Meeting California's Housing Needs: Best Practices for Inclusionary Housing

Inclusionary housing is used in hundreds of communities across the country to create units that are affordable to lower-income households in new market-rate residential developments. More than 170 cities and counties in California have used inclusionary-housing policies to help address affordable-housing needs while advancing equitable-development goals.

Inclusionary policies capture some of the value of rising real-estate prices to provide community benefits by using local land-use controls to ensure that much-needed affordable-housing units are produced along with market-rate units and that the limited supply of developable land is put to work in a way that serves households at all income levels.

Inclusionary housing – also referred to as "inclusionary zoning" – is a flexible tool that can be tailored to local circumstances. There is no one "model" inclusionary-housing policy, but rather a number of best practices to consider when adopting or amending an ordinance.

This factsheet explores the range of policy options to consider when designing a local inclusionary ordinance and highlights best practices that maximize community benefits and fulfill policy goals.

An inclusionary-housing ordinance is one part of an equitable-development strategy, and should not be viewed as the sole way to address affordable-housing needs. In most communities, building the needed amount of housing for lower-income families will still require public subsidies and must be integrated with other strategies.

Following a period of legal uncertainty around inclusionary ordinances, a 2015 Supreme Court decision affirmed city and county authority to impose inclusionary requirements based on local government's broad police powers. And passage of Assembly Bill 1505 in 2017 reinstated the authority to apply inclusionary policies for rental housing.

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Benefits of an Inclusionary Housing Ordinance

A well-designed ordinance can generate numerous benefits for communities seeking to increase housing affordability and develop diverse, inclusive neighborhoods. These include:

- More choices for lower-income households about where to live.
- Reduced opposition to affordable housing by producing affordable units within communities as they develop, not after.
- Support for compact infill development, reduced sprawl and achievement of local Regional Housing Needs Assessment (RHNA) targets for all income levels.
- Reduced vehicle miles traveled (VMT) and greenhouse gas emissions by providing people at all income levels more opportunities to live closer to work and in transit-rich areas.
- Ensuring that the entire community benefits from a growing economy. Public and private investments help create economic growth that raises property values. Inclusionary housing helps capture some of the value created by these investments to ensure that the benefits do not accrue solely to property owners and helps buffer against displacement pressures by ensuring that lower-income residents can remain in the community.
- Reduced segregation and concentration of poverty.

Keys to a Successful Ordinance

Adopting a detailed inclusionary ordinance with input from a wide range of community stakeholders is the best method for implementing effective and legally defensible inclusionary requirements.

The ordinance's language should provide clarity and certainty for the development community, and be structured to realistically achieve its goals. It should be backed by data and research that establishes both the need for the policy and the feasibility of the requirement.

The key elements of a well-crafted inclusionary ordinance include:

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1. State the need.

Local governments have **broad discretion under the police power** granted by the state constitution to regulate the use of land within their borders, so long as the regulation is reasonably related to advancing the general welfare. A local inclusionary ordinance, then, should start with a statement of findings related to the need for the policy to improve the community's well-being.

Most California jurisdictions have **a severe shortage of housing units affordable to low- and very low-income households**. The need to address that shortage provides a strong basis for inclusionary zoning, as does the need to meet the jurisdiction's share of the region's ongoing housing need at the lower-income levels (which is nearly impossible to do with subsidy alone).

Jurisdictions also frequently point to the need to **address past patterns of racial and economic segregation** in their community, ensure the preservation and development of diverse neighborhoods, meet fair-housing mandates, and make the best use of a limited supply of developable land.

The ordinance should be directly tied to the findings establishing the need for the policy. For example, if the findings cite the shortage of low- and very low-income housing units in the community, then one of the policy's goals should be to ensure that those units get produced. A well-crafted ordinance will start with findings that support the policy choices reflected in the design of the ordinance.

"Lower-income" households refers to those making 80% or less of area median income (AMI). The term encompasses households that are "low-income" (those making 50-80% of AMI) and "very low-income" (those making less than 50% of AMI).

2. Get the numbers right: how many, where, when and for how long?

How many affordable units should be required and to whom should they be affordable?

An inclusionary ordinance should clearly define how many affordable units must be included in a project and at which income levels. The vast majority of ordinances set the requirement as a percentage of the total number of units in the project, while a few communities use a square-footage metric.

LOW AND VERY-LOW: The requirement will typically be split between low- and very low-income households (for example, 15% of the total are affordable units, with 10% low and 5% very low). Some laws also include a target for extremely low-income households.

MODERATE: Some communities also require moderate-income units, but this should be based on a careful analysis of the market and its ability to serve moderate-income households. If the market is producing moderate-income units on its own, there would be no rationale for having a inclusionary requirement for moderate-income units.

In California, the requirements in most inclusionary policies adopted so far have fallen within the 10-20% range – 15% being the most common.

What percentage a community establishes will be dependent on its affordable housing needs, local market conditions, the financial incentives available to developers, and the mix of affordability levels required.

FIXED: Some communities require fixed percentages at each designated income level, whereas others may provide some flexibility (for example, allowing for a lower percentage of inclusionary units overall when the units are provided at a deeper affordability level).

FLEXIBLE: Some jurisdictions structure their inclusionary policies to involve a sliding scale, so that projects that include higher percentages of affordable units also qualify for more incentives, such as greater density increases.

While there may be reasons to build flexibility for the required number of affordable units into an ordinance, **too much flexibility can undermine the creation of new housing at the income levels needed most and cannot be produced by the market alone.**

Which projects should have to comply with the inclusionary requirement?

While it may be tempting to carve out various exceptions to an inclusionary requirement, the best practice is to apply the requirement to all housing-development projects throughout a community or the geographic area covered by the policy. This is the best way to ensure that the policy is implemented equitably and serves the overall goal of ensuring that all neighborhoods – single-family and multi-family, lower-density and higher-density – incorporate housing options at a range of income levels.

SMALL PROJECTS: Many jurisdictions choose to exempt small projects from complying with an inclusionary requirement. The rationale is often to ensure that smaller development projects are financially feasible. While a small-project exemption may be well-intended, it can be difficult to reconcile an exemption with the ordinance's overall goals and create potential legal issues.

It can also be a challenge to settle on a definition of "small" that doesn't simply encourage projects that come in just under the threshold, thus frustrating the goal of ensuring that all new housing development contributes to meeting the community's affordable-housing needs.

Rather exempting these projects altogether, **a better practice is to provide small projects with the option to pay an in-lieu fee as an alternative** to compliance with on-site production requirements. This is particularly true in areas where a high proportion of development activity occurs on smaller projects.

Should inclusionary requirements be different for for-sale projects and rental projects?

In most jurisdictions, the most defensible ordinance will be one that imposes an inclusionary requirement equally on rental and for-sale housing. Requirements that treat the two differently may have fair-housing implications and, much like exemptions for small projects, can be challenging to reconcile with the ordinance's goals.

For example, an ordinance that requires the inclusion of low- and very low-income units in rental developments, but only moderate-income units in for-sale developments, could run counter to the goal of ensuring that all neighborhoods have a mix of housing at all income levels in cities where rental and for-sale development generally happen in different neighborhoods.

Furthermore, **depending on local demographics, such policies may lead to disparate impacts on certain protected classes**, potentially violating legal requirements. In weighing whether to impose the same or different requirements on rental and for-sale housing, it's crucial to consult with an attorney with expertise in fair-housing laws.

RENTAL/FOR-SALE MIX: One way to maximize the production of affordable units and increase flexibility is to allow developers of single-family projects the option of meeting the inclusionary requirement by including affordable multi-family rental units within the development rather than affordable for-sale, single-family homes.

However, this option should be crafted carefully to ensure consistency with the ordinance's overall goals and fair-housing obligations. Rental units can generally be produced more cost-effectively than for-sale units, so this option should reflect that by requiring that a higher percentage of rental units be produced.

Under California law, if the inclusionary requirement is adopted through a program in the jurisdiction's housing element, the program must provide developers with this option. However, nothing requires a jurisdiction to adopt an inclusionary requirement through its housing element, and this approach is not ideal.

Should inclusionary requirements be structured differently in different neighborhoods?

Inclusionary requirements most typically apply jurisdiction-wide. **While different neighborhoods within a city may have differing development markets, a well-designed policy already adjusts for those differences.** For example, in a neighborhood where the development market is especially hot and land costs are high, the value of an increase in allowable density is also much higher, making a higher inclusionary requirement feasible.

SPECIFIC PLANS: However, in large cities, it may make sense to consider area-specific increases in an inclusionary requirement because some parts of town may be much hotter development markets than others. An effective way to accomplish this is through the adoption of a specific plan that lays out the land-use controls that apply within a designated geographic area.

TRANSIT AREAS: Some jurisdictions have also crafted specific inclusionary policies that apply to areas adjacent to transit stations, recognizing the wide body of research demonstrating how crucial it is to build affordability into transit-oriented development and the resulting benefits that increase transit ridership, reduce greenhouse gas emissions, and strengthen community stability.

How long should inclusionary units remain affordable?

Given the time and resources that go into developing housing, an inclusionary ordinance should aim to set the affordability term – how many years a unit must remain "affordable" – for the longest period of time that is feasible. **One important thing to consider in determining the affordability term is the cost of maintaining a unit's affordability over time compared to the cost of having to provide a new affordable unit to replace it when the deed-restriction period ends.** In most cases, the former will be far more cost-effective than the latter.

BUILDING WEALTH: One advantage of homeownership is the ability to build wealth through the ownership of an appreciable asset. Strict resale controls that require the home to be resold at an affordable price to another low-income homeowner significantly restrict the wealth-building advantages of homeownership. On the other hand, the program should protect against the owner of a for-sale inclusionary home quickly reselling the home at a significant profit.

For rental units, 55 years is a common affordability term required by many affordable-housing funding programs in California. An inclusionary ordinance should require at least as long a period, although it's not uncommon for jurisdictions to require longer periods – or even to mandate that inclusionary rental units be deed restricted in perpetuity, as West Hollywood does.

The typical term with for-sale units is 45 years. Affordability restrictions for these units present some additional policy considerations about the sale of the home during the affordability term.

SHARING EQUITY: The most common way of balancing these interests is an equity-sharing policy in which any appreciation is split between the selling homeowner and the jurisdiction. The jurisdiction then uses its share to assist in future homeownership opportunities for low-income buyers. Some policies have initial limits on resale (such as 10 years) that require the home to be resold only to a low-income buyer at an affordable price during that period.

Other ordinances have a sliding-scale, equity-sharing provision that states that no proceeds to a homeowner who sells during the initial years, but provides a greater share of the proceeds to the homeowner closer toward the end of the 45-year term.

Should the inclusionary requirement change over time?

Housing markets are constantly changing, and it would be a challenge to amend an inclusionary requirement in response to every rise and dip in local conditions. However, building in a set review period can be useful for a number of reasons. **Periodic review can help determine whether the percentage of units required remains appropriate for local conditions so that the community is not losing out on affordable units** that could feasibly be achieved with a higher inclusionary requirement.

It can also help in assessing whether changes to income targeting are necessary. For example, if a community has steadily produced low-income units but not very low-income units, it may be necessary to increase the percentage of very low-income units required by the ordinance and adjust available incentives accordingly to account for the higher cost of providing these units. Every five years is a reasonable review period.

SYNC WITH HOUSING ELEMENT: Another option is to review the ordinance concurrent with the housing-element adoption process every eight years. (While most local jurisdictions in California must update their housing element every eight years, some rural jurisdictions remain on a five-year cycle.)

3. Couple with incentives and concessions.

From both a legal and a practical standpoint, an inclusionary-housing policy should include incentives and concessions for developers to help offset the cost of providing the affordable units. Common concessions and incentives include:

- Density increases, including the option of greater density increases in exchange for higher percentages of affordable units.
- Waivers of development standards, such as height and setback requirements.
- Reduction in or a waiver of minimum parking requirements, especially for projects located in transit areas.
- Expedited permit processing or ministerial approval.
- Waiver, reduction or deferral of development fees, either on the inclusionary units or the entire project.
- Direct financial subsidies.

California law requires that developers who comply with an on-site inclusionary requirement that meets the affordable-housing requirements of the state **Density Bonus Law** must receive all of the benefits to which they are entitled under that law. These benefits include a density increase, concessions and incentives, waivers of development standards and reduced parking requirements. For example, a project that includes 20% of units affordable to low-income households is entitled to a 35% density bonus, two concessions or incentives and various other benefits provided under the state law.

4. Establish clear development standards.

In addition to specifying the percentage of affordable units and at which income levels, an ordinance should establish clear standards for the inclusionary units. Among such best practices:

- The affordable units must be indistinguishable from the market-rate units in the development, at least outwardly.

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- The project includes a similar mix of unit types. For example, if a multifamily rental development will have an equal number of 1-, 2- and 3-bedroom units, the affordable units should also incorporate an equal mix of 1-, 2- and 3-bedroom units. Many ordinances also require that inclusionary units be the same square footage as the market-rate units, although in some cases jurisdictions have built in flexibility to reduce square footage while including the same number of bedrooms to reduce project costs.
- Inclusionary units must be located throughout the development rather than clustered in one area.
- Residents of the affordable units must have access to all amenities – such as a pool, a fitness center and parking – that market-rate residents have.
- The affordable units must be completed either prior to or concurrent with the market-rate units, and prior to issuance of a certificate of occupancy.

ACCESSORY DWELLING UNITS: For single-family for-sale developments, some jurisdictions have allowed accessory dwelling units (ADUs) as a way to fulfill an inclusionary requirement. This is not considered a best practice and should be avoided. **While cities and counties should encourage the construction of ADUs, which can be a land- and cost-efficient way of expanding a community's housing supply, they are problematic from an inclusionary standpoint.**

ADUs are readily distinguishable from the other units in a for-sale development, and may raise equity and fair-housing concerns if used as the means for achieving compliance with an inclusionary policy.

ADUs are also typically studios or 1-bedrooms rather than a match of the bedroom mix of the primary development, and are often designed as "micro" or "efficiency" units without similar amenities as the primary development. They are challenging to deed-restrict and monitor, and are unlikely to provide the long-term affordability that an inclusionary ordinance should require.

5. Provide alternative methods of compliance.

Because one of the primary goals of an inclusionary requirement is to make affordable units available in all housing developments, ordinances should require on-site construction of the inclusionary units to the maximum extent possible. However, most jurisdictions have chosen to allow alternatives to on-site production of inclusionary units under certain circumstances.

In California, **state law requires that alternative methods of compliance be provided to developers of inclusionary rental housing**, although what those alternatives are, and when each alternative is available, is left up to individual jurisdictions. The law doesn't require alternatives for developers of for-sale housing. Common alternatives include in-lieu fees, off-site construction, land donation, and the acquisition and rehabilitation of existing units.

When weighing how to offer to provide some flexibility, alternatives should be appropriately limited to maximize on-site construction. **Alternatives should be available where on-site production of units is less feasible, rather than as a default option for all developments.** Common mistakes that can lead to inadequate production of actual housing units include setting in-lieu fees too low and failing to establish adequate standards for land donation.

Timing is also a crucial factor in the structure of alternatives. For example, some jurisdictions have required that off-site inclusionary units be completed concurrent with or prior to the development that triggered the inclusionary requirement, or before a certificate of occupancy for that development is issued. Ideally, alternatives should be used only when they will lead to the production of more affordable units than would otherwise be provided on-site, while still being consistent with the ordinance's other goals.

In-lieu fees

One common alternative is in-lieu fees, which are paid instead of constructing the required affordable units. **In-lieu fees are generally paid into a local affordable-housing trust fund that finances the construction of affordable housing at other locations within the community.** Of all the alternatives, in-lieu fees provide the greatest challenge to achieving inclusionary goals and therefore should be considered carefully and sparingly.

Unlike off-site construction and land-dedication alternatives, **in-lieu fees don't guarantee a site for the construction of the affordable units.** If the amount of the fee is not sufficiently high, the payment may also not produce enough revenue to help produce new affordable units. Without adequate funding and identified locations for their use, the fee revenue could sit unused.

TRUE COST: Furthermore, if in-lieu fees don't reflect the true cost of producing on-site units, this may drive most developers to opt for paying the fee rather than producing an affordable unit on-site. Over time, this can frustrate the policy and lead to an insufficient proportion of affordable units being developed.

If properly designed, an in-lieu fee option can have advantages in certain jurisdictions. **In-lieu fees can enable a jurisdiction to leverage state and federal funds** that may not have otherwise been available, allowing for more affordable units to be built than would have been created on-site.

IN-LIEU ADVANTAGES: It can also provide flexibility to produce needed units that the inclusionary requirement is not producing, such as extremely low-income units; use funds to preserve existing affordable housing with expiring deed restrictions; produce rental units in places where the inclusionary requirement is primarily creating for-sale units (or vice versa); or develop affordable units in parts of the city where development isn't happening and thus the inclusionary requirement is having no impact.

If allowed, the fee amount should be set at a level comparable to the cost of producing a similar unit to the one that otherwise would have been provided on-site. One of the most common methods for determining the fee amount is to base it on the gap between the affordable-housing and market-rate costs. For example, if it costs $300,000 to produce a low-income unit but the rent only covers the financing on $230,000, then the in-lieu fee would be set at $70,000 to cover the difference.

The amount of an in-lieu fee will need to change over time to reflect changes in construction costs, inflation and other market factors. Therefore, it is better to **put the formula for determining the fee amount into an ordinance rather than state the amount itself**, since amending an ordinance on a regular basis can be time-consuming, costly and potentially controversial.

ADJUSTING THE FEE: The ordinance should specify the mechanism for adjusting the fee over time, such as tying it to increases in the local Construction Cost Index, as San Francisco does. If an ordinance distinguishes between rental and for-sale units in its inclusionary requirements, in-lieu fees should also be distinguished in the same manner to ensure they are an adequate substitute for the provision of on-site units.

Off-site construction

Allowing construction of inclusionary units off-site can have advantages. For example, a developer may be able to build affordable units more cost-effectively off-site, thus enabling more units to be produced. However, there are also pitfalls that jurisdictions should work to avoid.

One important consideration with off-site construction is the allowable geography – how far from the development site. Given that the inclusionary requirement seeks to foster mixed-income neighborhoods and reduce segregation, even if inclusionary units can't be produced on-site in a new development, they should be produced nearby. In cases where that isn't possible, the jurisdiction should ensure that they are dispersed equitably throughout the community and not clustered in lower-income neighborhoods.

Jurisdictions also typically require more units to be built off-site than would be required on-site. This means the value of the cost savings over on-site construction is captured and translated into a community benefit, and that the policy properly expresses an appropriate preference for on-site units. **Ensuring on-site and off-site construction have similar costs incentivizes on-site construction (which should be the norm), while still providing a meaningful alternative for those projects that can't feasibly accommodate on-site affordable units.**

Another best practice is to **require that the off-site units be constructed before or concurrent with the market-rate units**, which can be achieved by having the off-site units finished before building permits are issued for the market-rate development site. That way an off-site alternative doesn't simply become an escape hatch to avoid complying with the site's inclusionary requirement.

Land donation

Land donation can be a useful option where affordable-housing developers have difficulty finding building sites. Paired with in-lieu fees or other sources of affordable-housing funding, **dedicated land can be used to produce needed types of housing that might not otherwise get built**, such as homes for people with special needs or permanent supportive housing.

However, jurisdictions must establish clear parameters for exercising this alternative. Donated land should be equivalent or greater in value to the affordable units that otherwise would have been produced on-site, and should be ready for development at the time it is donated. It is also important here to consider the allowable geography to make sure that the required affordable units are not concentrated in certain neighborhoods.

6. Include procedure for requesting waivers or reductions.

An inclusionary requirement may not withstand legal scrutiny if it doesn't include a process by which a developer can request a waiver or reduction of the requirement. Much like the inclusionary requirement itself, **the waiver process should be as clear and specific as possible**, detailing both the procedures for requesting the waiver – process, timeline, appeal procedure – and the standards by which the request will be evaluated.

Feasibility Studies

While not required by state law in California, preparing a feasibility study in support of an inclusionary requirement helps ensure that the requirement is right-sized for local conditions. It's important not to set an inclusionary requirement so high that it stops development, and equally crucial not to set it too low and miss out on affordable units.

A feasibility study is an opportunity to analyze local market conditions and the economics and tradeoffs of various policy options – affordability percentages and levels, incentives – to make sure the ordinance delivers the number and type of affordable units that a community needs. It also provides a data-driven foundation for the requirement, which can help overcome opposition by showing that it can be implemented without impeding the developers' ability to earn a profit.

The California Department of Housing and Community Development generally requires local jurisdictions to analyze inclusionary requirements as a potential constraint on development in their housing elements. A feasibility study can help demonstrate that the requirement isn't a barrier.

NEXUS STUDIES: Feasibility studies should not be confused with nexus studies. A jurisdiction must prepare a nexus study to impose an exaction. A nexus study would be required if a jurisdiction wanted to adopt a commercial linkage fee, for example, where it must show that the amount of the fee is roughly proportional to the need for affordable housing generated by new commercial development.

An inclusionary requirement is not an exaction but rather a land-use regulation, much like a density requirement or a height restriction, and need only be related to advancing a legitimate purpose. A nexus study is not required when adopting a traditional inclusionary ordinance.

For more information about the preparation of feasibility studies for inclusionary studies: inclusionaryhousing.org/resources/#feasibility

The waiver or reduction process should be carefully structured so that it functions as the exception and not the rule, and is only used in rare cases.

The City of Napa's inclusionary requirement withstood a constitutional challenge in part because it included a waiver-request provision. The City used a **constitutional test** to determine whether a waiver would be approved, under which the developer had to show that the requirement as applied would be unconstitutional.

Other jurisdictions apply a **hardship standard**, allowing for a waiver or reduction if the developer can show that the requirement would deprive them of all economically viable use of the land. An economic-hardship standard should not be about the level of profit, but about whether any profit can be made.

7. Monitor implementation and compliance.

A jurisdiction that chooses to adopt an inclusionary ordinance should be prepared to devote staff time and resources to ongoing monitoring and other administrative tasks needed to implement the ordinance effectively.

In addition to ensuring that deed restrictions and covenants are recorded in time and that affordability is maintained for the required time period, it is important to **ensure that units are occupied by households at the appropriate income levels over time and that resale provisions are enforced.**

To maximize the program's effectiveness, a jurisdiction should adopt procedures that:

- Establish whether the jurisdiction, property managers or a designated third party will be responsible for verifying tenant or homebuyer eligibility, income recertification and other occupancy factors. The best practice is to have the jurisdiction perform these tasks, although smaller jurisdictions may find it more cost-effective to pool resources with other neighboring jurisdictions and contract with a third party. Having property managers perform these tasks can prove overly burdensome due to the training required.
- Ensure that a list of available units is up-to-date and readily accessible to households in the targeted income categories, and that the list is maintained in a way that ensures compliance with fair-housing obligations.
- Determine which qualified applicants (those meeting household-income restrictions) are chosen to rent or buy inclusionary units.
- Recertify tenant income annually and determine when a tenant household no longer qualifies for residency in the inclusionary unit.

  Some jurisdictions require that tenants move at the end of the lease term as soon as their household income exceeds the income limit for the unit. Others allow a tenant to remain until their household income exceeds the income limit by a set amount or percentage.

  The policy should be tied to the cost of market-rate housing in the community and ensure that tenants are aware of requirements and receive adequate notice when they exceed income limits and must vacate the unit. To avoid displacement, consider allowing tenants to stay in a unit after their income exceeds allowable limits but convert that unit rent to market rate. The next comparable unit in the development that becomes vacant would then be offered as affordable to replace that "lost" unit.
- State how sales of for-sale units will be handled, including the referral of potential buyers and how funds derived from equity-sharing agreements will be used. Also, if the jurisdiction has an option to purchase a unit upon resale or at the end of the regulatory period, it should have a mechanism in place for handling those options.

A strong monitoring program can have the added benefit of providing clear data about the success of the ordinance. This information can then be used to establish that the inclusionary requirement is not a constraint on development for purposes of the housing-element review process, and for potential future discussions about amendments to the inclusionary requirement.

MORE RESOURCES

- inclusionaryhousing.org
- lgc.org/advancing-inclusionary-housing-policy

Other Value-Capture Tools to Produce Affordable Housing in Development

While "inclusionary housing" usually refers to mandatory land-use policies designed to construct affordable housing within market-rate developments, other tools can also capture land value to produce needed affordable units.

Voluntary inclusionary requirements

California has a statewide, voluntary inclusionary method in the form of Density Bonus Law, with which all cities and counties must comply. Under this law, developers who include affordable units in their projects are entitled to a density increase and other incentives.

Local governments can offer density increases above those specified in the state law in exchange for higher levels of affordability (units for households at the lower AMI levels).

Linkage fees

A linkage fee can be imposed on commercial and residential development to generate funds for affordable housing. The amount of this fee is set based on the community's need for affordable housing generated by new development. A growing number of California cities have adopted commercial linkage fees, including Los Angeles, Oakland, Sacramento and San Diego.

While linkage fees can be a crucial revenue source, a linkage fee for affordable housing doesn't produce the other community-wide benefits of a traditional inclusionary requirement, such as economically integrated neighborhoods, and may also not be as economically valuable. Pairing a commercial linkage fee with a traditional inclusionary requirement is one way for a community to maximize the production of affordable housing while also advancing other important policy goals.

Ad hoc inclusionary requirements

Some jurisdictions have tried to negotiate inclusionary requirements on a project-by-project basis, often on larger projects. These ad hoc requirements are problematic from a legal standpoint and don't ensure that all new residential development includes housing affordable at a range of income levels.