passed its inclusionary zoning statute, the Moderately Priced Dwelling Unit (MPDU) program, in 1974. Since then, the program has become a model for the nation, producing over 11,500 affordable housing units, including detached and semi-detached homes, townhouses, condominiums, and high-rise apartments.² For-sale homeownership units make up 72% of these affordable units, and the remainder is rental. Today, about 250 units are produced

each year through the program.

Under the MPDU program, every new subdivision or development with 35 or more units must price between 12.5 and 15% of its units affordably. The affordable units are targeted to households making 65% or less of area mean income (AMI), with priority given to people who live or work within the county. The Housing Opportunities Commission, Montgomery County's public housing authority, also has a right to purchase up to one-third of the affordable units in any development for use by lower-income households (typically, those earning less than 50% of AMI). This provision allows the county to serve the full range of working households in need of moderately priced housing in the county, not just those at the 65% of AMI level.

Montgomery County has set maximum rents for its MPDU units as affordable to households earning up to



Potomac Glen

- ◆ Completed in 1996
- ◆ 660 total units; 80 priced affordably
- ◆ Affordable units targeted to 65% of AMI
- ◆ No public subsidy provided

65% of AMI. For homeownership units, this cap includes the cost of closing and brokerage fees, and for rental units, it includes parking costs and utilities. The Moderately Priced Housing Office, a division of the county Department of Housing and Community Affairs, oversees the program and determines the eligibility of participants, administering a lottery system for selecting participants and enforcing ordinance requirements.

Developers are required to provide a minimum of 12.5% of the total number of units in the subdivision as moderately priced dwelling units. As a result, many developers seek a density bonus for their development. If, through the development review process, they receive a density bonus of more than 15%, the MPDU requirement increases incrementally (up to a maximum 22% density bonus).⁵

The MPDU program encourages developers to integrate affordable units into the neighborhood. In order to make a development's affordable units more compatible with its market-rate units, the MPDU program gives developers a 10% compatibility allowance, which means developers can include amenities such as brick fronts and bay windows and charge up to 10% more on affordable units than they otherwise could in order to fund the additions. These improvements are intended to make the affordable units visually compatible with market-rate units.

Occasionally, a developer may successfully argue that a development is an "exceptional case," that the package of residential services proposed for the development would make the affordable units unaffordable and that developing affordable units off-site would produce greater public value and significantly more affordable units.⁴ In such exceptional cases, the developer must ensure that significantly more affordable units than the current development can support will be produced elsewhere, through one of three alternatives: building affordable units in the same or in an adjoining planning area; conveying land in the same or an adjoining planning area that is suitable to contain the units; or contributing enough funding to the Housing Initiative Fund to produce the units.⁷ Such

an exception has been granted infrequently since it was created in 1989.

MPDU units must remain affordable for 10 years if they are homeownership units, and rental units must remain affordable for 20 years. During the restricted affordability periods, resale

price is capped at the original sales price plus inflation and the fair market value of any approved capital improvements made to the unit. The current length of the affordability period is the result of an extension in 1981. Even with this 10/20 year control period, however, Montgomery County has lost affordable units at an alarming rate: of the over 11,500 units created, 3,800 had been lost by 1999. This illustrates why many communities have adopted long-term deed restrictions that extend from 30 years to perpetuity in some cases.

Including Affordable Units in Potomac Glen

Ryan Homes, Inc., developed Potomac Glen in accordance with Montgomery County's MPDU program in the early 1990s.⁶ Of the 660 total units, 80 were priced affordably. Because it created only the mandated 12.5% affordable units, the development received no density bonus. The developer did receive, however, a 10% compatibility allowance, which allowed it to increase the price of the affordable units by 10% to include extra amenities that made the affordable units appear similar to the market-rate units.

Construction of the units was completed in 1996. The development's townhomes range from two to four bedrooms and have 2-1/2 baths, basements, and garages. Market-rate units in the development sold for about \$330,000 for the single-family homes and for over \$280,000 for the townhomes. The affordable units sold for approximately \$90,000.

Today, Ryan Homes is building a second MPDU development in Montgomery County. Clarksburg Ridge will include 20 MPDU units and no more than 160 market-rate homes. Single-family homes at Clarksburg Ridge are expected to begin at \$500,000, while the affordable townhomes will sell for between \$140,000-\$150,000. The development will be entirely privately financed, although Ryan Homes will not be required



to pay the development impact fee or system development charges for the affordable units that would otherwise apply. The development is expected to be completed in 2005.

Conclusion

By requiring every development over a certain size to include affordable units, inclusionary zoning can create affordable housing without the use of public tax dollars. Inclusionary zoning shares the burden of producing affordable housing between developers and the community and integrates affordable housing throughout an entire area. The municipality can determine the threshold level of affordability it desires to target, as well as any incentives or waivers it will provide to offset the requirement of providing affordable housing. Inclusionary zoning stands as a proven tool for affluent communities working to ensure that a range of housing options are available for working families and seniors.

Nicholas J. Brunick, *The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs*, ZONING PRACTICE, Sept. 2004, at 2.

Montgomery County, Maryland Department of Housing and Community Affairs, *MPDC – Program Summary and Background*, <http://www.montgomerycountymd.gov>.

Interview with Patrick Maier, Innovative Housing Institute, October 2004. For every one percent bonus in density, the MPDC requirement increases a tenth of a percentage point. Patrick Maier is the source for a significant amount of the information about the MPDC program.

One example where the exception might apply is a luxury high-rise condominium where the condominium fees are extremely high and the services provided cannot be eliminated or modified for a MPDC resident.

MONTGOMERY COUNTY, MD., CODE §25A-5(e).

Interview with Eric Larsen, Montgomery County Department of Housing and Community Affairs, August 2004. Eric Larsen is the source for a significant portion of the Potomac Glen material.

VOLUNTARY INCLUSIONARY ZONING

Chicago Partnership for Affordable Neighborhoods



Magnolia Gardens

The Development: Magnolia Gardens • Chicago, Illinois

Magnolia Gardens is a 40-unit condominium development constructed in Chicago's Uptown neighborhood. Four of the units were sold for about \$140,000, affordable to families at 80% of area median income (AMI), while the market-rate units sold for about \$300,000. Ten percent of the units in the development were reserved as affordable under Chicago's voluntary inclusionary zoning program, Chicago Partnership for Affordable Neighborhoods (CPAN).

The Tool: Voluntary Inclusionary Zoning

Inclusionary zoning programs can take the form of mandatory requirements found in the local zoning code or voluntary programs that provide incentives for developers to include affordable housing in new developments. Municipalities may also negotiate with developers on individual projects through an ad hoc policy to encourage moderately priced development. Although the trend nationwide has been toward the uniformity that mandatory inclusionary housing provides, voluntary policies can offer a constructive tool for creating affordable housing.

Chicago Partnership for Affordable Neighborhoods Program

The CPAN program was created in 2002 as a partnership tool between developers and the city of Chicago to create affordable homeownership units in market-rate developments, especially in appreciating neighborhoods. The city uses two main tools to accomplish affordability: a write-down in development costs to the developer and the provision of purchase price assistance to homebuyers. Although each project is

negotiated individually, the goal of the program is to make at least 10% of the units in each development affordable. The commitment of the local alderman¹ to participate in the CPAN program is a major factor in determining whether it is used in new developments. The alderman may actively engage developers in negotiations around new developments and may use zoning and other city incentives to create opportunities for affordable housing.

Since 2002, 35 developments have participated in the CPAN program, and over 200 affordable units have been created or are in the process of being built. About half of the units created through CPAN have been purchased by families making less than 80% of AMI,² and half have been sold to those earning between 80% and 100% of AMI.³

The affordability of the units is preserved, even if they are sold, by the imposition of a junior mortgage. As part of the CPAN program, a thirty-year second mortgage is assigned to the developer in the amount of the market price less the affordable price. The developer, in turn, assigns the second mortgage to the Chicago Low Income Housing Trust Fund, which holds the mortgage for the 30-year affordability period. If the CPAN owner sells the unit within the affordability period to a non-affordable buyer, he or she must repay the full amount of the second

mortgage, plus 3% interest. In this way, the junior mortgage provides a disincentive for a CPAN owner to sell the unit at full market price, since the windfall from the market-rate price of the sale (measured by the amount of the junior mortgage) would be surrendered to the Trust Fund.

The CPAN program has been designed to permit flexible development incentives so that municipal officials can make arrangements with developers that best

CPAN

Encourages 10% of new development to be priced affordably

Local aldermen negotiate with developers and provide incentives such as expedited permitting, reduced fees or grants, infrastructure support, or density bonuses

Units remain affordable for 30 years through a junior mortgage assigned to the city
Since 2002, 35 participating developments and over 200 affordable units created



Magnolia Gardens

- ◆ 36 market-rate units sold for about \$300,000 each
- ◆ 4 affordable units sold for about \$140,000 each
- ◆ Affordable units served families at 80% of AMI
- ◆ Total cost of development, about \$10 million, financed entirely through private equity and construction loans

serve each project. As an incentive to participate in the program, the city may assist the developer in a range of ways. For example, the city provides assistance in expediting the permit application process. Financial assistance may be available in the form of reduced application fees or construction grants. In some developments, the city has provided infrastructure support to the new development in the form of new sidewalks or landscaping. Other projects have included density bonuses that allow more units to be constructed than would otherwise be permitted.

As part of the CPAN program, potential buyers are approved by the city's Department of Housing to ensure they are income-qualified (with incomes at or below 100% of AMI), that they are either first-time homebuyers or have not owned a home in the past three years, and that they qualify for a mortgage. In addition, all interested buyers must participate in a homeownership training program, usually sponsored by a local community organization. The Department of Housing maintains an ongoing list of interested homebuyers with over 1,000 families.

To make the homes affordable to families with lower incomes, the city offers purchase price assistance to buyers who demonstrate a gap between the amount of the first mortgage they can secure and the affordable sales price. Assistance is in the form of a deferred loan at 0% interest, and is available to families making less than 80% of AMI (\$57,500 in 2004 for a family of four). Federal HOME funds are used by the city to subsidize the mortgage. In this way, CPAN provides incentives for developers to create housing affordable to families at 80%-100% of AMI, and then provides HOME funds to write down the cost further for families earning less than 80% of AMI.

Magnolia Gardens: CPAN Encourages Affordable Unit Creation

The affordable units constructed at Magnolia Gardens through CPAN were the result of negotiations between

the developer and the local alderman. In 2002, Northbridge Partners acquired a vacant parcel of land in Chicago's Uptown neighborhood. Although the CPAN program is not mandatory, some city council members, including Uptown's Alderman Shiller, made participation in the program a requirement for residential construction in their jurisdiction.

When the alderman explained to Northbridge that development in the area must include at least 10% affordable units, it agreed to include affordable housing in the development.

After discussing the development with the alderman, Northbridge approached community groups interested in the redevelopment of the parcel. Not only did the community support inclusion of affordable units, many area residents expressly conditioned their approval of the new development on its moderately priced housing component.

Magnolia Gardens was completed in 2004. The affordable units sold for \$140,000, making them affordable to a family earning 80% of AMI. The market-rate units sold for between \$280,000 and \$300,000. The total cost of the project was about \$10 million, and it was financed entirely through private equity, including construction loans.

Demand for the affordable units was high. Hundreds of Chicago residents put their names in a lottery drawing for the units. The four families selected include a public school teacher, a federal government employee, a staffer at a local philanthropic organization, and an employee in a university financial aid office. Two of the homeowners also received purchase price assistance.

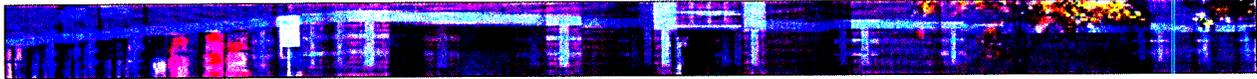
In addition to earning the goodwill of city officials and contributing to the community, the developer received a \$10,000 reduction in its permit fee per affordable unit, for a total savings of \$40,000.

"I strongly support the CPAN program," said Kent Knebelkamp, President of Northbridge Partners. "When developers are aware of the program requirements, they can still make an adequate profit on their development, and it provides housing for people who

Who Benefits?

The four CPAN homes were purchased by a:

- ◆ public school teacher
- ◆ U.S. government employee
- ◆ staffer of a philanthropy
- ◆ college financial aid officer



want to live in the community but otherwise could not afford to, like teachers and firefighters." In fact, Northbridge is currently planning a second CPAN development in the city's trendy Ravenswood neighborhood. The development, to be called Ravenswood Square, will include nearly 20% affordable units. Northbridge plans to request a modification of the zoning of the parcel to allow for a modest increase in density on the site, a process it anticipates will be made easier due to its participation in the CPAN program.

Conclusion

Chicago's CPAN program encourages local city council members to negotiate with developers in their district to obtain inclusion of affordably priced units in new developments. The program's flexibility allows each deal to be structured in a way that best fits each project. It illustrates how public officials can negotiate with private developers to encourage and secure the construction of moderately priced homes in affluent and appreciating neighborhoods.

¹ Members of Chicago's city council are referred to as aldermen.

² "Area median income" is determined based on income levels in the primary metropolitan statistical area (PMSA). The Chicago PMSA includes Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, and Will counties. HUD USER, <http://www.huduser.org>.

³ Interview with Brian O'Donnell, City of Chicago, Department of Housing, August 2004. Brian O'Donnell and Bonita Scarlett-Logan, also of the Department of Housing, are the sources for a significant portion of the CPAN material.

⁴ Interview with Kent Knebelkamp, Northbridge Partners, September 2004. Kent Knebelkamp is the source for a significant portion of the Magnolia Gardens information.

legal services programs. States commonly earmark some tax collections for specific purposes, e.g. dedicating motor fuel taxes to highway and other transportation programs. Property tax revenues at the local level have long been used to support local school systems. Thus, it wasn't much of a stretch for this concept to be applied to housing.

Two of the earliest sources for housing trust funds were real estate transfer taxes (paid at the time real estate is transferred) and linkage fees (paid by commercial or industrial developers to offset the impact of additional employees on the local housing supply). While they built upon concepts that were becoming commonplace within zoning approval processes, these first trust funds recognized that development had a direct impact on the housing supply.

One key factor has undoubtedly driven the rapid evolution of the housing trust fund idea across the country. This is the striking reduction in federal support for assisted housing. It couldn't be more dramatic. Federal funding for low-income housing dropped from \$71.2 billion in 1978 to \$16.3 billion in 1997 (according to *Housing at a Snail's Pace: The Federal Housing Budget: 1978-1997*, NLIHC, August 1996). Under the circumstances, it shouldn't be any surprise at all that city, county and state governments have been searching for ways that they could make up for the dramatically increasing deficit in housing funding. While housing trust funds are a step in the right direction, they were never intended to make up for the gap in federal funding.

Today, the Center works with various communities around the nation in the effort to create housing trust funds. At any given time around the nation, there are approximately 30 campaigns underway to create housing trust funds.

The Housing Trust Fund Model

The model includes 4 key components:

- 1. Purpose of the fund.**

Housing trust funds are established to provide the financial resources needed to address the housing needs of low- and very low-income households. Some extend this mission to moderate-income; others focus on the needs of the homeless or other special groups. They clearly intend to serve unmet existing housing needs of their poorest residents.

- 2. Administration**

Most housing trust funds are administered by the agency or department that typically handles federal housing programs, such as HOME and CDBG. Staff will be assigned to run day-to-day operations of the housing trust fund. It is common for a Board to be established to oversee responsibilities for the fund. The Board is usually appointed and represents nonprofit developers, service providers, housing advocates, private industries, unions, low-income citizens, and others. It is not uncommon for the City Council or County Commissioners to have final say over the direction of the fund and the awards made, but the Boards bring both representation from the community as well as support from all segments involved in housing issues.

3. **Programs**

Housing trust funds are designed locally so they take advantage of unique opportunities and address specific needs that exist within a community. Housing trust funds support virtually any housing activity that serves the targeted beneficiaries. They would typically fund new construction and rehabilitation, as well as community land trusts, mobile home parks, and first time homeowners. A few housing trust funds were created to benefit the homeless population in particular, and have designed their programs accordingly. Most housing trust funds contain various components to help achieve specific objectives. For example, they: may include programs to increase the capacity of nonprofit organizations so that they can better engage in housing development activities; often require that the units supported remain affordable to the intended beneficiaries for the longest possible period; and typically encourage leveraging of other public and private resources. Funds are usually made available as loans or grants through a competitive request for proposal process. Projects are typically ranked on a number of pre-established criteria.

4. **Revenues**

Nearly forty different sources of revenue have been dedicated to existing housing trust funds. Most housing trust funds in existence have revenue from a tax or fee dedicated to the Fund.

Total annual revenue collected by trust funds range from a high of \$300+ million each year to less than \$100,000 annually. Overall, housing trust funds commit some \$750 million to housing

projects each year through dedicated revenue streams, along with additional funds through appropriations and other special funds.

The revenues most commonly committed to housing trust funds include: exactions required of developers, real estate transfer taxes, or document recording fees. New sources are constantly being secured including: unclaimed utility deposits, gaming revenues, interest from rainy day funds, and others.

List of Housing Trust Funds

There are more than 350 housing trust funds in the United States – from cities, counties, states, and even regional areas. Housing trust funds have grown substantially in the last 30 years. This list is up-to-date as of 2002.

City Housing Trust Funds

County Housing Trust Funds

Multi-jurisdictional Housing Trust Funds

State Housing Trust Funds

City Housing Trust Funds

Berkeley, California: Housing Trust Fund

Cupertino, California: Affordable Housing Fund

Los Angeles, California: Housing Trust Fund

Menlo Park, California: Below Market Rate Housing Reserve

Morgan Hill, California: Senior Housing Trust Fund

Palo Alto, California: The Housing Reserve

San Diego, California: Housing Trust Fund

San Francisco, California: Office of Affordable Housing, Production Program; Hotel Tax Fund; and Bond Housing Program

Santa Monica, California: Citywide Housing Trust Fund

West Hollywood, California: Affordable Housing Trust Fund

Aspen, Colorado: Housing Day Care Fund

Boulder, Colorado: Community Housing Assistance Program and Affordable Housing Fund

Denver, Colorado: Skyline Housing Fund

Longmont, Colorado: Affordable Housing Fund

Telluride, Colorado: Housing Trust Fund

Tallahassee, Florida: Housing Trust Fund

Chicago, Illinois: Low Income Housing Trust Fund

Bloomington, Indiana: Housing Trust Fund

Fort Wayne, Indiana: Central City Housing Trust Fund

Indianapolis, Indiana: Housing Trust Fund

Lawrence, Kansas: Housing Trust Fund

Massachusetts: 50+ communities through the Community Preservation Act

Boston, Massachusetts: Neighborhood Housing Trust

Cambridge, Massachusetts: Housing Trust Fund

Ann Arbor, Michigan: Housing Trust Fund

St. Paul, Minnesota: STAR Program

St. Louis, Missouri: Housing Trust Fund

New Jersey: 142 COAH approved developer fee programs

Santa Fe, New Mexico: Community Housing Trust

Greensboro, North Carolina: VM Nussbaum Housing

Partnership Fund

Toledo, Ohio: Housing Fund

Portland, Oregon: Housing Investment Fund

Charleston, South Carolina: Housing Trust Fund

Knoxville, Tennessee: Housing Trust Fund

Nashville, Tennessee: Nashville Housing Fund, Inc.

Austin, Texas: Housing Trust Fund

San Antonio, Texas: Housing Trust

Salt Lake City, Utah: Housing Trust Fund

Burlington, Vermont: Housing Trust Fund

Alexandria, Virginia: Housing Trust Fund

Manassas, Virginia: Manassas Housing Trust Fund, Inc.

Bainbridge Island, Washington: Housing Trust Fund

Seattle, Washington: Housing Assistance Funds

Washington, D.C.: Housing Production Trust Fund

County Housing Trust Funds

California = 4 county housing trust funds

- **Alameda County:** Housing Trust Fund
 - **Napa County:** Housing Trust Fund
 - **Sacramento:** see multi-jurisdiction htfunds
 - **Santa Clara County:** Housing Bond Trust Fund
 - **Santa Clara County:** Housing Trust
-

Florida = 2 county housing trust funds

- **Dade County:** Documentary Stamp Program
 - **Dade County:** Homeless Trust Fund
-

Iowa = 1 county housing trust fund

- **Polk County:** Housing Trust Fund
-

Maryland = 2 county housing trust funds

- **Howard County:** Community Renewal Program Fund
 - **Montgomery County:** Housing Initiative Fund
-

Minnesota = 1 county housing trust fund

- **Ramsey County:** Housing Endowment Fund
-

Missouri = 3 county housing trust funds

- **Jackson County:** Housing Resources Cmsn.
 - **St. Charles County:** Housing Trust Fund
 - **St. Louis County:** Housing Resources Cmsn.
-

Ohio = 1 county housing trust fund

- **Columbus/Franklin County:** see multi-jurisdiction htfunds
 - **Montgomery County:** Housing Trust Fund
-

Pennsylvania = 40 county housing trust funds

Virginia = 2 county housing trust funds

- **Arlington County:** Affordable Housing Investment Fund
 - **Fairfax County:** Housing Trust Fund
-

Washington = 1 county housing trust fund

- **ARCH:** see [multi-jurisdiction htfunds](#)
 - **King County:** Housing Opportunity Fund
-

Multi-jurisdictional Housing Trust Funds

ARCH, Eastside Housing Trust Funds: Includes King County and the cities of Bellevue, Bothell, Issaquah, Kirkland, Mercer Island, Redmond, Woodinville, NewCastle, Beax Arts Village, Clyde Hill, Hunts Point, Medina, and Yarrow Point.

Columbus/Franklin County, Ohio Housing Trust Fund: Includes the City of Columbus and Franklin County.

Sacramento City and County, California Housing Trust Funds: Includes the City of Sacramento and Sacramento County.

State Housing Trust Funds

Arizona: Housing Trust Fund

California: Housing Trust Fund

Connecticut: Interest on Real Estate Brokers Trust Account

Delaware: Housing Development Fund

Florida: William E. Sadowski Act

Georgia: Housing Trust Fund for the Homeless

Hawaii: Rental Housing Trust Fund

Idaho: Housing Trust Fund

Illinois: Affordable Housing Trust Fund

Indiana: Low Income Housing Trust Fund

Kansas: Housing Trust Fund

Kentucky: Affordable Housing Trust Fund

Kentucky: Single Family Trust Fund

Maine: Housing Opportunities for Maine (HOME)

Maryland: Affordable Housing Trust

Massachusetts: Affordable Housing Trust Fund

Minnesota: Housing Trust Fund

Missouri: Housing Trust Fund

Montana: Revolving Loan Account for Housing

Nebraska: Affordable Housing Trust Fund

Nebraska: Homeless Assistance Trust Fund

Nevada: Account for Low Income Housing Trust Fund

Nevada: Assistance for Low-Income Owners of Mobile Homes

New Hampshire: Affordable Housing Fund

New Jersey: Balanced Housing Program

North Carolina: Housing Trust Fund

Ohio: Housing Trust Fund

Oklahoma: Housing Trust Fund

Oregon: Housing Development Grant Program

Oregon: Low Income Rental Housing Fund

Rhode Island: Housing and Conservation Trust

South Carolina: Housing Trust Fund

Texas: Housing Trust Fund

Utah: Olene Walker Housing Trust Fund

Vermont: Housing & Conservation Trust

Washington: Housing Trust Fund

West Virginia: Affordable Housing Trust Fund

Wisconsin: Interest Bearing Real Estate Trust Account

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HOUSING TRUST FUNDS

San Diego Housing Trust Fund



Hollywood Palms Apartments

The Development: Hollywood Palms Apartments • San Diego, California

Hollywood Palms Apartments in the City Heights neighborhood of San Diego is a 94-unit rental development reserved for families earning 60% or less of area median income (AMI). Completed in 2003, the development has helped meet the city's need for larger family apartments, providing 44 two-bedroom, 28 three-bedroom, and 22 four-bedroom units. A key source of funding for its development was San Diego's Housing Trust Fund.

The Tool: Housing Trust Funds

Housing trust funds are accounts, like bank accounts, that may receive dedicated sources of public funds and distribute funds toward development, rehabilitation, and preservation of affordable housing units. The funds can vary widely as to the sources of their revenues, the types of projects they support, and how the funds are administered. This flexibility is one of the key benefits of housing trust funds, as it allow communities to custom fit the fund to their particular strengths, needs, and priorities with minimal administrative burden. Because housing trust funds are established locally, they are free from federal intervention and restrictions, allowing them to be a flexible tool designed to fit the needs and conditions of a particular community.

San Diego Housing Trust Fund

In San Diego, for example, the Housing Trust Fund (HTF) is the city's most flexible source of financing for affordable housing development. The San Diego Housing Commission uses HTF dollars as a gap

financing measure and to help projects meet matching requirements for other funding sources such as federal HOME funds and the State of California's Local Housing Trust Fund Program.¹ In this way, the city can leverage local HTF funds to secure additional funds for developments, make projects more competitive for Low Income Housing Tax Credits, and promote developments, such as special purpose housing, that might otherwise not receive funding.

HOUSING TRUST FUNDS

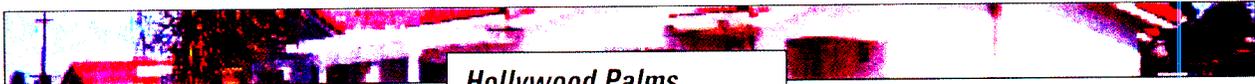
Help leverage other public resources and private equity to finance developments

Allow communities to custom fit funds to their particular priorities with minimal administrative burden

Have supported the creation of over 6,500 units of affordable housing in San Diego
San Diego's fund generates most of its revenue through a commercial linkage fee

San Diego's Housing Trust Fund program has been extremely successful. The Fund was created in 1990 to address the city's need for low- and moderate-income housing by encouraging private sector activities that advance affordable housing opportunities. The HTF has helped to transform affordable housing in San Diego from small projects initiated mainly by non-profit community development corporations to larger, more complex projects undertaken by a range of developers. Over the course of its history, HTF investments have included \$27.6 million for developing 4,100 rental and special purpose housing units; \$9 million for rehabilitating 1,500 owner-occupied units; \$5 million for 1,100 units for first-time homeowners; \$2.2 million for non-profit capacity building; and \$12.5 million for transitional housing.

In general, funds can be used for the new construction and rehabilitation of rental housing, transitional housing, special purpose housing, owned-occupied rehabilitation, and first-time homeowners. By city ordinance, particular percentages of its assistance must benefit very-low-income households (at or below 50% of AMI), low-income households (between 50% and 80% of AMI), and first-time homebuyers. Rental housing developments must remain affordable for 55 years and are restricted through the use of



covenants, conditions, and restrictions (CC&Rs).

The San Diego Housing Commission awards funding through a continually open Notice of Funding Availability. Awards correspond to programmatic strategies outlined in the Annual Plan. To ensure that plans reflect community needs, conditions, and priorities, a community task force helped to design the fund in 1990, and public meetings precede the adoption of each year's Annual Plan.

The Housing Commission awards both loans and grants with HTF funds, with most rental developments receiving loans. These loans are typically structured to be repaid through residual receipt payments or at the back end of financing, allowing the developer to repay other loans before repaying HTF loans. As loans are repaid, HTF becomes a self-sustaining resource.

While the HTF has occasionally received revenue from the sale of city-owned property, CDBG loan repayments, and from a Transient Occupancy Tax,² the San Diego HTF's primary revenue source is the city's commercial linkage fee. This fee is charged to commercial and industrial buildings on a square-foot basis at the time building permits are issued for new construction or renovations that change a structure's use.³ Over \$39 million has been raised for the Housing Trust Fund from the commercial linkage fee since the program's creation.

In 2003, San Diego created an Inclusionary Housing Program. The ordinance requires that developers of two or more residential units must price at least 10% of their units at levels affordable to families with incomes at or below 65% of AMI for rental developments or 100% of AMI for homeownership units.⁴ The ordinance allows a fee to be paid in lieu of providing the affordable housing units.⁵ This in-lieu fund has collected over \$1 million since its creation, with over \$3 million more expected based on permit applications currently being processed. Dollars from this fund are used to support affordable rental housing development and may supplement funds from the city's Housing Trust Fund. In addition, over 2,000 afford-

Hollywood Palms

- ◆ 94-unit rental development
- ◆ All units are reserved for families at or below 60% of AMI
- ◆ Affordable rents range from \$591 to \$693/month for two-, three-, and four- bedroom apartments; market rents are about \$1100 to \$1550/month
- ◆ Use of Housing Trust Funds helped leverage financing necessary to complete the project

able units have been or are expected to be built under the ordinance.

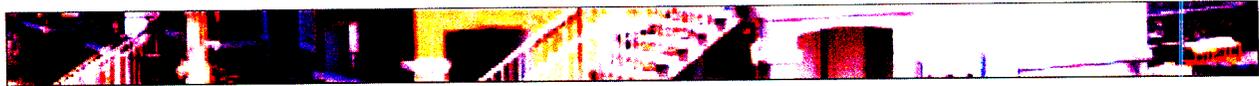
Using the Housing Trust Fund to Develop Hollywood Palms

Construction of the Hollywood Palms Apartments, a development reserved exclusively for households earning less than 60% of AMI, originally began without support from the city's Housing Trust Fund. The project had received Low Income Housing Tax Credits, but these required that the development be placed in service by December 2000. When the developer did not meet the deadline, the tax

credits were forfeited, leaving the project half-complete. When the Housing Commission learned that the project was in jeopardy, it stepped in to help restructure the financing and preserve the affordable units. A community task force was formed to give input into how the design and construction could be completed.

The Fox Hollow Limited Partnership was restructured, creating a new partnership between the non-profit City Heights Community Development Corporation, a newly added for-profit developer, Affirmed Housing Group, and the original tax credit equity investor. This limited partnership took over the development and worked with the Housing Commission to refinance the project. The Housing Commission granted the project a \$900,500 HTF loan. These funds met the federal HOME funds matching requirement, allowing the project to secure an additional \$1,299,500 in HOME funds. The Housing Commission also worked with the developers to help them secure \$6,550,000 in tax-exempt bonds and \$4,540,910 in newly issued Low Income Housing Tax Credits. The Fox Hollow Limited Partners agreed to contribute \$1,321,000 of equity to complete the financing.

In this way, San Diego's Housing Commission used its Housing Trust Fund to leverage the financing needed to construct a thriving development that would serve low-income families exclusively. Opened in 2003, Hollywood Palms provides 94 affordable family units, including 21 units that are affordable to families earning 50% of AMI and 73 units that are affordable to families making 60% of AMI. In a mar-



ket where two-bedroom units are rented for \$1,100 a month, the maximum two-bedroom rent at Hollywood Palms is \$591. Typical market-rate rent is \$1,500 a month for a three-bedroom apartment and \$1,550 for four bedrooms, but maximum rent for Hollywood Palms units is \$651 for three bedrooms and \$693 for four-bedroom apartments.

Conclusion

Because housing trust funds are locally administered, they provide cities with flexibility to meet their own community needs and priorities. Cities can determine for themselves the source of the revenue, the process for awarding funding, and the types of projects that receive assistance. While the direct assistance provided by a housing trust fund may be modest compared to the total development cost, it can be leveraged to make affordable housing units possible by attracting private equity and other public resources.

Interview with Ann Kern, San Diego Housing Commission, August 2004.

Ann Kern provided a significant portion of the information about San Diego's Housing Trust Fund and the Hollywood Palms Apartments.

The Transient Occupancy Tax is a 10.5% surcharge on hotel rooms.

San Diego's current Housing Impact Fee is \$1.06 per square foot for office and comparable uses, 80 cents per square foot for research and development space, 64 cents per square foot for hotels, retail, and manufacturing, and 27 cents per square foot for warehouses.

* San Diego Housing Commission, *Inclusionary Housing Programs*, <http://www.sdhc.net>.

* The fee-in-lieu is currently \$1.75 per square foot and will increase to \$2.50 per square foot on July 3, 2005.

Community Land Trust Program City of Flagstaff



Summary of Program

Background

Home prices in Flagstaff continue to grow and have increased 85% in the last five years, currently exceeding a median price of \$331,000. However, Area Median Income has only increased about 1% per year in the same time period. Due to the rapidly increasing real estate market coupled with fairly stagnate income increases, housing affordable to essential community workers is further and further out of reach.

The Community Land Trust Program (Program) of the City of Flagstaff is a tool to assist in meeting the needs of the community through the provision of housing for its workforce; by taking the cost of purchasing land out of the total cost of obtaining housing, while the City maintains ownership and control of the land. The Program will provide an alternative to renting for households that have been priced out of the traditional market.

Community land trust programs typically acquire and hold land and sell off any residential or commercial buildings that are on the land. Exclusive, possessory use of the land is conveyed to individual homeowners by means of a long-term (99-year) ground lease that is assignable to the heirs of the leaseholder and renewable at the end of the 99-year term. In this way, the cost of land in the purchase price of the home is minimized or eliminated, making the housing more affordable – while assuring long-term stability and security for the homeowner.

Additionally, community land trust programs place equity limitations into the ground lease agreement that restrict the resale price of the housing in order to maintain its long-term affordability – in an attempt to balance the seemingly competing goals of providing a fair return on the initial owner's housing investment, on the one hand, with assuring that the housing unit is kept affordable for the next buyer, on the other. People who buy homes through a community land trust are, in substance, selling their right for unlimited market-driven appreciation in exchange for significant upfront subsidy that allows them to own a home they otherwise would have been unable to afford. Careful crafting of ground lease resale formulas assures that homeowners are able to realize a fair (albeit limited) equity return on their housing investment, while preserving the affordability of the home for subsequent limited-income homebuyer households – without requiring the infusion of additional subsidy at the time the property changes hands. In so doing, the benefit of the investment of public and private dollars needed to create affordability is preserved for generations to come. (Burlington Associates, 2005)

Eligibility Criteria Summary – City of Flagstaff

- Majority Age - must be 18 years of age
- Citizen of USA or registered alien
- Income Eligibility -
 - Maximum Income - Household must have an annual income which does not exceed 150% of the Area Median Income (AMI) for Flagstaff, Arizona adjusted for household size and as defined by the U.S. Department of Housing and Urban Development or its successor agency. For 2006, 150% of AMI is an income of \$81,300 for a family of four.
 - Minimum Income - Household's monthly income, when multiplied by the appropriate debt-to-income ratio, must be sufficient to support the housing costs for the housing opportunity in question. In general, households that require a cosigner in order to obtain a mortgage will not be considered.
- Assets - A review of a household's financial resources and circumstances should clearly indicate a limited ability to compete successfully in the conventional housing market in Flagstaff. In addition, the combined assets for the household may not exceed 150% of the Flagstaff AMI for the household size.
- Affordability - (i.e. matching household income to housing cost). In general, affordability means that the monthly cost of occupying a particular housing unit does not exceed 33% of monthly household income, depending on the applicable lender's guidelines.
- Residency – Applicants must reside or hold employment within the Flagstaff Metropolitan Planning Organization (FMPO) boundary.
- Flagstaff First-time Homebuyer – Applicants must not have owned a home within the Flagstaff Metropolitan Planning Organization (FMPO) boundary within the last three years.
- Creditworthiness - In all cases, a household must be able to demonstrate a sense of ownership of its financial obligations, and a history of responsible effort to meet them. Mortgage pre-qualification must be obtained and presented with application.
- Homebuyer Education - Applicants must complete City of Flagstaff Land Trust Program Orientation Workshop. First-time homebuyers must also complete a City of Flagstaff approved homebuyer education program.

Ground Lease Provisions - City of Flagstaff

Each ground lease will contain the non-negotiable features of the Program.

The ground lease shall:

- provide a renewable 99-year lease term
- limit the use of the land to residential purposes
- dictate responsible use and compliance with all laws
- require owner occupancy of the home constructed on leased land
- stipulate that the lessee shall pay a ground lease fee
- specify that all improvements are the property of the lessee and provides parameters for construction and alteration

- prohibit liens from being filed against the land
- stipulate that the lessee is responsible for all maintenance and services
- prohibit the lessee from mortgaging the land
- specify the lessee's liability and the lessor's indemnification
- require the lessee to obtain and maintain casualty and liability insurance
- preserve right of first refusal of the City regarding purchase of the improvements
- provide a mediation and arbitration process
- limit the resale of the home to eligible buyers
- Dictate the resale price of the improvements shall be determined through the following formula: initial purchase price + [(appraisal 2 – appraisal 1) x 25%] = resale price, entitling the seller to 25% of the increase in equity of the improvements upon resale.

Critical to creating permanent affordability in the Program are the resale provisions to be contained in the ground lease. The formula to be contained in all Program ground leases is an appraisal-based formula, entitling the homeowner to 25% of the change of market value of the improvements.

Following is an example of the formula:

Initial Purchase price + [(appraisal 2 – appraisal 1) x %] = resale price

Initial Purchase Price - \$180,000 (improvements only)

10 years later

Appraisal 2 (assuming 5% increase per year)	—	\$293,201 (improvements only)
Initial purchase price (Appraisal 1)		<u>\$180,000</u>
		\$113,201
25% of increase		\$ 28,300

The household receives not only \$28,300, but also has paid down the mortgage:

3% down payment	\$ 5,400
10 years of mortgage principle	\$35,033
minus 2% selling expense	(\$ 4,166)
Net Sales Proceeds	\$59,167

Questions??

Please contact:

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Frequently Asked Questions

[Deciding to Start a CLT](#)

[The Variety of CLT Programs](#)

[How CLT Homeownership Works](#)

[CLT Relationships with Governments and Other Organizations](#)

Deciding to Start a CLT

Why have a number of communities chosen the CLT approach to affordable homeownership?

These communities differ in many ways, but all of them are concerned about what will happen to the homes after the first owners leave. For low-income communities suffering from disinvestment—like the neighborhoods of west central Durham—the primary goal is to sustain owner-occupancy and prevent a return to absentee ownership. For communities where property values are rising, as in Albuquerque and Burlington, the primary goal is to limit resale prices so the homes will continue to be affordable for lower income households. All of these communities recognize that just producing affordable housing is not enough. They need some way to control what happens to the housing in the long run. The community land trust gives them a way to do this.

"We wanted to be able to revitalize those neighborhoods without making them unaffordable to the people who lived there."

— Brenda Torpy, Burlington CLT

What kinds of groups have started CLTs?

CLTs have been established by a variety of local groups, including neighborhood associations, religious coalitions, community development corporations, local governments, and groups of concerned citizens. Regardless of the kind of group, organizing a CLT involves an effort to familiarize the community with the CLT concept and to develop grassroots support and participation.

"The community was involved in the planning process. As a result of that, the neighborhood is very supportive of this project."

— Debbie O'Malley, Sawmill CLT

How large an area does a CLT serve?

Some CLTs serve a single neighborhood, like Sawmill CLT in Albuquerque, or a small rural community, like CLTs in Maine and other rural areas. Some serve a larger section of a city, like the Durham CLT, or an entire city or county, like the Burlington CLT. How a CLT's territory is defined is shaped by the immediate interests of its founders, the location and nature of housing needs, the location of project opportunities, and the roles and service areas of other housing and community development organizations in the general area.

The Variety of CLT Programs

Does a CLT usually acquire more than one parcel of land?

A few CLTs, like the one in Albuquerque, have launched their programs with the development of a single large parcel of land, but most, like the Durham and Burlington CLTs, have acquired many smaller properties, one at a time over the years, throughout a neighborhood or city or rural area.

How do CLTs acquire property?

In most cases, CLTs acquire property in the same ways as do other nonprofit organizations. As tax-exempt organizations, they sometimes receive gifts of property from individuals or corporations and quite often acquire city or county-owned property from local governments. But in many cases, they purchase property in the open market— often with the help of funding from public sources.

What kinds of housing do CLTs provide?

As is illustrated by the wide variety of housing developed by the Burlington CLT, it is possible for CLTs to provide any type of housing for which there is a need in the local community and for which there is an opportunity to create permanent affordability for lower income households.

"We have folks living in shelters; we have single-room occupancy; we have very affordable rentals; we have housing cooperatives; we have affordable condominiums throughout the city and county, and affordable single-family homes."

— Brenda Torpy, Burlington CLT

Can CLT land be used for purposes other than housing?

Many land uses are possible— from facilities for community services such as the "food shelf," Legal Aid, and the Technology Center in Burlington, to local businesses, parks, and plazas, as planned in Albuquerque, to gardening and fuel wood production in the case of some rural CLTs.

How CLT Homeownership Works**How does the CLT reduce the cost of housing in the first place?**

In producing affordable housing, CLTs usually rely on the same resources as other affordable homeownership programs — including grants from government programs, contributions of property from both public and private sources, volunteer labor, and so on. At the same time, CLT projects do sometimes gain greater access to these resources because the CLT is able to extend their benefits for the long-term — not only for rental housing but for owner-occupied housing as well. In Vermont, both the City of Burlington and the State have adopted policies that provide subsidies only for housing that is permanently affordable (in part because of the successful example set by the Burlington CLT).

How does the CLT make sure that the home will be affordable—and available—for other lower income households?

CLT homeowners and their descendents have a right to occupy and use the leased land for as long as they wish, provided that they abide by the terms of the land lease. These terms place some limitations on the resale of the home— preventing resale to a household that does not qualify as low or moderate income, and limiting the sales price to keep it affordable. The lease lays out a "resale formula" that determines the maximum allowable price.

"We're old enough to have had a number of resales, and we've seen it really work. The second time around we don't need any additional government subsidy and we typically serve a lower income family. We're doing that at the same time that the seller is taking equity with them...and has had all the tax benefits and all the security that homeownership offers."

— Brenda Torpy, Burlington CLT

How do resale formulas work?

Each CLT — given its own goals and local circumstances — designs its own resale formula to set maximum prices that are as fair as possible to the seller while staying affordable for the next buyer. There are several types, but the majority of CLTs use what are called "appraisal-based" formulas. These formulas set the maximum price as the sum of what the seller paid for the home in the first place plus a certain percentage of any increase in market value (as measured by appraisals). Variations on these and other types of formulas are possible. Most local groups starting CLT programs spend a good deal of time examining the various possibilities before deciding on a formula.

"The formula would give you back what you had invested in the house plus an inflation factor, but you would not be able to go out and sell that house on the open market at an inflated value."

—Beverly Little, Durham CLT

How do CLTs insure continued owner-occupancy?

The ground lease requires that owners continue to live in the home as their primary residence. Subleasing is permitted only for limited periods with the consent of the CLT. If owners want or need to move away permanently, they must sell the home. The lease does not allow them to continue as absentee owners.

Can CLT homes be inherited?

Yes, the home is an asset that can be left to the owner's children or to anyone else the owner chooses. When a home is inherited, most CLTs will allow the heirs to live in the home if they are (1) children of the deceased owner, or (2) have already lived in the home for a period of time, or (3) qualify as low or moderate income households. Heirs who do not meet any of these qualifications, or who do not intend to live in the home anyway, must sell the home, in accordance with the resale restrictions, and will receive the proceeds from the sale.

Is it really fair to restrict resale prices for lower income CLT homeowners when higher income conventional homeowners can sell for market-rate prices?

CLTs look at this question not in terms of what would be fair in an ideal world, but in terms of the real choices open to lower income tenants, most of whom are not able, on their own, to buy decent homes in their communities through conventional channels. Homeownership through a CLT can give them many advantages that they do not enjoy as tenants — long-term security, a chance to build substantial assets through affordable monthly payments, and the opportunity to leave these benefits to their children. But, as with any investment, potential buyers should look at the advantages and disadvantages of all their options, and make their own decisions.

"I didn't buy this house to make a profit. I did it to get ahead.... This is not the traditional market. You have to understand that principle before you buy a land trust house."

—Linda Lewis Giles, Durham CLT

What other benefits do CLTs give their homeowners?

Some CLTs provide homeowner training and assistance. Some have developed home repair loan funds and have made special arrangements for leaseholders who face unexpected financial problems. Most CLTs help the owners sell their homes when the time comes, which means the owners get to keep more of the resale price. And, as members of the organization, all CLT residents share a set of connections with the community and each other that can bring tangible benefits, like the sharing of a lawn mower, as well as the sense of security that comes from belonging to a group.

How do property taxes work?

Residents pay property taxes on their homes if they own them. CLTs usually pay taxes on their landholdings, with the cost usually covered by lease fees from those using the land.

(CLTs and their residents can request reduced property tax assessments based on the resale value of the home as determined by the CLT's resale formula rather than what would otherwise be the market value of the property.)

Can CLT homebuyers get mortgage loans even though they won't own the land outright?

CLTs have been able to negotiate mortgage agreements that address the basic concerns of lenders while protecting the CLT's long-term interest in the property. These agreements typically allow the CLT to take action, if necessary, to prevent foreclosure and the sale of the property on the open market. Such mortgages give the lender a claim on the borrower's house and "leasehold interest." The CLT's "fee interest" in the land is not mortgaged. These "leasehold mortgages" can be, and have been, insured by FHA, and have been purchased by Fannie Mae and a number of state housing finance agencies, as well as banks. CLT homebuyers have also received mortgage loans through the Rural Housing Services program of the federal Department of Agriculture.

CLT Relationships with Governments and Other Organizations

Are CLTs supported by local governments?

It is common for CLTs to work in cooperation with local governments in meeting present and future community needs. A growing number of public officials recognize that CLTs can play an important role as stewards of community resources and that property and funds allocated to a CLT can benefit not only present community residents but future residents as well.

"Particularly if there is a public investment in housing, I think we ought to be very careful as to where that investment flows. With the land trust model, that investment remains with the community and the long-term affordability of the housing is guaranteed."

— Peter Clavelle, Mayor of Burlington, Vermont

A number of states and municipalities — including all three cities featured in the CLTs described in CLT Profiles — have allocated Community Development Block Grant and HOME funds, as well as

other available resources, to CLT programs. Some — as in the notable case of the large Albuquerque project— have allocated city-owned land.

Do federal housing programs provide for CLTs?

The 1992 Housing and Community Development Act makes specific provision for CLT funding under the federal HOME program (which provides block grants to municipalities and states to be used for affordable housing programs in their jurisdictions). The Act defines CLTs as "community housing development organizations" (CHDOs) under the HOME program, thus qualifying them for additional project funding, operating support, and technical assistance. (In 1999, ICE received its second three-year national contract with HUD to provide technical assistance to CHDOs that operate as or want to start CLTs.)

How do CLTs relate to other housing organizations?

Many CLTs are initiated through the sponsorship of other organizations, or emerge out of other organizations as in the case of Albuquerque's Sawmill CLT. Most CLTs, regardless of how they were created, cooperate with the efforts of other organizations in their community. Burlington CLT, for instance, works closely with a network of organizations that address the area's housing and community development needs. In a number of communities it is common for CLTs to acquire housing (or the land beneath housing) that has been built or rehabilitated by other not-for-profit (or sometimes for-profit) organizations.

How do CLTs relate to limited equity housing co-ops?

Co-op housing is owned by a corporation that is controlled by the people who live in the housing. Thus co-op residents do not own their homes individually, but each household owns a share in the corporation and has a "proprietary lease" to their own apartment. When a household wants to move away, they can sell their share — and their rights as co-op residents — to another buyer. In the case of "limited-equity" co-ops, the price for which shares can be sold is limited by the corporate bylaws to keep the housing affordable. (In "market rate" co-ops, shares can be sold for whatever the market will bear.)

Some CLTs, like the Burlington CLT, have developed limited equity co-ops on land leased from the CLT. These CLTs can provide important support services to the co-ops, and the land lease can help to ensure long-term affordability by requiring that restrictions on the sale of shares remain in place.

How are CLTs different from conservation land trusts?

Both CLTs and conservation land trusts control land use for the benefit of people in the future as well as the present, but they are primarily concerned with different types and uses of land. Conservation trusts are concerned with controlling rights to undeveloped land to preserve open space, ecologically fragile or unique environments, wilderness, or productive forest or agricultural land. CLTs, on the other hand, are mainly concerned with acquiring developed or developable land for specific community uses — particularly residential use. These concerns are not mutually exclusive, and some land trusts, notably in Vermont, combine these purposes, preserving some land in a natural state while leasing other land for development.

ACHIEVING LAND USE PLANNING OBJECTIVES THROUGH DEVELOPMENT AGREEMENTS

Development agreements can be used for a wide range of projects, from large mixed-use developments to smaller projects. Moreover, the scope of a development agreement can vary according to the needs of the project in question. Although a development agreement can be comprehensive, detailing every aspect of the project, it can also focus on particular aspects of a project.

This chapter discusses the role that development agreements can play in a local agency's overall planning process. Fundamentally, development agreements are one tool in the local agency's toolbox for achieving the community's long-term planning and development goals.

THE IMPORTANCE OF COMPREHENSIVE PLANNING

In authorizing the use of development agreements, the Legislature emphasized that development agreements are intended to serve as a tool to *strengthen* a community's commitment to comprehensive land use planning.³² The concept behind the use of development agreements is to encourage communities to think ahead, in a comprehensive manner, about the impacts of development within their jurisdiction and the steps necessary to make that development a win-win proposition for both the project proponents and the community.

The Importance of Comprehensive Planning	25
Uses of Development Agreements.....	28
Summary	28

³² See Cal. Gov't Code § 65864(a) ("The Legislature finds and declares that: (a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and *discourage investment in and commitment to comprehensive planning* which would make maximum efficient utilization of resources at the least economic cost to the public.") (emphasis added).

WHAT DOES A DEVELOPMENT AGREEMENT COVER?

A development agreement generally allows a project proponent to proceed with a project that meets the “policies, rules and regulations” in effect at the time the development agreement is approved.³³ A development agreement may also supercede an agency’s existing policies, rules and regulations, as long as the project is consistent with the general plan and any applicable specific plan.³⁴

THE ROLE OF PLANNING POLICIES IN THE NEGOTIATION PROCESS

A helpful starting point is having well-understood planning regulations that reflect the community’s current and anticipated needs. Such policies, when adhered to, facilitate the negotiation process, ensuring that a proposed development agreement reflects the local governing body’s policies. This approach can also address a source of decisionmaker discomfort with the development agreement process, because even though the governing body ultimately approves a development agreement, it also needs a mechanism to provide direction to the negotiation process. Planning policies meet this need.

Typically in a negotiation process, decisionmakers provide their negotiators with parameters on key bargaining issues. It is important that the parameters remain confidential, so the other side does not know how much leeway the negotiators have.

Confidentiality is difficult in the context of development agreement negotiations because the state’s open meeting laws³⁵ do not generally allow an exception for public agency negotiators on development agreements to receive direction from the governing body. There may be aspects of a development agreement—for example, the price and terms of payment for acquisition of property—that can be discussed in closed session. However, only those issues may be discussed in closed session—not the development agreement in general.

The agency’s planning policies, therefore, may serve as the negotiators’ key source of direction in this circumstance. In addition, a local agency may want to consider directing its staff to adopt a different type of negotiating style, where identification of “interests” replaces the need to establish outer

³³ See Cal. Gov’t Code § 65864(b) (“The Legislature finds and declares that: ... (b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”) (emphasis added). See also Cal. Gov’t Code § 65866.

³⁴ See Cal. Gov’t Code § 65867.5.

³⁵ See generally Cal. Gov’t Code § 54950 and following (The Ralph M. Brown Act).

“positions” or parameters (see discussion in Chapter 4). If an agency uses an interest-based negotiating strategy, there are fewer strategic disadvantages associated with a governing body’s trying to provide direction in open session.

Well-conceived and up-to-date planning policies can also assist local agencies to avoid having to ask the staff to negotiate in a vacuum, with little or no immediate direction or feedback from decisionmakers. When the agreement is before the legislative body for final approval, it may be difficult for the body to modify aspects of the agreement without, in effect, renegotiating the agreement from the dais to change the terms that the staff negotiated.

DEVELOPMENT AGREEMENTS AND ANNEXATIONS/INCORPORATIONS

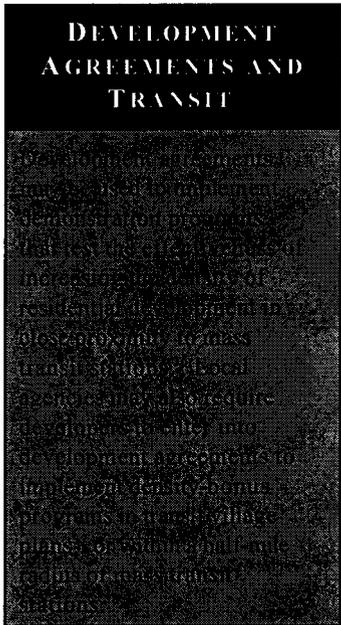
The development agreement law provides that cities generally initiate development agreements negotiated by counties for newly incorporated or newly annexed areas. See Cal. Gov’t Code § 65865.3(a) (for incorporations, the effective date of the incorporation must be after January 1, 1990). The development agreement must meet the following requirements, however:

- The initiation of the development initiative must be initiated before the first signature is placed on the petition for incorporation or incorporation for resolution and final proceedings.
- The agreement must have been approved by the incorporation/annexation election for prior to the date on which the governing authority adopted the annexation.
- The annexation initiated by the city (or, if initiated by someone else, the city does not adopt written findings that the development agreement is injurious to the health, safety or welfare of city residents. See Cal. Gov’t Code § 65865.3(b) and (c).

The duration of such initiated development agreements is the duration of the agreement or eight years, whichever is shorter. See Cal. Gov’t Code § 65865.3(a).

The city may modify or suspend the development agreement’s provisions if the city determines that failure to do so would place the residents of the territory subject to the development agreement (or the residents of nearby areas) in a condition dangerous to their health or safety (or both). See Cal. Gov’t Code § 65865.3(d).

However, the development agreement law also authorizes cities to enter into development agreements for unincorporated territory within their sphere of influence. See Cal. Gov’t Code § 65865(b). The agreement does not become operative until the annexation occurs. See Cal. Gov’t Code § 65865(f). The timeframe for the annexation must be specified in the agreement and the annexation must occur within that timeframe. See Cal. Gov’t Code § 65865(b). Extensions are possible, however. See Cal. Gov’t Code § 65865(b).



PLANNING POLICIES AS A MECHANISM FOR DEFINING PROJECT PROPONENT EXPECTATIONS

An agency’s planning documents, including its local development agreement procedures, can provide an important source of guidance for project proponents going into negotiations. By stating in the procedures that the local agency is committed to using development agreements as a tool to promote the community’s needs, the agency makes clear that it expects to receive greater community benefits than it could otherwise achieve through the land use regulatory process. This level of understanding can be helpful in setting the proper tone, so both parties have realistic expectations going into the negotiations.

Such an approach also may be helpful in responding to community concerns that the community has not received adequate benefits in the past from development agreements. These concerns may arise, especially when the project proponent has an ongoing relationship with the public agency.

USES OF DEVELOPMENT AGREEMENTS

Local government agencies have successfully used development agreements to facilitate:

- School, park and other facility funding;
- Affordable housing projects;
- Large-scale mixed use projects; and
- Multi-phase commercial projects.

Development agreements can also be a vehicle for addressing concerns among developers about perceived adverse impacts of neighboring projects.

SUMMARY

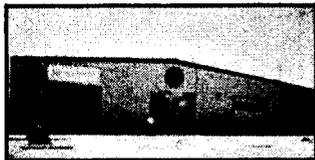
Used judiciously, development agreements are a useful tool for achieving an agency’s land use planning objectives. Well-articulated planning policies

³⁶ Cal. Gov’t Code § 14045.

³⁷ Cal. Gov’t Code §§ 65460.10, 65460.2.

³⁸ Cal. Gov’t Code § 65913.5

may also provide important policy direction to staff in negotiating such agreements.



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- Programs
- Technical Assistance
- Positions Available
- Fair Housing
- Find An Affordable Apartment
- Governor's Tribal Housing Initiative
- Homes for Arizonans Initiative
- Rural Arizona Homeless Management Information System (HMIS) Website
- Inter-Agency and Community Council on Homelessness
- Request for Department Speaker

Homes for Arizonans

In an effort to help low and medium-income families realize the dream of homeownership, the Arizona Housing Finance Authority (AzHFA) and the Arizona Department of Housing (ADOH) have combined forces to create the Homes for Arizonans Initiative. This Initiative makes homeownership possible for individuals and families who may not otherwise be able to purchase their first home. The Initiative is available in all counties except Pima and Maricopa.

The Initiative combines several funding sources including the AzHFA Mortgage Revenue Bond (MRB) program, funding from the Housing Trust Fund and federal tax credits from the AzHFA Mortgage Credit Certificate (MCC) program. By combining these programs, the Homes for Arizonans program offer:

- Mortgage financing (MRB)
- Down payment and closing cost assistance
- Federal tax credits for individuals (MCC)

Mortgage Revenue Bond

The Mortgage Revenue Bond (MRB) program provides an attractive 30-year fixed-rate mortgage at approximately 1% below market for homebuyers with qualifications similar to those needed for VA, FHA, and FNMA. The buyer must not have owned a home in the past three years and must qualify to borrow from a participating lender. The home, whether new or previously owned, must become their primary residence. An MRB loan can be combined with the ADOH Down Payment, Closing Cost Assistance program, but not with the MCC. Certain income and purchase price limits apply. Refer to the Mortgage Revenue Financing Information Sheets for more details.

Down Payment and Closing Cost Assistance

The major stumbling block for many first-time homebuyers is the lack of sufficient funds for the down payment and closing costs involved in the purchase of the home. The amount of assistance available under the Initiative is adjusted based on the buyer's income:

- Above 80% Area Median Income (AMI) ~ up to 5% of purchase price (or appraisal, whichever is less)
- 60-80% AMI ~ up to 10% of purchase price (or appraisal, whichever is less) plus up to \$3,000 for closing costs
- Below 60% AMI ~ up to 15% of purchase price (or appraisal, whichever is less) plus up to \$3,000 for closing costs
- Maximum of \$20,000 in combined assistance

If the buyer is above 80% AMI, the assistance must be used in combination

with either the MRB or MCC programs. Buyers with incomes at or below 80% AMI must participate in homeownership counseling classes or individual meetings that explain the down payment and/or closing cost assistance requirements, the home buying process, and the buyer's responsibilities. These classes or meetings are free and are held at various times and in various locations around the state, excluding Pima and Maricopa counties.

The amount of assistance is dependent on five factors:

- Amount of household income
- Purchase price of the house or appraised value, whichever is less
- Actual closing costs on the house
- Amount of household savings and assets
- Other gifts or assistance the buyer may be receiving

Certain income and purchase price limits apply. Please refer to the Down Payment and Closing Cost Assistance Information Sheet for more details.

Mortgage Credit Certificate

The Mortgage Credit Certificate (MCC) program is designed to allow first-time homebuyers a reduction in their federal income tax liability thereby helping make their mortgage payments more affordable. The tax credit is equal to 20% of the buyer's annual mortgage interest payment. The buyer receives the credit for as long as the home remains their primary residence.

The purchaser must qualify for the program and not have owned a home in the past three years. Maximum income and purchase price limits do apply and are explained in the Mortgage Credit Certificate Information Sheets. This program usually works best for buyers at or over 80% AMI and can be combined with the Down Payment, Closing Cost Assistance program.

Universal Qualifications:

The following applies to all three programs of the Initiative:

- Buyer must be a first-time homebuyer. Typically, borrowers that have not had an ownership interest in a residence within the prior three years qualify except borrowers purchasing eligible residences located in target areas. There are census tracts located in Apache, Cochise, Coconino, Gila, Graham, LaPaz, Mohave, Navajo, Santa Cruz and Yuma counties where buyers are not required to be first-time buyers and income and sales price limits are higher. Please see the 2004 Arizona Target Area Census Tracts Information sheet. Participating lenders can provide more information regarding specific census tracts.
- Buyer must apply to a bank or mortgage company for a home loan and meet the lender's requirements.
- Buyer must occupy the purchased home as their principal residence. The dwelling cannot be rented or left vacant.
- Buyer's income must not exceed the maximum income limits.
- Homes may be new or previously occupied, but must be priced below the maximum purchase price for the county in which they are located.
- Homes may be single-family homes, town homes, or condominiums, or permanently affixed manufactured housing that is FHA insurable. Target area purchase price limits apply.
- Homes must be located in rural Arizona (excluding Maricopa and Pima counties.)

Information Sheets

Information Sheets are included to provide more details on various program restrictions and requirements. Brochures are also available and designed to help buyers understand the basics of the programs.

[Click here for the Mortgage Revenue Bond \(MRB\) information sheet.](#)

[Click here for the Down Payment and Closing Cost Assistance information sheet.](#)

[Click here for the Mortgage Credit Certificate \(MCC\) information sheet.](#)

[Click here for the Participating Lenders List.](#)

[Click here for the Target Area Census Tract information.](#)

[Click here for the 203B Mortgage Insurance Limits.](#)

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About The Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit (LIHTC or Tax Credit) program was created by the Tax Reform Act of 1986 as an alternate method of funding housing for low- and moderate-income households, and has been in operation since 1987. Until 2000, each state received a tax credit of \$1.25 per person that it can allocate towards funding housing that meets program guidelines (currently, legislation is pending to increase this per capita allocation). This per capital allocation was raised to \$1.50 in 2001, to \$1.75 in 2002, and adjusted for inflation beginning in 2003. These tax credits are then used to leverage private capital into new construction or acquisition and rehabilitation of affordable housing.

The tax credits are determined by the development costs, and are used by the owner. However, often, because of IRS regulations and program restrictions, the owner of the property will not be able to use all of the tax credits, and therefore, many LIHTC properties are owned by limited partnership groups that are put together by syndicators. In this manner, a variety of companies and private investors participate within the LIHTC program, investing in housing development and receiving credit against their federal tax liability in return.

Tax Credits must be used for new construction, rehabilitation, or acquisition and rehabilitation. and projects must also meet the following requirements:

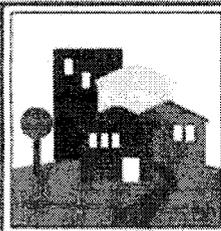
- 20 percent or more of the residential units in the project are both rent restricted and occupied by individuals whose income is 50 percent or less of area median gross income *or* 40 percent or more of the residential units in the project are both rent restricted and occupied by individuals whose income is 60 percent or less of area median gross income.
- When the LIHTC program began in 1987, properties receiving tax credits were required to stay eligible for 15 years. This eligibility time period has since been increased to 30 years.

These are minimums. Because of the way states award credits, it is in the interest of developers to exceed these minimums, as most states look more favorably on projects serving a higher percentage of income-eligible households.

Determining the amount of tax credit

Qualified Basis

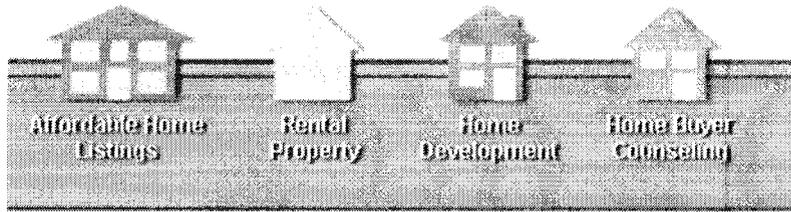
Most states determine the amount of tax credit an individual project receives based on its *qualified basis*. First, total project cost is calculated. Second, *eligible basis* is determined by subtracting non-depreciable costs, such as land, permanent financing costs, rent reserves and marketing costs. The project developer may also voluntarily reduce the requested eligible basis in order to gain a competitive advantage. If the



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- About Us
- Contact Us

How We Help Homebuyers

How We Collaborate for Housing



Employer Assisted Housing

The program can include grants for down payment assistance, low interest loans, matched dollar savings plans, credit counseling, homebuyer education, and much more.

For the employer EAH provides:

- An effective recruitment tool
- A way to reduce hiring and training costs through higher retention
- A tax deduction on benefits
- Enhanced reputation as a "family friendly" employer
- Improved employee morale
- Employer good will in the community

For the employee EAH is:

- Realization of the dream of home ownership
- Enhanced lifestyle with greater community & school involvement
- Increased job satisfaction
- Possibility of reduced commuting time

For the community EAH means:

- Increase to tax base due to rise in home ownership
- Increase in business for realtors and local businesses
- Increase in community involvement
- Increased stability in neighborhoods

Check below to see if your company offers and Employer Assisted Housing benefit. If your employer is not listed, email Home Ownership Program to inquire how your company can find out about the benefits of their own EAH program.

Norton Healthcare EAH Program
Norton Healthcare EAH Mortgage Lender

The Housing Partnership Inc. 333 Guthrie Green, Suite 404 Louisville, KY 40202 502.585.5451 info@housingpartnershipinc.org

Features

Employer-Assisted Housing Benefits Employers, Workers and Their Communities

A front-page article in the Fall 2005 newsletter of Illinois' Metropolitan Planning Council (MPC) calls attention to a swiftly growing movement among civic leaders, organizations and workers that affects employee benefits packages. In the article, Syed Quadri, an employee of St. Charles, IL-based smoke detector manufacturer System Sensor, praises the merits of the employer-assisted housing (EAH) program he enjoys through a cooperative effort between System Sensor and MPC.

As a System Sensor employee of more than five years, Quadri recently fulfilled his retention commitment to his employer that was a condition of the \$5,000 forgivable loan he received to help him buy a house for his family of six. Quadri now lives so close to his employer, he can walk to work when it's warm. It's a win-win situation for System Sensor, too: By offering EAH to eligible employees, System Sensor improves its recruitment package for potential hires and experiences greater retention and morale for participating employees.

System Sensor was the first employer in Illinois to offer EAH in 1999. King Harris, president and CEO of Pittway, the parent of System Sensor at the time, understood the need. "Members of a typical working family with a moderate income too often find it impossible to live close to their jobs," he said. "As a result, our highways are more crowded, families have less time together and employers lose money due to turnover of workers." Since then, Harris has worked tirelessly to promote affordable housing for low-income families and others in need of affordable housing.



Maria Herrera bought a home in Arlington Heights, IL, with assistance from her employer, Northwest Community Healthcare.

Photo courtesy Metropolitan Planning Council

Today 58 employers in Illinois offer some form of EAH, according to MPC Housing Consultant Samantha DeKoven. EAH refers to a variety of ways employers assist their workers with housing. Often, a live-near-work requirement gets workers closer to their workplace, reducing stressful commutes. In some cases, the employer's assistance leverages state or local dollars, boosting the employee's home purchasing power.

For information on implementing an EAH program in your workplace, including a list of agencies that can provide assistance, download this month's [free Tool Kit](#).

The EAH movement is so strong in Illinois – a state largely recognized as the national leader in EAH programs – that 26 employers jumped on the EAH bandwagon in 2005. This has translated to more than \$1.3 million in employer dollars that were provided to employees in 2005 as down payment

http://www.winningworkplaces.org/library/features/employer-assisted_housing.php

10/13/2006

assistance toward buying or renting a home near their employer. DeKoven, for one, is not surprised by the spike in participating employers statewide in the past year. "EAH programs help employers combat turnover challenges as well as absenteeism and tardiness," she says.

Besides helping to curb turnover and absenteeism, EAH programs reap other positive rewards for participating employers. In Illinois, the state's Affordable Housing Tax Credit reduces an employer's net cost of implementing EAH programs significantly: 50 percent of the employer's investment comes back through the tax credit. In addition, investment in the program is federally tax deductible.

As EAH programs are used by more employers, and as those employers report increased productivity, the inherent benefits for both the public and private sectors have garnered the government's attention. Kathy Ryg, 59th District representative for the state of Illinois, was excited to report that on June 28, 2006, Governor Rod Blagojevich signed into law the Business Location Efficiency Incentive Act. Pioneered by Ryg as the "Location Matters" program, the legislation provides incentives for businesses to assist their employees with both housing and transportation options. For instance, employees who stay at their company for five years can qualify for a home down payment of up to \$15,000.

DeKoven is quick to point out that MPC didn't invent EAH – in fact, the group looked to similar programs that existed in other states when it began researching employee barriers to home ownership in Illinois. One resource that emerged was California's Silicon Valley Leadership Group (SVLG). The group offers first-time home buyer training for its 200 member businesses. There is also a bill in the California Senate that would provide state funds to assist with employees' home purchases.

Other states are enacting programmatic approaches to EAH that derive financial support from employers and municipalities rather than the state. In Maryland, a "Live Near Your Work" program serves as a good recruitment tool for the city of Baltimore's employees. And on the federal level, a bill that's in both the House of Representatives and the Senate shows promise: the Housing America's Workforce Act.

With EAH assistance at the federal level pending and state and local involvement growing but intermittent, what can an employer do to find out more about EAH programs? DeKoven says that MPC, while located in Illinois, is now available to offer technical assistance to employers across the country. That's good news for organizations looking to decrease turnover and make their benefits packages more enticing for job applicants. "EAH is appealing to progressive, enlightened business owners who recognize that investing in housing solutions for their workers makes good business sense and can save them money," DeKoven says.

EAH Resource Links

Read the latest government news on EAH programs:

http://www.winningworkplaces.org/library/features/employer-assisted_housing.php

10/13/2006

<http://www.congress.org/congressorg/issuesaction/orgs/>

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