

Inclusionary Zoning

Inclusionary Zoning requires that all new development in a jurisdiction include a certain number of units that meet affordable housing requirements based on area median income. Programs can be voluntary, conditional, or mandatory. In a voluntary program, the local government typically offers a “conditional use permit” as an overlay on the original zoning requirements in exchange for inclusion of housing that meets certain income requirements. Examples of what may be permitted as an incentive include greater density allowances, smaller setbacks, lot sizes, and buffers. In a “conditional inclusionary zoning program,” the local government negotiates with the developer in exchange for including affordable units. Finally, a “mandatory” program would require an explicit percentage of affordable units in all residential developments. One survey found that there are 886 inclusionary zoning laws in jurisdictions in 25 states and DC.¹

Davidson, Manteo, and Chapel Hill, have all experimented with mandatory inclusionary zoning ordinances for for-sale units, however these programs occupy a legal grey zone. In North Carolina, local governments only have powers granted to them by the state constitution and statutes, and the state has not granted the power to enact inclusionary zoning. However, towns do have the authority to regulate the “location and use of buildings,” so some have argued that affordable housing can be understood as a protected “use”.² Others have argued that local governments can offer incentives, but cannot require affordable units as part of a development. The state could resolve this question either statewide, or for a specific local area. The state could also overturn a local government’s inclusionary zoning ordinance. To date, the local governments in NC that have used inclusionary zoning have focused on units in new developments. Davidson was sued in 2014 by two local developers who claimed they did not have the right to require homebuilders to construct affordable housing or collect fees for public services, but the town settled the case by easing their requirements, offering a fee-in-lieu of required affordable units and lowering the fee.

In the case of Chapel Hill, the city requires that any new development with five or more units must include 15% of the units at prices (or 10% in the town center) that are affordable to low- to moderate-income households. Housing is considered affordable if a household pays no more than 30% of its income for housing costs. Davidson requires 12.5% of homes in new developments if there are more than eight units to be affordable.

Outside NC, examples of inclusionary zoning include Fairfax County (developments with 50 units must reserve 5-12.5% of units for households making 70% or less of area median income) and Montgomery County (requires “moderately priced dwelling units” in developments with 20 or more housing units based on household incomes between \$31,500 and \$81,500), which both have had such ordinances for over 30 years.³

¹ Bloomberg CityLab at <https://www.bloomberg.com/news/articles/2018-07-17/inclusionary-zoning-everything-you-need-to-know#:~:text=Inclusionary%20zoning%20is%20a%20policy,market%20to%20subsidize%20affordable%20housing.>

² See e.g. Tyler Mulligan, *A Primer on Inclusionary Zoning (November 2010)* at <https://canons.sog.unc.edu/2010/11/a-primer-on-inclusionary-zoning/#:~:text=There%20are%20three%20general%20categories,nature%20of%20their%20inclusionary%20requirements.> See also Matt Hartman, *Eight Years Ago, Chapel Hill Enacted the Most Progressive Affordable Housing Policy in the Triangle. Here's How It Failed*, *IndyWeek* (August 2018) at [https://indyweek.com/news/eight-years-ago-chapel-hill-enacted-progressive-affordable-housing-policy-triangle.-failed./](https://indyweek.com/news/eight-years-ago-chapel-hill-enacted-progressive-affordable-housing-policy-triangle.-failed/)

³ For an extensive review of the Montgomery and Fairfax County programs and a literature review on inclusionary zoning, see US Department of HUD, *Expanding Housing Opportunities through Inclusionary Zoning: Lessons from Two Counties* (December 2012) at [https://www.huduser.gov/portal/Publications/pdf/HUD-496_new.pdf.](https://www.huduser.gov/portal/Publications/pdf/HUD-496_new.pdf)