

# INCLUSIONARY ZONING FOR WORKFORCE HOUSING

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## **I. Introduction**

There are a glut of problems exacerbating affordable housing needs as a consequence of increased property values and concentrated poverty, including but not limited to sprawling development patterns, physical and mental health consequences, and decreased levels of economic mobility.<sup>1</sup> The proposed model ordinance includes some of the following recommendations: (1) mandatory (as opposed to voluntary) enforcement mechanisms; (2) packaging inclusionary units with other affordable housing resources; and (3) long-term affordability requirements.<sup>2</sup> These recommendations attack the source of the exacerbating problems and as a result will, if effectively implemented, provide certain social, economic, and environmental benefits such as: (1) decreased exposure to high crime rates; (2) decreased levels of water and air pollution; and (3) decreased taxpayer dollars spent on basic infrastructure.<sup>3</sup>

The following discussion will begin in Section II, with a discussion of some of the ways that increased property values and incidences of concentrated poverty exacerbate the need for affordable housing. Section III will address how affordable housing needs have been addressed by both existing inclusionary zoning ordinances and “other efforts” attempting to address this need. Section IV will address how these existing laws fail to adequately address affordable housing needs and the sources that exacerbate these needs. Section V will be a presentation of recommendations that the proposed model ordinance will offer municipalities to further advance efforts to address affordable housing needs and their accompanying sources that exacerbate

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<sup>1</sup> Section II

<sup>2</sup> Section V A

<sup>3</sup> Section V B

them. The paper will conclude with Section VI, where some of the more salient ideas presented in this paper will be reviewed and highlighted.

## **II. The Problem—Increased Property Values and Concentrated Poverty**

Alongside the many other programs that seek to address affordable housing needs, the problems that inclusionary zoning for affordable housing seeks to resolve are legion.<sup>4 5</sup> On a national level, two of the most salient sources of these problems are: (1) increased property values because of a locale’s development of the area<sup>6</sup> and (2) the increasing incidence and diversity of the types of places where “extremely poor neighborhoods” (i.e. neighborhoods where 40% or more of the population lives below the federal poverty line) exist.<sup>7</sup> The remaining discussion will look to these sources and their accompanying problems.

### **A. Increased Property Values and Its Effects**

Increased property values resulting from a locale’s development of the area may either introduce or exacerbate problems for: (1) low-income residents themselves, having a more limited pool of housing choices as a result of the property increases, or (2) in the community

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<sup>4</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 1* (Lincoln Inst. of Land Policy, 2017) (stating that the “primary objectives of inclusionary housing programs [including inclusionary zoning efforts] are to increase the supply of affordable housing [addressing the first source of the problems to be discussed] and to promote social and economic integration [addressing the second source of the problems to be discussed]”).

<sup>5</sup> *See also*: Alan C. Weinstein Et Al., *Current Trends and Practical Strategies in Land Use Law and Zoning 145-146* (Patricia E. Salkin ed., 2006) (additional benefits of inclusionary housing [including inclusionary zoning] including: “(1) the development of mixed-income communities; (2) the production of a range of housing that attracts a diverse labor force; (3) the creation of economic opportunity for residents in high-poverty neighborhoods; and (4) the design of consistent regulatory guidelines for developing affordable housing within a community.”); 1 *Zoning and Land Use Controls*, §3.07 *Inclusionary Zoning* (pg4) (A goal of inclusionary zoning is to “bring about social and economic integration”).

<sup>6</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities 6* (Maureen Clarke ed., 2015).

<sup>7</sup> Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession* (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

itself.<sup>8</sup> On a national level, increases in home prices have been occurring in both metro and non-metro areas from 2000-2017.<sup>9</sup> More importantly, the “real home prices for the lowest cost homes” have gone up by nearly 80%, as compared with 28% for highest-cost homes, between the years of 2000-2017.<sup>10</sup> Unfortunately, the nation is also experiencing a 28% growth from 2000-2016 in the number of people with below-poverty-level incomes, translating into an increasing pool of people pressured by these rising housing costs.<sup>11</sup>

From this increased pool there has been a development of increased competition in the rental market for affordable housing.<sup>12</sup> The U.S. Department of Housing and Urban Development (HUD), in a report to Congress in 2017, found that increases in households with “worst case needs”<sup>13</sup> between the years of 2013-2015 are largely a function of a shift from homeownership to renting<sup>14</sup>, which was a consequence of rent burdens rather than inadequate housing (causing only 2 percent of worst case housing needs).<sup>15</sup> The effect of the rising competitive environment amongst the rental market is not limited to those “worst case needs.”<sup>16</sup> This rising competitive environment also affects other vulnerable populations who are in the

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<sup>8</sup> Lincoln Inst. of Land Policy, *Inclusionary Housing: Creating and Maintaining Equitable Communities* 6 (Maureen Clarke ed., 2015).

<sup>9</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation’s Hous. 2018* 10-11 (Marcia Fernald ed., 2018).

<sup>10</sup> *Id.* at 11-12.

<sup>11</sup> *Id.* at 16.

<sup>12</sup> Nicole Elsasser Watson, *Worst Case Housing Needs: 2017 Report to Congress* x (U.S. Dep’t of Hous. And Urban Dev. 2017).

<sup>13</sup> Nicole Elsasser Watson, *Worst Case Housing Needs: 2017 Report to Congress* ix (U.S. Dep’t of Hous. And Urban Dev. 2017) (“worst case needs” is defined as “renters with very low incomes—no more than 50 percent of the Area Median Income (AMI)—who do not receive government housing assistance and who pay more than one-half of their income for rent, live in severely inadequate conditions, or both.”).

<sup>14</sup> *Id.* at x.

<sup>15</sup> *Id.*

<sup>16</sup> Placer Hous. Matters, *Who Needs Affordable Housing* <http://placershousingmatters.org/who-needs-affordable-housing/>.

rental market and are in need of affordable housing options (e.g. people with disabilities who have special needs, and the elderly).<sup>17</sup>

### 1. Effects on Low-Income Residents and Other Vulnerable Populations

With respect to the low-income residents and other vulnerable populations, as a result of their limited pool of affordable housing options, they may be subject to problems such as “extreme commute times, overcrowding, substandard housing, or rents or mortgages that are so high they deplete resources for other essentials.”<sup>18</sup>

### 2. Effects on the Community

The community does not always go unaffected when unequal access to housing exists within its borders, bringing with it potential problems such as “sprawling development patterns[,] worsen[ed] traffic congestion[,] pollut[ion of] air quality[,] increases [in] taxpayer dollars spent on basic infrastructure[,] and decreases [in] racial, cultural, and economic diversity.”<sup>19</sup>

#### B. Spatial Concentration of “Extremely Poor Neighborhoods”

Related yet distinct, the increasing incidence and diversity of the types of places where spatial concentration of “extremely poor neighborhoods” are found, also comes with a set of challenges.<sup>20</sup> Such concentration is a persistent and increasing issue, with more than twice the number of people living in “extremely poor neighborhoods” in 2014 as there were in 2000.<sup>21</sup>

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<sup>17</sup> Placer Hous. Matters, Who Needs Affordable Housing <http://placerhousingmatters.org/who-needs-affordable-housing/>.

<sup>18</sup> Lincoln Inst. of Land Policy, Inclusionary Hous.: Creating and Maintaining Equitable Communities 6 (Maureen Clarke ed., 2015).

<sup>19</sup> Id.

<sup>20</sup> Elizabeth Kneebone & Natalie Holmes, U.S. Concentrated Poverty in the Wake of the Great Recession (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

<sup>21</sup> Elizabeth Kneebone & Natalie Holmes, U.S. Concentrated Poverty in the Wake of the Great Recession (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

Furthermore, following the recession, this concentration of “extremely poor neighborhoods” is not a uniquely urban phenomenon, with suburbs experiencing almost twice the rate of growth of such neighborhoods as compared to cities.<sup>22</sup>

These trends regarding concentrated poverty do not come without their problems, affecting both the people who live in those neighborhoods (poor or not) and the larger regions these neighborhoods find themselves.<sup>23</sup> With respect to the residents, they are often subject to “higher crime rates. . . poorer physical [and health outcomes,] [poorer] mental health outcomes[,]. . . [attendance] to poor-performing neighborhood schools with higher dropout rates[, ] [weaker] job-seeking networks and. . . higher levels of financial insecurity.”<sup>24</sup> The limited economic mobility that results from these problems only worsens the longer the residents live in the neighborhoods.<sup>25</sup> In a grander scale this issue regarding increased incidences of “extremely poor neighborhoods” has generational implications as well; the poverty rate in the neighborhood where a child grows up strongly predicts that child’s economic mobility as an adult, more so than the parents’ education levels or occupations.<sup>26</sup> These mobility issues are not always limited to the neighborhoods but may extend to their surrounding regions.<sup>27</sup>

### C. Final Note

This in no way is meant to suggest that only low-income residents and those living in those areas of concentrated poverty are in need of affordable housing. The omission of other

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<sup>22</sup> Elizabeth Kneebone & Natalie Holmes, U.S. Concentrated Poverty in the Wake of the Great Recession (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities* 38 (Maureen Clarke ed., 2015).

<sup>27</sup> Elizabeth Kneebone & Natalie Holmes, U.S. Concentrated Poverty in the Wake of the Great Recession (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

groups was done with the intent to keep the applicable sentences from becoming messy. Other affected classes of people who have need for affordable housing and are subject to the same issues for lack thereof include those people with disabilities and the elderly.<sup>28</sup>

### **III. How the Need for Affordable Housing has been Addressed**

The following discussion will examine different methods by which affordable housing needs have been addressed. The discussion begins with a brief recognition of some methods employed that aren't the topic of this paper. In examining current inclusionary zoning efforts to address affordable housing needs, there are several common features in such ordinances, including affordability terms and enforcement mechanisms.<sup>29</sup> The effectiveness of these inclusionary zoning ordinances is established through a showing of creation and retention of affordable housing units and the promotion of economic and social integration.<sup>30</sup> Some factors that have been found in jurisdictions with effective ordinances include provision for the mandatory creation of affordable housing units mandatory and jurisdictions with stronger housing markets.<sup>31</sup>

#### A. Efforts Other than Inclusionary Zoning Ordinances used to Address Affordable Housing Needs

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<sup>28</sup> Placer Hous. Matters, Who Needs Affordable Housing <http://placerhousingmatters.org/who-needs-affordable-housing/>.

<sup>29</sup> See Lincoln Inst. of Land Policy, Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 2, 42-47 (Lincoln Inst. of Land Policy, 2017) (for a more full discussion of all concepts).

<sup>30</sup> See Lincoln Inst. of Land Policy, Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices (Lincoln Inst. of Land Policy, 2017); See also Alan C. Weinstein Et Al., Current Trends and Practical Strategies in Land Use Law and Zoning 145 (Patricia E. Salkin ed., 2006).

<sup>31</sup> Lisa A. Sturtevant, Separating Fact from Fiction to Design Effective Inclusionary Housing Programs (Center for Housing Policy 2016); Lincoln Inst. of Land Policy, Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 3 (Lincoln Inst. of Land Policy, 2017).

Because this paper has a focus on how inclusionary zoning ordinances, specifically, address these affordable housing needs, I have attempted to find a balance by not completely ignoring other programs and efforts but also not going into too much detail by describing all of the types within the below efforts and the effectiveness of each of those efforts.

With respect to affordable housing, efforts have taken many forms in addressing these problems and their sources. The types of laws we have seen addressing these problems include: governmental public housing programs<sup>32</sup>; nonprofit and private-sector programs<sup>33</sup>; capital grant programs<sup>34</sup>; tax incentives for affordable housing<sup>35</sup>; preservation of affordable housing programs<sup>36</sup>; certificates and vouchers<sup>37</sup>; and low-income ownership programs<sup>38</sup>. In short, there have been varied levels of success in each of these programs.<sup>39</sup>

#### B. Efforts to Resolve Affordable Housing Problems in the Context of Inclusionary Zoning

Another effort, inclusionary zoning, has played a part in addressing these affordable housing needs. Review of these zoning efforts in the United States reveals that there is “tremendous variation in policy and program design that is inherent to inclusionary [zoning],” creating a complex set of “types” of such laws and ordinances found in the United States.<sup>40</sup> Inclusionary zoning ordinances may be enacted to implement judicial (e.g. New Jersey) or

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<sup>32</sup> Charles L. Edson Et Al., *The Legal Guide to Affordable Housing Development* 4 (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011).

<sup>33</sup> *Id.* at 5.

<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.* at 12.

<sup>36</sup> *Id.* at 14.

<sup>37</sup> *Id.* at 17.

<sup>38</sup> *Id.* at 18.

<sup>39</sup> See Charles L. Edson Et Al., *The Legal Guide to Affordable Housing Development* 4-18 (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011). (refer to this source for a more thorough examination of these programs)

<sup>40</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 2 (Lincoln Inst. of Land Policy, 2017).

legislative (e.g. Massachusetts and California) requirements or may be voluntarily adopted; with each reason for adoption influencing what types of inclusionary zoning laws or ordinances are created.<sup>41 42</sup>

## 1. Types of Inclusionary Zoning Ordinances

From these foundations we see many types of inclusionary zoning laws and ordinances emerge, each with their own take on the following concepts (some types completely omitting some of these concepts from their ordinances): (1) presence of incentives; (2) enforcement mechanisms (voluntary vs. mandatory); (3) applicability triggers (e.g. minimum development size); (4) targeted income groups; (5) proportion of affordable housing needed to meet requirements; (6) applicable development types (rental vs. for-sale); (7) geographic application (e.g. county, city, certain neighborhoods); (8) contribution options; and (9) affordability terms.<sup>43</sup>

Although there are many options, for purposes of creating a more uniform discussion on inclusionary zoning ordinances, the four relevant types from the Lincoln Institute of Land Policy (“Institute”) will be used, with the rest of the concepts being discussed as minor concepts within these broader types. The types identified by the Institute include: “(1) voluntary program[s] with rental development; (2) voluntary program[s] with for-sale development; (3) mandatory program[s] with rental development; [and] (4) mandatory program[s] with for-sale

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<sup>41</sup> See Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 26-53 (Lincoln Inst. of Land Policy, 2017)

<sup>42</sup> 1 Zoning and Land Use Controls; §3.07 Inclusionary Zoning (pg1-2)

<sup>43</sup> See Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 2, 42-47 (Lincoln Inst. of Land Policy, 2017) (for a more full discussion of all concepts).

development.”<sup>4445</sup> These types are not meant to suggest that any particular municipality must choose only one of the above types to include in its inclusionary zoning ordinance.<sup>46</sup>

For the purposes of consistency in usage of the preceding concepts, the following definitions and explanations of the concepts will be substantially borrowed from the Institute.<sup>47</sup> The following paragraphs’ structure will follow the order in which the above enumerated concepts are listed. To start, with respect to incentives, of the sample size, many of the programs offered more than one incentive, including but not limited to: (1) density bonuses; (2) zoning variances other than density bonuses (e.g. reduction of parking standards); (3) fee reductions or waivers; and (4) expedited permitting.<sup>48</sup> On Pennsylvania example of a density bonus is in the Lititz Borough Zoning Ordinance. In that ordinance, Lititz Borough provides that “the density may be increased at the discretion of the Council to meet Borough objectives of affordable housing. . . .”<sup>49</sup>

As to the distinction between mandatory and voluntary, it is simply whether a developer can opt out of the program when the development falls within its scope.<sup>50</sup> An example of a mandatory program in Pennsylvania can be found in Ferguson Township. In Chapter 27 its

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<sup>44</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 37* (Lincoln Inst. of Land Policy, 2017) (The other two types were left out for a uniform discussion. On page 3, the document makes a distinction between the inclusionary zoning policies and fee-based policies).

<sup>45</sup> Michael Floryan, COMMENT: Cracking the Foundation: Highlighting and Criticizing the Shortcomings of Mandatory Inclusionary Zoning Practices, 37 *Pepp. L. Rev.* 1039, 1058 (2010) (for a different view of how to classify types of inclusionary zoning programs).

<sup>46</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 37* (Lincoln Inst. of Land Policy, 2017).

<sup>47</sup> See Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* (Lincoln Inst. of Land Policy, 2017) (it is worth noting that the sample used, because of several factors, had California inclusionary housing programs as most of the sample size.).

<sup>48</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 38-39* (Lincoln Inst. of Land Policy, 2017) (refer to these pages for a full list of the incentives reported by the sample).

<sup>49</sup> Lititz Borough, Pennsylvania, Zoning Ordinance, Article II, §216(E)(4).

<sup>50</sup> *Id.* at 37.

zoning ordinance provides that “workforce housing shall compromise an element of each development and will be incorporated at a minimum rate of 1:10 residential units.”<sup>51</sup>

As to when the ordinance become applicable, we generally see it based on development size, with variance from no reports on the required development size, to two to five units, up to applicability triggers at a minimum size of 50 units.<sup>52</sup> In addition, the applicability triggers may vary depending on whether they are rental units or for-sale units.<sup>53</sup> In the context of zoning ordinances with a provision for mandatory creation of affordable housing units, the development size or type of unit determines when the developer must build affordable housing units. In the context of zoning ordinances with a provision for the voluntary creation of affordable housing units, the development size or type of unit will determine when the developer is able to take advantage of the incentives provided for.

As to targeted income groups, the income levels served are usually described in terms of the percentage of their income in relation to the area median income (AMI).<sup>54</sup> In establishing who the beneficiaries of these ordinances are, some municipalities will set a blanket maximum percentage of the AMI of beneficiaries.<sup>55</sup> Other municipalities will establish multiple tiers, deciding what AMI percentage is served as a function of things like project size, incentives, and the proportion of required affordable housing units.<sup>56</sup> One Pennsylvania example of targeting income groups through the use of AMI is Spring Township. In the Spring Township zoning ordinance, it is provides for housing for incomes between 60% and 120% of the AMI of Centre

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<sup>51</sup> Ferguson Township, Pennsylvania, Municipal Code, Chapter 27, §701(4)(A)(4).

<sup>52</sup> *Id.* at 43.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 46.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

County (where Spring Township is located).<sup>57</sup> It further provides that “one half of these units shall fall within the 60%-90% range and one half shall fall within 91%-120% range.”<sup>58</sup>

Within the context of deciding what proportion of affordable housing is needed to meet its requirements, ordinances generally use a “minimum number of units” as the measure of compliance and satisfaction.<sup>59</sup> Less often, municipalities will use measures such as: “(1) floor area ratio; (2) tract/land parcel/lot area; [and] (3) a combination of unit and floor area[.]”<sup>60</sup> In addition, municipalities sometimes vary satisfaction requirements based on factors such as: “(1) level of affordability; (2) project size or density; (3) geographic location; (4) project type; (5) tenure; (6) percentage of open space; (7) Any combination of the above[] mechanisms; and (8) case-by-case negotiations with the developer.”<sup>61</sup>

With respect to the applicable development types, three options have emerged: (1) for-sale only; (2) rental only; and (3) ordinances applying to both.<sup>62</sup> As of the date of the report, most jurisdictions (72%) elect to have their ordinance apply to both.<sup>63</sup>

Concerning the geographic area that falls within the scope of the ordinance, a majority of jurisdictions elect to have the entire jurisdiction fall within its scope (75%), while a smaller portion only has certain zones, neighborhoods, or districts to which the ordinance applies.<sup>64</sup>

In considering what options developers will be given to contribute to affordable housing, several possibilities and/or requirements have developed, including but not limited to: (1)

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<sup>57</sup> Spring Township, Pennsylvania, Zoning Ordinance, Part 8, §821(B)(2).

<sup>58</sup> Spring Township, Pennsylvania, Zoning Ordinance, Part 8, §821(B)(2).

<sup>59</sup> *Id.* at 45-46.

<sup>60</sup> *Id.* at 46.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 50.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

provision of on-site affordable units; (2) in lieu fees; (3) provision of off-site affordable housing; (4) land donations; and (5) preservation or rehabilitation of existing affordable housing.<sup>65</sup> Not surprisingly, providing on-site affordable units was the dominant way developers were asked to or required to contribute to affordable housing.<sup>66</sup>

Finally, municipalities vary in the length of time in which the affordable housing units will have affordability requirements attached to the units.<sup>67</sup> Three categories were listed, with affordability terms set at: (1) less than thirty years; (2) greater than thirty years; and (3) “life of building” or “in perpetuity.”<sup>68</sup> Just as some of the other concepts make rental vs. for-sale distinctions in their application, so too does this concept.<sup>69</sup> To enforce these terms, most inclusionary housing policies utilize either a “shared equity homeownership model” or price and/or rent restrictions.<sup>70</sup>

## 2. Measures of Effectiveness and Effectiveness of Inclusionary Zoning Ordinances

As the following discussion will demonstrate, measuring the effectiveness of the four types inclusionary zoning ordinances enumerated above, or inclusionary zoning ordinances in general, can be a difficult thing to do. Nevertheless, some discussion is still warranted. In a general sense, measuring the effectiveness of these ordinances generally, and/or types of ordinances, will revolve around their ability to: (1) create affordable housing units; (2) retain

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<sup>65</sup> Id. at 42.

<sup>66</sup> Id.

<sup>67</sup> Id. at 44.

<sup>68</sup> Id.

<sup>69</sup> Id.

<sup>70</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 44 (Lincoln Inst. of Land Policy, 2017) (“the most common shared equity homeownership model utilized by inclusionary housing programs is a resale-restricted homeownership program that applies deed restrictions to sell and resell homes at below market-rate to income-eligible buyers.”); Alan C. Weinstein Et Al., *Current Trends and Practical Strategies in Land Use Law and Zoning* 129 (Patricia E. Salkin ed., 2006).

those units as affordable housing; and (3) promote economic and social integration.<sup>71</sup> More specifically, in measuring whether the ordinances or types of ordinances are effective in producing these results, “[t]he best evaluations use a research design that 1) compares outcomes in localities with inclusionary housing programs to similar localities without inclusionary requirements, and 2) accounts for other factors that could influence housing market outcomes.”<sup>72</sup> Even if these empirical studies are done well, however, it is still difficult to make generalizations about inclusionary housing programs (including generalizations about the four enumerated types above) on account of large variance among things such as: (1) the local economic and housing conditions and (2) the state and local regulatory and political frameworks.<sup>73</sup>

Notwithstanding these issues in measuring the effectiveness of these measures, some general numbers can be provided to at least allude to the effectiveness of inclusionary housing programs on a national level. The sample of jurisdictions from the Institute’s study quantified the number of affordable units created since the inception of each of their inclusionary zoning ordinances, with 49,287 affordable homeownership units created, and 122,320 affordable rental units created.<sup>74</sup>

In addition, although there is no data to clearly elucidate the effectiveness of each decision available to municipalities when choosing between options within the above enumerated concepts, there are a few generalities that have emerged. The inclusionary zoning

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<sup>71</sup> See Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* (Lincoln Inst. of Land Policy, 2017); See also Alan C. Weinstein Et Al., *Current Trends and Practical Strategies in Land Use Law and Zoning* 145 (Patricia E. Salkin ed., 2006).

<sup>72</sup> Lisa A. Sturtevant, *Separating Fact from Fiction to Design Effective Inclusionary Housing Programs* (Center for Housing Policy 2016).

<sup>73</sup> *Id.*

<sup>74</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 31 (Lincoln Inst. of Land Policy, 2017) (also stating that these numbers “substantially underestimate . . . units created by the entire inclusionary housing field, since only a proportion of the programs [were] represented [because much data was missing].”).

ordinances that are most impactful in producing affordable housing units tend to: (1) be mandatory; (2) be in an environment with greater political will; (3) be in stronger housing markets; (4) include incentives that offset the cost to developers; (5) be predictable with clear guidelines; and (6) have flexible compliance options.<sup>75</sup> With respect to the ordinances effectiveness in retaining the units as affordable housing units, some critical elements have emerged, namely: (1) long-term affordability terms; (2) shared equity homeownership models; and (3) well-designed post-purchase stewardship of units.<sup>76</sup>

#### **IV. Why an Inclusionary Zoning Model Ordinance is Needed**

For several reasons which will be covered in the following discussion, the current laws and inclusionary zoning ordinances have been failing to address the need for affordable housing.

In considering our findings above revealing that affordable housing needs are a growing problem,<sup>77</sup> this alone seems to suggest that on the whole affordable housing laws have been failing to accomplish their larger goals of increasing the number of affordable housing units and integrating communities socially and economically.

In a short treatment, the explanation for why much of the “other efforts” in Section III A have relegated providing housing as a “secondary goal to some other purpose for enacting affordable housing legislation” is because the “vast majority of Americans are well housed.”<sup>78</sup> This, however, does not detract from the fact that the need for affordable housing exists and is

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<sup>75</sup> Lisa A. Sturtevant, Separating Fact from Fiction to Design Effective Inclusionary Housing Programs (Center for Housing Policy 2016); Lincoln Inst. of Land Policy, Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 3 (Lincoln Inst. of Land Policy, 2017).

<sup>76</sup> Lincoln Inst. of Land Policy, Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices 3 (Lincoln Inst. of Land Policy, 2017).

<sup>77</sup> Section II

<sup>78</sup> Charles L. Edson Et Al., The Legal Guide to Affordable Housing Development 20 (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011).

becoming a growing problem as discussed above throughout Section II; particularly with regard to concentrated poverty.<sup>79</sup>

With respect to inclusionary zoning ordinances, the author could not find any data pointing to any major failures within any of the four types of ordinances described in Section III B 1. First, there is an “inherent problem in the field” concerning the failure of many jurisdictions in tracking the amount of affordable housing units created or in lieu fees collected for the creation of affordable housing units,<sup>80</sup> making it impossible to determine in what ways inclusionary zoning policies are failing to address the affordable housing needs.<sup>81</sup> This is not surprising, however, given that quite often there is “a lack of external compliance requirements result[ing] in literally no system for tracking outcomes.”<sup>82</sup> In addition, in failing to track progress, these municipalities, by necessity, cannot learn how to make incremental improvements to their existing policies. Furthermore, in failing to track progress, policymakers are uninformed as to what provisions are best for their municipality<sup>83</sup> in light of the characteristics of the particular municipality. A second area where failures may be found is that “many jurisdictions prohibit developers from using. . . federal, state, and local affordable housing funds on the same affordable units as those required by the inclusionary program.”<sup>84</sup> Unsurprisingly, likely as a result of the reporting issue, the author was not able to find any

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<sup>79</sup> Lincoln Inst. of Land Policy, *Inclusionary Housing: Creating and Maintaining Equitable Communities* 40 (Maureen Clarke ed., 2015) (“Decades after embracing ‘deconcentration of poverty’ as a federal housing policy goal, most federal programs don’t appear to be achieving meaningful economic integration.”).

<sup>80</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 31 (Lincoln Inst. of Land Policy, 2017).

<sup>81</sup> See Elizabeth Kneebone & Natalie Holmes, *U.S. Concentrated Poverty in the Wake of the Great Recession* (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/> (strategy for the best way to evaluate the effectiveness of inclusionary zoning ordinances).

<sup>82</sup> Lincoln Inst. of Land Policy, *Inclusionary Housing: Creating and Maintaining Equitable Communities* 51 (Maureen Clarke ed., 2015).

<sup>83</sup> Section III B 1

<sup>84</sup> Lincoln Inst. of Land Policy, *Inclusionary Housing: Creating and Maintaining Equitable Communities* 31 (Maureen Clarke ed., 2015).

statistics to establish whether such restrictions have had any real effects on the creation of affordable housing units; however, it is not unrealistic to think that such restrictions would cause more strain on the developers and on the relations between those developers and the municipality.

## V. **Recommendations**

It is worth repeating that best practices for inclusionary zoning for affordable housing are going to be determined largely by a locale's characteristics.<sup>85</sup> Nevertheless, where possible, recommendations will be based off of trends within the United States that have demonstrated themselves to be effective in either producing affordable housing units or integrating communities. Furthermore, the structure of the following discussion will begin with recommendations within the proposed model ordinance that will both address affordable housing needs and make specific policy choices, where possible. Following this, the discussion moves to how the proposed model ordinance will resolve affordable housing needs and how it would provide social, environmental, and economic benefits or opportunities to a municipality's residents. The discussion will then wind down by a discussion on some options for paying for successful implementation of the model ordinance.

### A. Recommendations on Policy Choices and How the Ordinance Will Address Affordable Housing Needs

The first and most obvious recommendation, based off of the Institute's study, is that the proposed model ordinance should include a provision setting up a clear, yet flexible monitoring requirements, so that municipalities can fill in the large hole that is the need for data

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<sup>85</sup> Elizabeth Kneebone & Natalie Holmes, U.S. Concentrated Poverty in the Wake of the Great Recession (Brookings 2016) <https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/>.

demonstrating the effectiveness of their ordinances.<sup>86</sup> With respect to outcome tracking, the model ordinance will require data to be recorded and analyzed through both use of the HomeKeeper tracking system and community reports.<sup>87</sup> With respect to the HomeKeeper tracking system, the Housing Planner in the Community Development Department for the City of Cambridge, Massachusetts, commented on how HomeKeeper has allowed the Department to better manage and as a result, gain a better understanding of how its programs were working.<sup>88</sup> With respect to community reports, cities such as Burlington, Connecticut have seen the need for better in-house monitoring procedures to ensure the “achievement of permanent affordability.”<sup>89</sup> Burlington is not alone. Monterey County, California, in its inclusionary zoning policy, requires both an “annual housing report” and a “five-year report” to give: (1) a brief summary of accomplishments and challenges and (2) a more in-depth evaluation of the programs effectiveness, with accompanying recommendations for policy or Ordinance revisions, respectively.<sup>90</sup> In conclusion, the proposed ordinance shall contain both of the suggested requirements so that (1) a more widely used uniform method of consolidating national data regarding affordable housing efforts can be established through HomeKeeper and (2) the municipality will have two different sources from which to track its goal progress with respect to addressing its affordable housing needs with its inclusionary zoning ordinance. Some of the items that will be monitored will include the: number of Workforce Housing Units created in the

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<sup>86</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 31 (Lincoln Inst. of Land Policy, 2017).

<sup>87</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities* 52-53 (Maureen Clarke ed., 2015).

<sup>88</sup> Tiffany Eng, *Member Profile: How the City of Cambridge is simplifying operation and managing waitlists with HomeKeeper* (2014) <https://myhomekeeper.org/news/member-profile-how-the-city-of-cambridge-is-simplifying-operations-and-managing-waitlists-with-homekeeper/>.

<sup>89</sup> czbLLC, *Evaluation of the City of Burlington’s Inclusionary Zoning Ordinance 23* (czbLLC 2017).

<sup>90</sup> County of Monterey, *Administrative Manual: County of Monterey: Inclusionary Housing Program* 30-33 (County of Monterey, 2011).

relevant calendar year; proportion of existing Workforce Housing Units purchased or rented out, on average, in the relevant calendar year; and amount of fees collected.

The second recommendation is that the proposed model ordinance should set a mandatory enforcement mechanism, with respect to both rental and for-sale units, when possible.<sup>91</sup> Generally, mandatory inclusionary zoning has “superior delivery power” as compared with voluntary options.<sup>92</sup> California, a significant producer of affordable housing,<sup>93</sup> is set up with an overwhelming majority of its inclusionary zoning programs being mandatory.<sup>94</sup> In toto it has been noted that its mandatory policies are producing a substantial amount of affordable housing, whereas the few jurisdictions with voluntary programs have produced little to no production, sometimes in the midst of a market rate boom.<sup>95</sup> In a 2003 interview with a housing project planner at the City of Cambridge, Massachusetts, it was reported that from 1988-1998 it operated under a voluntary program with density bonus offerings and produced no affordable housing; a stark contrast from the period starting in 1999, when a mandatory program was adopted and it experienced the production of “131 affordable units. . . with another 130 in the pipeline.”<sup>96</sup> Similar results were reported in a 2003 interview regarding Boulder, Colorado.<sup>97</sup>

With respect to incentives/cost-offsets, they ought to be thought of within the framework of how they can offset developer costs to encourage more contribution to affordable housing and help them make a profit while doing so. The proposed model ordinance should include a model

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<sup>91</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 56 (Lincoln Inst. of Land Policy, 2017) (there are some “states with laws against rent control ([e.g.] California, Colorado, [etc.]) [and so] it is often not legally possible to apply a mandatory policy on rental development.”).

<sup>92</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 24 (PolicyLink 2003).

<sup>93</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 51 (Lincoln Inst. of Land Policy, 2017).

<sup>94</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 24 (PolicyLink 2003).

<sup>95</sup> Id.

<sup>96</sup> Id.

<sup>97</sup> Id.

of how multiple types of incentives/cost-offsets should be structured to accomplish these goals. The author was not able to track down data that spoke to the prevalence of usage of specific incentives/cost-offsets over others or their respective effectiveness in accomplishing affordable housing goals. Nevertheless, the following types ought to be included: (1) Density bonuses; (2) unit size reduction; (3) relaxed parking requirements; (4) design flexibility; (5) fee waivers or reductions; (6) fee deferrals; (7) expedited permitting; and (8) tax abatements.<sup>98</sup> As a general recommendation, prior to drafting the ordinance, it is suggested that an economic feasibility study be done to determine how best to structure the policy to accomplish above stated goals in any municipality that is proposing such an ordinance or that already has one in place, if a renewed look is warranted.<sup>99</sup>

As a further recommendation, the proposed model ordinance should include a model of what an ordinance's income targets should look like when tailored to the affordable housing needs of the community. It is also recommended that the proposed model ordinance include models of both blanket and tiered approaches, to account for relatively homogenous and heterogenous communities, respectively. A blanket approach would be one that would provide affordable housing units for any prospective resident who falls within the income level targeted. A tiered approach is similar but would seek to provide affordable housing units for multiple levels of income level targets, with houses set aside for each "tier" of income level. The author was not able to find any data separating the income targets metric to determine how much particular targets choices influence the production of affordable housing units in the various types of social, economic, and political atmospheres that a municipality may be situated.

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<sup>98</sup> *Id.* at 26; see also Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 39 (Lincoln Inst. of Land Policy, 2017); Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities* 7 (Maureen Clarke ed., 2015).

<sup>99</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 25 (PolicyLink, 2003).

Notwithstanding this fact, on a national level, success has been documented when the ordinance “require[es] developers to deliver affordable housing units at 50-120 percent of the AMI, and when in combination with public resources [(to be discussed in the next paragraph)], those units can be made available to households between 0-50 percent of AMI.”<sup>100</sup> In terms of trends, although many communities ask developers to meet an income target at 50 percent, communities are beginning to push for lower percentages.<sup>101</sup>

A fifth recommendation, to reach the extremely low-income families, the proposed model should present model examples of how to package inclusionary units with other affordable housing resources. Some such packaging would include: (1) mandating a proportion of inclusionary units go to housing choice voucher holders; (2) offering home buyer assistance; and (3) enabling public agencies or non-profit organizations to purchase and further subsidize inclusionary units.<sup>102</sup> One example of such a packaging is demonstrated in Montgomery County, Maryland (the largest producer of affordable homeownership units).<sup>103</sup> Montgomery County has granted its local public housing authority, the Housing Opportunities Commission (HOC), with a right of first refusal for up to a third of the inclusionary units, for the purpose of renting or selling them to very-low income households.<sup>104</sup> This has resulted in HOC making 1500 units available

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<sup>100</sup> Id. at 27.

<sup>101</sup> Id.

<sup>102</sup> Id. at 28-29.

<sup>103</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 33 (Lincoln Inst. of Land Policy, 2017).

<sup>104</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 30 (PolicyLink 2003); Charles L. Edson Et Al., *The Legal Guide to Affordable Housing Development* 102 (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011).

to very-low income renters, enabling it to serve more households of lower incomes than many other inclusionary programs.<sup>105</sup>

Sixth, it is recommended that the proposed model ordinance should apply to all residential units. This is so because it has been found that jurisdictions with such requirements produce significantly more affordable units than those that are inconstantly applied and/or have exemptions and loopholes.<sup>106</sup>

Seventh, it is recommended that the proposed model ordinance include a long-term affordability provision, also utilizing a shared equity homeownership model. With respect to the shared equity homeownership model, the most commonly used, and the one that can effectively deliver permanent affordability terms, is the “resale-restricted homeownership program,” which “applies deed restrictions to sell and resell homes at below market rate to income-eligible buyers.”<sup>107</sup> As a cautionary tale, Montgomery County, Maryland, relinquished 2,135 owner-occupied units and only 1,598 created.<sup>108</sup> This was a result of its short affordability requirement terms, between 1992 and 1999.<sup>109</sup>

Finally, it is recommended that the proposed model ordinance limit the use of contribution alternatives in the interest of balancing out equitable distribution of affordable housing against the production of affordable housing units. In order to accomplish this the proposed model ordinance will have to establish clear guidelines for particular contexts, instead

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<sup>105</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 30 (PolicyLink 2003); Charles L. Edson Et Al., *The Legal Guide to Affordable Housing Development* 102 (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011).

<sup>106</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 31 (PolicyLink 2003).

<sup>107</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 44-45 (Lincoln Inst. of Land Policy, 2017).

<sup>108</sup> Karen Destorel Brown, *Expanding Affordable Hous. Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area* 17 (Brookings Inst. Center on Urban and Metro. Policy, 2001).

<sup>109</sup> *Id.*

of allowing alternatives to be used in an ad hoc manner by program administrators.<sup>110</sup> Some examples such contexts for these limitations may include those related to project size (e.g. Boulder, Colorado, “requires on-site construction for projects of five or more units, and allows an in-lieu fee on projects that are four units or smaller”) or geographic area.<sup>111</sup> Another example of limiting the use of contribution alternatives is Cambridge, Massachusetts, where it prohibits in-lieu fees and off-site construction wholesale, unless a developer can demonstrate economic hardship in providing affordable units.<sup>112</sup> To add context to this situation, it decided on this method because: (1) land there is prohibitively expensive; (2) private developers would consistently over-bid nonprofits for land; and (3) neighboring jurisdictions had struggled with spending generated in-lieu fee dollars.<sup>113</sup>

B. How the Proposed Model Ordinance Will Help Meet Affordable Housing Needs and the Accompanying Sustainability Benefits or Opportunities

Before discussing the specific ways in which the proposed model ordinance will address the sources of problems that create a need for affordable housing, one way in which the model ordinance helps position the nation for more concrete gains with respect to its affordable housing needs in general is found in the two recommended reporting requirements.<sup>114</sup> This is true because in the absence of such requirements, the ability to measure the success of these programs and make subsequent improvements based on these measurements will be severely compromised.

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<sup>110</sup> PolicyLink, Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning 34 (PolicyLink 2003).

<sup>111</sup> Id.

<sup>112</sup> Id.

<sup>113</sup> Id.

<sup>114</sup> Section V A

As discussed earlier, the two primary sources of problems that aggravate the need for affordable housing are increased property values and concentrated poverty.<sup>115</sup> The following paragraphs will address how the recommendations listed above will help affordable housing needs (and in effect counter the sources of these needs) in terms of its goals relating to: (1) production of affordable housing units; (2) equitable distribution; (3) both production and equitable distribution; and (4) preservation of affordable housing units.

With respect to production, the recommendation that the proposed model ordinance adopt a mandatory enforcement mechanism is geared towards this specific goal. This is true because between the two options (voluntary or mandatory), mandatory ordinances overwhelmingly produce more affordable housing units.<sup>116</sup>

Concerning equitable distribution goals, the recommendation of packaging inclusionary units with other affordable housing resources serves this end. This is true because this recommendation is designed to include extremely low-income residents who would otherwise be unable to reap the benefits of most inclusionary zoning efforts.<sup>117</sup>

With respect to those recommendations that can serve both production and equitable distribution goals, the following fit the mold: (1) incentives/cost-offsets; (2) income targets; (3) application of the ordinance to all residential units; and (4) limitations on the use of contribution alternatives.

The incentives/cost-offset recommendations serve production goals in that they decrease the cost burdens on developers, making it less likely that they will look elsewhere for their

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<sup>115</sup> Section II

<sup>116</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning 24* (PolicyLink 2003).

<sup>117</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning 30* (PolicyLink 2003); Charles L. Edson Et Al., *The Legal Guide to Affordable Housing Development 102* (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011).

development goals. They serve equitable distribution goals because, in encouraging developers to work in a particular jurisdiction, or at least making it less likely they will want to develop elsewhere, the goal of equitable distribution is by necessity likely to be furthered because in developing in the municipality it will have to conform to the inclusionary zoning ordinance (which will be tailored accomplishing equitable distribution goals).

Concerning income targets, equitable distribution goals are served in that they are established for the express purpose of serving lower income levels.<sup>118</sup> With respect to production goals, income targets can help a municipality tailor its ordinance in order to target its specific housing needs.<sup>119</sup> With respect to whether certain targets affect production in toto, the only information found is that, on a national level, success has been documented when the ordinance “require[es] developers to deliver affordable housing units at 50-120 percent of the AMI, and when in combination with public resources, those units can be made available to households between 0-50 percent of AMI.”<sup>120</sup>

With respect to the recommendation that the model ordinance should apply to all residential units, production goals are served in a straightforward manner, namely because in not excluding some residential units or providing exceptions to applicability, significantly more affordable units are produced.<sup>121</sup> Equitable distribution goals are likewise served by his recommendation because, if it did not apply to all residential units, there would likely be more instances where affordable housing will produced in some areas while not in others, creating pockets of concentrated poverty in the community.

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<sup>118</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous. in the U.S.: Prevalence, Impact, and Practices* 46 (Lincoln Inst. of Land Policy, 2017).

<sup>119</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities* 25 (Maureen Clarke ed., 2015).

<sup>120</sup> PolicyLink, *Expanding Hous. Opportunity in Wash., DC: The Case for Inclusionary Zoning* 27 (PolicyLink 2003).

<sup>121</sup> *Id.* at 31.

Finally, the recommended limitations on the use of contribution alternatives also serves both production and equitable distribution goals because the purpose of such limitations and their application is to find a balance between encouraging production and facilitating equitable distribution in the community.<sup>122</sup>

To conclude on the discussion of how the recommendations serve the affordable housing needs, we look to preservation goals. In terms of preservation goals, the recommended long-term affordability provision serves this because they have been demonstrated to allow jurisdictions to build up their affordable housing stock over time by retaining more, while production encouraging provisions add to the pool.<sup>123</sup>

Related to the way in which these recommended provisions counter the sources that exacerbate affordable housing needs are the social, environmental, and economic opportunities and benefits that the proposed model ordinance can provide to a municipality's residents. This is true because in countering these sources, the consequent problems that emanate from these sources will also be countered, if not completely quashed.

First, we will discuss the social, economic, and environmental benefits and opportunities of the proposed model ordinance as they relate to increased property values. With respect to social benefits and opportunities, by countering effects from increased property values, issues such as overcrowding, substandard housing for low income residents, and a lack of racial diversity in the community will likely be less prevalent.<sup>124</sup> As related to economic benefits, if effectively implemented, we will likely see: (1) decreased expenses with respect to otherwise

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<sup>122</sup> *Id.* at 33.

<sup>123</sup> *Id.* at 32.

<sup>124</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities* 6 (Maureen Clarke ed., 2015).

extreme commute times; (2) a decrease in the overall burden that renters or homeowners experience in a community; and (3) a decrease in taxpayer dollars spent on basic infrastructure.<sup>125</sup> As related to the environmental benefits, effective implementation would: (1) decrease air pollution from decreased commute times and decreased instances of traffic congestions and (2) Decrease the prevalence of sprawling development patterns and their accompanying environmental consequences (i.e. air and water pollution and the “loss or disruption of environmentally sensitive areas”).<sup>126</sup>

Finally, we will discuss the social, economic, and environmental benefits and opportunities of the proposed model ordinance as they relate to decreased incidences of concentrated poverty. With respect to social benefits there will by necessity be decreased: (1) exposure to high crime rates; (2) physical and mental consequences; and (3) attendance of poor-performing neighborhood schools.<sup>127</sup> As related to economic benefits, effective implementation will likely: (1) provide stronger job-seeking networks translating to more job opportunities; (2) increase overall levels of financial security in the community; and (3) Increased economic mobility and the accompanying generational implications.<sup>128</sup>

### C. Funding Options

This next section will review some of the funding options available to municipalities wanting to implement such ordinances. The most common sources of funding these administrative costs are: (1) local government general funds and (2) federal housing block grant

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<sup>125</sup> Id.

<sup>126</sup> Samuel Brody, The Characteristics, Causes, and Consequences of Sprawling Development Patterns in the United States (Knowledge Project, 2013), <https://www.nature.com/scitable/knowledge/library/the-characteristics-causes-and-consequences-of-sprawling-103014747>; Lincoln Inst. of Land Policy, Inclusionary Hous.: Creating and Maintaining Equitable Communities 6 (Maureen Clarke ed., 2015).

<sup>127</sup> Lincoln Inst. of Land Policy, Inclusionary Hous.: Creating and Maintaining Equitable Communities 6 (Maureen Clarke ed., 2015).

<sup>128</sup> Id.

funds.<sup>129</sup> In addition to this, communities have: (1) used a portion of the revenues from inclusionary housing fees, with some communities setting up fee structures to grow with administrative demands; (2) charged tenants or homebuyers application fees; (3) charged significant fees when inclusionary homeowners resell or refinance their homes.<sup>130</sup>

Another important source of funds can come from a local housing trust fund, often having the proceeds from “local taxes set aside for housing, linkage fees, inclusionary in-lieu fees, and tax increment funds” placed in them.<sup>131</sup> With respect to set-asides of local taxes,

Finally, community land trusts can also be a source of funding, typically charging homeowner a monthly ground lease fee, and on a less frequent basis they will charge: (1) administration fees in deed covenants (e.g. Chicago) or (2) owners of inclusionary rental units and annual monitoring fee.<sup>132</sup>

## VI. Conclusion

In conclusion, the nation and its vulnerable populations (as well as the traditionally defined nonvulnerable populations when in areas of concentrated poverty) are experiencing an abundance of real consequences as a result of the increasing need for affordable housing, especially in light of the increasing severity of the two primary sources exacerbating its/their affordable housing needs.<sup>133</sup> Although inclusionary zoning efforts have increased in number, without any real reporting requirements on the communities, there is a large hole in the data that would help inform the community, its neighboring communities, and the nation on what types of

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<sup>129</sup> *Id.* at 51.

<sup>130</sup> *Id.*

<sup>131</sup> Charles L. Edson Et Al., *The Legal Guide to Affordable Hous. Development 309* (Tim Iglesias & Rochelle E. Lento eds., 2nd ed. 2011).

<sup>132</sup> Lincoln Inst. of Land Policy, *Inclusionary Hous.: Creating and Maintaining Equitable Communities 51* (Maureen Clarke ed., 2015).

<sup>133</sup> Section II

improvements can be made and what efforts work best in what contexts.<sup>134</sup> As a result, one important recommendation to be included in this proposed model ordinance is the establishment of effective reporting requirements.<sup>135</sup> Other key recommendations include: (1) packaging inclusionary units with other affordable housing resources and (2) limitations on the use of contribution alternatives.<sup>136</sup> These two recommendations (in conjunction with the other recommendations) will offer solutions to both affordable housing needs and a plethora of connected social, economic, and environmental issues including: (1) limitations to economic mobility; (2) physical and mental health consequences; and (3) sprawling development patterns.<sup>137</sup>

### **Workforce Housing Model Ordinance<sup>138</sup>**

Thomas Lopez

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE \_\_\_\_\_ [TOWNSHIP/BOROUGH] OF  
\_\_\_\_\_ COUNTY, PENNSYLVANIA, TO ESTABLISH ZONING  
REGULATIONS RELATED TO THE PROVISION OF WORKFORCE HOUSING UNITS

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<sup>134</sup> Section III

<sup>135</sup> Section V A

<sup>136</sup> Section V A

<sup>137</sup> Section V B

<sup>138</sup> See Inclusionary Regulations: Pennsylvania Examples; July 10, 2009. “Workforce housing/ workforce housing units” language has been used instead of “affordable housing” language found in the Narrative, in order to be consistent with language being used in most Pennsylvania ordinances on the subject.

WHEREAS, there is an increasing interest and need in this Commonwealth for more sustainable housing options for lower and moderate-income individuals.

WHEREAS, in adopting this ordinance, this [Township/Borough] can regulate and address the growing interest and need for workforce housing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the authority of the {Board/Council} of the \_\_\_\_\_ [Township/Borough] of \_\_\_\_\_ County, Pennsylvania:<sup>139</sup>

## **Chapter 1**

### **Preliminary Provisions**

#### **Section 1.1 Short Title.**

This ordinance shall be known as the Workforce Housing Ordinance (“WHO”).

#### **Section 1.2 Legal Authority.**

This ordinance is permitted under the Pennsylvania Municipalities Planning Code, pursuant to: Article 1, Section 105<sup>140</sup>; Article III, Section 301 (A)(2.1); and Article VI, Sections 603(c)(5)-(6) and 604(1),(5).<sup>141</sup>

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<sup>139</sup> Above language adapted from the “Tiny Homes” model sustainability ordinance for the Pennsylvania State Association of Township Supervisors and the Pennsylvania State Association of Boroughs (Fall 2017). <https://widenerenvironment.wordpress.com/students/ordinances/>

<sup>140</sup> 1988 Pa. ALS 170. (“It is the intent, purpose and scope of this act. . . to permit municipalities, other than cities of the first and second class, to minimize such problems as may presently exist or which may be foreseen.”)

<sup>141</sup> Id.

### Section 1.3 **Severability.**

The provisions of this ordinance are severable. If any provision of this act or its application is held invalid such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.<sup>142</sup>

### Section 1.4 **Repeals.**

Any other parts of the zoning ordinance shall not be repealed. Any inconsistencies in the WHO to the rest of the zoning ordinance shall be construed as alterations to the zoning ordinance for purposes of relevant WHO provisions.

### Section 1.5 **Effective Date.**

This ordinance shall become effective 30 days after enactment.

### Section 1.6 **Purpose.**

The purpose of the WHO is to:

- (a) Increase the supply of workforce housing.
- (b) Meet the housing needs of current and future low and moderate income residents in the community.
- (c) Assist in maintaining developer profitability in comparison to other municipalities without workforce housing ordinances as much as is practicable.
- (d) Balance the interests of meeting the housing needs of current and future low and moderate income residents with developer profitability.

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<sup>142</sup> language adapted from the "Tiny Homes" model sustainability ordinance for the Pennsylvania State Association of Township Supervisors and the Pennsylvania State Association of Boroughs (Fall 2017).  
<https://widenerenvironment.wordpress.com/students/ordinances/>

- (e) Provide workforce housing in a wide choice of locations, which maximizes the social, economic, and environmental opportunities for everyone.
- (f) Preclude over-concentrations of low and moderate income households in any one area.
- (g) Create and maintain suitable residential areas that are well-maintained, attractive, and stable.<sup>143</sup>
- (h) Ensure that people who work in the community may also live in the community.
- (i) Implement the housing goals and policies contained in the municipal and county comprehensive plans.<sup>144</sup>

## Chapter 2

### Definitions

**“Administrative Agency.”** The agency or organization responsible for implementing and administering the provisions of the WHO.<sup>145</sup>

**“Affordable.”** Housing that involves paying no more than 30 percent of gross household income for housing expenses, including mortgage or rent, utilities, insurance and taxes, regardless of income level.<sup>146</sup>

**“Applicant.”**

- (a) developer, attempting to get a Development Permit; or

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<sup>143</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning (verbatim copy for 1.5(e)-(g).)

<sup>144</sup> Strategies for Increasing Housing Affordability in Lancaster County, Pennsylvania (pg47). (Section 1.5 (a)-(b), (h)-(i) is a verbatim copy from this document, except that “affordable” was replaced with “workforce”. Does not include parts A(3) and (5) if the document’s purpose section.)

<sup>145</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning

<sup>146</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning

(b) Potential homeowner or renter seeking to purchase or rent a Workforce Housing Unit, respectively.

**“Applicant’s Household.”** A potential homeowner or renter who is seeking to purchase or rent a Workforce Housing Unit, including the individuals who may be moving in with the Applicant.

**“Application for Development.”** An application submitted to the Administrative Agency for approval as required in Section 5.2.

**“Application for Purchase/Rent.”** An application submitted to the Administrative Agency for approval as required in Section 3.4(e).

**“Area Median Income/AMI.”** Median income as defined by HUD.<sup>147</sup>

**“Certificate of Qualification.”** The document issued by the Administrative Agency to the Applicant purchaser/renter, certifying that the Applicant’s Household is a Qualified Household.

**“Developer.”** A person whose intent is to buy land and build on it.

**“Development Permit.”** A permit issued by the Administrative Agency to the applicant developer after the required procedure as defined in Chapter 5 is completed.

**“Governing Body.”** The council in cities, boroughs, and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of

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<sup>147</sup> Strategies for Increasing Housing Affordability in Lancaster County, Pennsylvania (pg55)

the second class; the board of commissioners in counties of the second through eighth class or as may be designated in the law provided for the form of government.<sup>148</sup>

**“Household Type.”** Either a Low Income or Moderate Income household.

**“HUD.”** U.S. Department of Housing and Urban Development.

**“Low Income.”** Household income that does not exceed 80% of the median income for the area, as determined by HUD.<sup>149</sup>

**“Market Rate Units.”** Housing units in a residential development that are not workforce housing units.

**“Moderate Income.”** A household whose income is between 81 and 116 percent of the median household income for the area.<sup>150</sup>

**“New Residential Development.”** Any residential development not in existence or not already approved for development upon the adoption of the WHO.

**“Phasing Plan.”** A residential development plan that develops housing units in phases over time.

**“Primary Residence.”** The place which is considered to be the main living location.<sup>151</sup>

**“Qualified Household.”** A Household Type meeting the requirements set out in Section 3.4(b)

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<sup>148</sup> 1988 Pa. ALS 170. (Article I, Section 107(A)(10))

<sup>149</sup> Strategies for Increasing Housing Affordability in Lancaster County, Pennsylvania (pg57).

<sup>150</sup> Strategies for Increasing Housing Affordability in Lancaster County, Pennsylvania (pg57)

<sup>151</sup> Blacks Law Dictionary 2<sup>nd</sup> Ed. (“Primary Residence”)

**“Residential Development Plan.”** A plan proposing to improve one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving a group of two or more residential units.<sup>152</sup>

**“WHO.”** Workforce Housing Ordinance.

**“Workforce Housing Unit.”** Housing unit affordable to either a low income or moderate income household.

### Chapter 3

#### Workforce Housing

##### Section 3.1 Workforce Housing Unit Creation Requirements

(a) **Total Workforce Housing Unit Creation Requirement.** Workforce Housing Units in \_\_\_\_\_ zoning districts shall be included in each new residential development and shall be incorporated at a minimum rate of 1:10.<sup>153</sup>

(1) The ratio shall be rounded to the nearest whole number for both market rate units and Workforce Housing Units.<sup>154</sup>

(2) If the ratio results in a “x.5” result, the number of Workforce Housing Units shall be rounded up to the next whole number.<sup>155</sup>

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<sup>152</sup> 1988 Pa. ALS 170. (Article I, Section 107(A)(11)(i)(1)(a); edited to fit residential specific development plans)

<sup>153</sup> Ferguson Township, Pennsylvania, Municipal Code, Chapter 27, §701(4)(A)(4). (Adjusted the wording to allow municipalities to decide the scope of zoning districts that the requirement applies to; Ferguson applies only to Traditional Town Development zoning districts)

<sup>154</sup> e.g. If the residential development will have 101 units, the calculation would demand that 10.1 of those units be Workforce Housing Units. Because the nearest whole number to 10.1 is 10, there shall be 10 Workforce Housing Units created in this development.

(b) **Workforce Housing Requirements: Household Types.** Workforce Housing Units shall be created for Low and Moderate Income households in proportion to the municipality's demand for both household types as determined, on an annual basis, by the Administrative Agency.

(1) This calculation shall be done after the appropriate calculation in Section 3.1(a) is done.

(2) The Low and Moderate Income Workforce Housing Units proportions shall be rounded to the nearest whole number for both the Low and Moderate Income households respective Workforce Housing Unit demand.<sup>156</sup>

### Section 3.2 **Permitting Process.**

(a) **Prohibition of Improvements without Permit.** A developer may not make substantial improvements on the land until the Development Permit has been issued to the Applicant Developer by the Administrative Agency.

(b) **Application for Development.**

(1) The Application for Development shall include the Residential Development Plan and all other information the Administrative Agency will require in the Application.

(2) The Residential Development Plan shall include:

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<sup>155</sup> e.g. If the residential development will have 105 units, the calculation would demand that 10.5 of those units be Workforce Housing Units. Because 10.5 is a "x.5" result, it will be rounded up and there shall be 11 Workforce Housing Units created in this development.

<sup>156</sup> e.g. If 11 Workforce Housing Units shall be built in a development and the demand of Low and Moderate Income households results in a 1:2 ratio respectively, the Low Income needs is roughly 3.65 and the Moderate Income need is roughly 7.35. As a result, there shall be 4 Low Income Workforce Household Units and 7 Moderate Income Workforce Household Units created, respectively.

- (i) A general description of the development;
- (ii) The total number of market-rate units and Workforce Housing Units;
- (iii) The number of bedrooms in each market-rate units and affordable units;
- (iv) 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 area;
- (v) The location in the development of each market-rate and affordable housing unit;
- (vi) 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;
- (vii) The estimated sale price or monthly rent of each market-rate unit and each workforce housing unit;
- (viii) Documentation and plans regarding the exterior appearances, materials, and finishes of the Workforce Housing Development and each of its individual units; and
- (ix) A marketing plan the Applicant proposes to implement to promote the sale or rental of the affordable units within the development of eligible households.<sup>157</sup>

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<sup>157</sup> Inclusionary Regulations: Pennsylvania Examples (pg28; Lower Merion Township Draft Regulations; the language is substantially the same, except for the replacement of the language "Affordable Housing" with "Workforce Housing.")

(3) The grant or denial of a Development Permit shall be given to the Applicant Developer within \_\_\_ business days of receipt of the Residential Development Plan.

**Section 3.3 Phasing Plans.** If the Residential Development Plan contains a Phasing Plan, Workforce Housing Units shall be made available for occupancy on approximately the same schedule as a Residential Development Plan’s market rate units, except that certificates of occupancy for the last 10% of the market rate units shall be withheld until certificates of occupancy have been issued for all of the Workforce Housing Units is complete.<sup>158</sup>

**Section 3.4 Location.** Workforce Housing Units may not be segregated or clustered within a development<sup>159</sup>, and shall be dispersed among the market rate units throughout the development<sup>160</sup>, unless the Administrative Agency approves an alternative from Section 3.9, exempting the developer from Section 3.1(a)-(b) requirements.

**Section 3.5 Design.**

(a) **Exterior Appearance.** Workforce Housing Units shall be compatible with the market rate units in exterior visual appearance and architectural style. External building materials and finishes shall be substantially the same in type and quality for the Workforce Housing Units as for the market rate units.<sup>161</sup>

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<sup>158</sup> State College Borough Zoning Ordinance §19-1952(a)(5), (e)

<sup>159</sup> Ferguson Zoning Ordinance: §27-701(4)(A)(4) (excluded the language regarding design because the author decided the requirements were not flexible enough)

<sup>160</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning (pg22)

<sup>161</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning (pg22) (mostly verbatim; only significant alteration was the replacement of the word “affordable dwelling” with “Workforce Housing”)

(b) **Interior Amenities.** Workforce housing units may differ from the market-rate units in a development with regard to interior amenities and gross floor area, provided that:

(1) The differences, excluding differences related to building size differentials, are not apparent in the general exterior appearance of the development;

(2) The gross floor area of the habitable space within workforce housing dwelling units is not less than the following minimum requirements:

(i) One Bedroom: \_\_\_\_ square feet.

(ii) Two Bedrooms: \_\_\_\_ square feet.

(iii) Three Bedrooms: \_\_\_\_ square feet.

(iv) Four Bedrooms: \_\_\_\_ square feet.

(v) Five or more bedrooms: add an additional \_\_\_\_ square feet per additional bedroom.<sup>162</sup>

(3) These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency and standard components, as defined by the Municipality, of the project's units.<sup>163</sup>

### Section 3.6 Eligible Households

(a) **Primary Place of Residence.** Workforce Housing Units required under this ordinance shall be offered for sale or rent to a qualified household that will use the Workforce Housing Unit its own primary residence.<sup>164</sup>

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<sup>162</sup> College Township Zoning Ordinance §200-38.4 (D)(1) (Verbatim language used for Section 3.4(b)(1)-(2); only removed the designated minimums for an adopting municipality to determine)

<sup>163</sup> State College Borough Zoning Ordinance §19-1952(a)(7) (verbatim language used; only excluded the language that would have been redundant)

<sup>164</sup> State College Borough Zoning Ordinance §19-1952(a)(4) (omitted the last clause of the provision)

(1) The Administrative Agency shall assist in finding buyers/renter for the Workforce Housing Units.

(2) The Administrative Agency shall offer the Workforce Housing Unit to an applicant who satisfies the requirements of this section, after the Applicant receives a Certificate of Qualification from the Administrative agency.

(b) **Qualified Household.** A household shall be deemed a Qualified Household if the following is true:

(1) The household is either Low Income or Moderate Income; and

(2) either:

(i) The Workforce Household Unit being applied to for purchase or rent by a Low Income or Moderate Income household is designated for their Household Type; or

(ii) If the Household Type is not the Type designated for the Workforce Housing Unit applied for, the Administrative Agency makes an exception for the Applicant based upon the local demand for the two provided for household types.

(c) **Primary Residence.** The Administrative Agency shall define, flexibly and reasonably, what a Primary Residence is and shall provide the definition in the Application for Purchase/Rent.

(d) **Low or Moderate Income Households.**

(1) **Low or Moderate Income.** The Administrative Agency shall determine whether a household is Low or Moderate Income by measuring income from all individuals at least 18 years of age in the Applicant's Household.

(2) **Income.** Determining what qualifies as income shall be at the reasonable discretion of the Administrative Agency.

**(e) Application for Purchase/Rent.**

(1) The Applicant attempting to purchase or rent a Workforce Housing Unit shall include in the Application for Purchase/Rent:

(i) An agreement that the Applicant's Household will have its Primary Residence be the Workforce Housing Unit; and

(A) This agreement shall include a description of the Applicant's Household's other living locations if applicable.

(B) If there are no other living locations for any individual in the Applicant's Household, the Applicant must include language indicating this fact in this agreement.

(ii) Information demonstrating that the Applicant's Household is a Qualified Household.

(2) The Administrative Agency may not deny an Application for Purchase/Rent if the sole reason for denial of the Application for Purchase/Rent is that at least one individual in the Applicant's Household will not be using the Workforce Housing

Unit as his/her Primary Residence, unless either subsection (i) or (ii) of this paragraph apply.

(i) The Administrative Agency may deny an Application for Purchase/Rent under these circumstances if the individual in the Applicant's Household that will not be using the Workforce Housing Unit as his/her Primary Residence is the Applicant.

(ii) The Administrative Agency may deny an Application for Purchase/Rent under these circumstances if the individual/s in the Applicant's Household—not including the Applicant—would disqualify the Applicant from being a Qualified Household under subsection (b).

### Section 3.7 **Incentives.**

#### (a) **Density and Height Bonus.**

(1) **Density Bonus.** The administrative agency shall give the Developer the ability to build \_\_\_\_ additional units per lot for each Workforce Housing Unit that exceeds the minimum requirements for Workforce Housing Unit creation set out in Section 3.1(a).<sup>165</sup>

(i) The Administrative Agency will be the entity that gives the density bonus through the Development Permit that it shall issue to the Developer upon the Developer's satisfaction of the permitting process.

(ii) The Administrative Agency will be limited in the maximum density permissions it may give to the Developer for the density bonus by the

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<sup>165</sup> Strategies for Increasing Housing Affordability in Lancaster County, Pennsylvania (pg48)

maximum density permitted in the municipality or zoning district within the municipality under [Section/Subsection] \_\_\_\_\_.

(iii) **Zoning Ordinance Dimensional Adjustments.** The minimum lot size and dimensional standards (including the minimum lot width, the maximum lot coverage by impervious cover, and the minimum front yard, side yard, and rear yard, setbacks) shall be adjusted by the zoning hearing board to enable the density bonus to be fully exercised, except as provided under Subsection (B) of this paragraph.<sup>166</sup>

(A) The zoning hearing board shall include these adjustments in the Development Permit.

(B) The zoning hearing board may decline to adjust the minimum lot size and dimensional standards to allow for full exercise of a density bonus if there is a reasonable probability that a substantial adverse effect will result to either:

(I) Environmental interests of the [Township/Borough] or

(II) The character of the adjoining neighborhoods.

(2) **Height Bonus.** The zoning hearing board shall give the Developer the ability to construct units to a maximum of \_\_\_ feet to enable not more than \_\_\_ stories for habitation purposes if the creation of Workforce Housing Units exceeds the

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<sup>166</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning (pg20) (The language in this provision is substantially similar to the cited document, except that language was added or omitted to make it consistent with the flow of the document)

minimum requirements set out in Section 3.1(a) by equal to or greater than 10 percent.<sup>167</sup>

**(b) Fee Waiver, Discount, of Deferral.**

(1) The Administrative Agency, with the approval of the [Township/Borough], may waive, discount, or defer, municipal fees associated with the approval process of a land development project.<sup>168</sup>

(2) **Waiver, Discount, Deferral, Request.** Any developer of Workforce Housing Units may submit a request for a waiver, discount, or deferment, of fees.

(i) The request shall contain information detailing how costs will be reduced and how the savings will be passed on to the Workforce Housing Units.

(ii) The Administrative Agency's decision on a waiver, discount, or deferment, of municipal fees will be based upon the Agency determining that such savings will be appropriate and directly proportionate to the reduction in Workforce Housing Unit sales or rental costs.

(iii) The Administrative Agency shall review the request and provide an answer to the developer within 30 days of receipt of the request.<sup>169</sup>

(3) **Applicability.** Fees referred to in this Section may not be waived, discounted, or deferred, if the fee-in-lieu option set forth in Section 3.7(a) is applied.

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<sup>167</sup> Strategies for Increasing Housing Affordability in Lancaster County, Pennsylvania (pg48) (the provision is substantially unchanged but language was added to make it consistent with the WHO)

<sup>168</sup> College Township Zoning Ordinance; §200-38.4(D)(3)

<sup>169</sup> College Township Zoning Ordinance; §200-38.4(D)(3) (No major modifications made to the language of the statute; i.e. it is mostly verbatim)

### Section 3.8 Continued Affordability Requirements.

(a) **Ninety-Nine-Year Requirement.** All Workforce Housing Units shall remain as a Workforce Housing Unit for a period of no less than 99 years commencing from the date of initial occupancy of the units.

(b) **Affordability Instruments.** Provisions to ensure continued affordability of Workforce Housing Units shall be embodied in legally binding agreements and/or deed restrictions, which shall be prepared by the [Township/Borough] and agreed to by the Developer and upon execution, shall be recorded and filed.<sup>170</sup>

(1) The legally binding agreements and/or deed restrictions shall include limitations with respect to sale/resale price and unit improvements. The specifics of these limitations, not already specified below, shall be established by the Administrative Agency, which shall collaborate with the Developer in specifying the limitations to ensure the Developer's profitability.

(i) The legally binding agreements and/or deed restrictions shall permit the initial and subsequent occupants of the Workforce Housing Unit to receive in their sale price some of the appreciation of the Workforce Housing Unit market value. The Administrative Agency shall be responsible for setting the amount of appreciation that may be received by the initial and subsequent occupants.

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<sup>170</sup> State College Borough Zoning Ordinance; §19-1952(d)(1)-(2). (substantially verbatim except for minor changes like replacing "inclusionary" for "Workforce Housing"; used for all of subsection (a) and for subsection(b) up to the footnote.)

(ii) If the current owner or renter's affordability agreement in the legally binding agreement and/or deed restriction has not expired, the new legally binding agreement and/or deed restriction shall include a provision reestablishing the 99-year requirement set forth in subsection (a) for each subsequent purchaser.

(2) The Administrative Agency shall monitor the sale/resale process to ensure that the Developer and/or initial and subsequent occupants of each Workforce Housing Unit are in compliance with the above requirements. This

### Section 3.9 **Alternatives to On-Site Construction of Workforce Housing Units.**

#### **(a) Fee In-Lieu of Workforce Housing.**

(1) The Administrative Agency may, with the approval of the Governing Body, approve a Residential Development Plan that allows an Applicant—instead of building some or all of the required number of Workforce Housing Units—to pay the Administrative Agency (or [Township/Borough]; whichever is more suitable to the municipality) an amount computed under subsection (2) only if it is found that:

##### (i) Either:

(A) An indivisible package of services and facilities available to all residents of the proposed Development Project would cost Workforce Housing Unit buyers/renters so much that it is likely to make the Workforce Housing Units effectively unaffordable by eligible buyers; or

(B) Environmental constraints at a particular site would render the building of all required Workforce Housing Units at that site economically infeasible; and

(ii) The public benefit of additional affordable Workforce Housing Units outweighs the value of locating Workforce Housing Units throughout the [Township/Borough], and accepting the payment will further the objective of providing a broad range of housing opportunities throughout the county.

(2) Any payment to the Administrative Agency under this subsection shall equal or exceed 125 percent of the imputed cost of land for each unbuilt Workforce Housing Unit. The imputed land costs must be calculated as 10 percent (for high-rise units) or up to 30 percent (for all other housing units) of the actual sale price charged for each substituted units. If the substituted unit will be a rental unit, the Administrative Agency shall calculate an imputed sale price based on the rent actually charged.<sup>171</sup>

(3) The Administrative Agency shall use the monies collected from this fee to further goals of Workforce Housing Unit production in a reasonable manner, with approval and oversight of the Governing Body.

**(b) Off-Site Development.**

(1) The Administrative Agency may, with the approval of the Governing Body, allow the Developer to, instead of building on-site, to provide at least the same

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<sup>171</sup> Montgomery, MD County Code; Chapter 25A; Section 25A-5A(a) (Adapted to be consistent with the WHO; very minor modifications; used for (a)(1)-(2).)

number of Workforce Housing Units at another location only if the Administrative Agency finds all of the following:

(i) The public benefit of locating Workforce Housing Units at the proposed alternative location outweighs the value of locating Workforce Housing Units in each subdivision throughout the [Township/Borough].

(ii) Building the Workforce Housing Units at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the [Township/Borough].<sup>172</sup>

(2) The Administrative Agency, upon finding the above requirements to be met, shall collaborate with the Developer in agreeing on a suitable location for the off-site Workforce Housing Unit/s.

### Section 3.10 Appeals Process

(a) The grant or denial of a permit, certificate or other findings by the administrative agency may be appealed in writing by the Applicant or other aggrieved party to the zoning officer within \_\_\_ business days of receipt of notice of the grant or denial.

(b) The aggrieved party shall be given an opportunity for a hearing within \_\_\_ days.

(c) The decision of the zoning hearing board, governing body, or any decision by the administrative agency which is not appealed in accordance with subsection (a) above shall be deemed a final action.<sup>173</sup>

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<sup>172</sup> Montgomery, MD County Code; Chapter 25A; §5B(a).

Section 3.11 **Fees.** Fees to administer the program such as an application fee, monitoring fee, or resale fee, may be established by [Township/Borough] Council resolution following written recommendation by the [Township/Borough] Manager and adopted as part of the [Township's/Borough's] schedule of fees.<sup>174</sup>

## **Chapter 4**

### **Administrative Agency**

Section 4.1 **Selection of Administrative Agency.** The Governing Body shall designate an Administrative Agency.

- (a) Selection of an Administrative Agency shall be limited to a governmental entity that deals with housing or community development issues or a nonprofit organization.<sup>175</sup>
- (b) If a municipality is interested in a private nonprofit organization, then the Governing Body shall use a competitive process in selecting the organization.<sup>176</sup>
- (c) The designated Administrative Agency shall hold and use all money collected through In-Lieu or other fees created from this ordinance to further goals of Workforce Housing Unit production, in a reasonable manner, with approval and oversight of the Governing Body.

Section 4.2 **Data Records and Reporting.**

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<sup>173</sup> Above language adapted from the "Tiny Homes" model sustainability ordinance for the Pennsylvania State Association of Township Supervisors and the Pennsylvania State Association of Boroughs (Fall 2017). <https://widenerenvironment.wordpress.com/students/ordinances/>

<sup>174</sup> State College Borough §19-1952(k) (substantially verbatim)

<sup>175</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning (pg15)

<sup>176</sup> Lehigh Valley Planning Commission Model Ordinance: Inclusionary Zoning (pg15)

(a) **General.** The Administrative Agency shall monitor all data relevant to measuring the effectiveness and administration of the WHO.

(b) **Recording Data.** The Administrative Agency shall record data from subsection (a) in the HomeKeeper tracking system and in community reports.

(c) **Community Reports.** The Administrative Agency shall provide to the Governing Body, both:

(1) A brief annual housing report, which shall include data such as:

(i) The number of Workforce Housing Units created in the relevant calendar year;

(ii) The proportion of existing Workforce Housing Units purchased or rented out, on average, in the relevant calendar year;

(iii) The amount of fees collected; and

(iv) Expenses of the Administrative Agency relevant to the administration and implementation of the WHO.

(2) A five-year report, which shall give:

(i) A brief summary of accomplishments and challenges; and

(ii) A more in-depth evaluation of the programs progress—including the information required in subsection (1)—with accompanying recommendations for policy or WHO revisions.