Building Better

Recommendations for Boston's Inclusionary Development Policy

Massachusetts Association of
Community Development Corporations

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Massachusetts Association of Community Development Corporations

The Massachusetts Association of Community Development Corporations (MACDC) is the policy and capacity-building arm of the community development movement in Massachusetts. We support and advance the affordable housing, economic development and community-building strategies of our members. We work to build the power of low and moderate income people to achieve greater economic, social and racial justice.

The Boston Committee

The Boston Committee is comprised of the executive directors of Boston's community development corporations. Convened by MACDC, the committee addresses policy concerns that affect affordable housing, commercial and industrial real estate development, workforce development, small business development, and social services in the city of Boston. The committee meets frequently with city and state officials to address these concerns. The Boston Committee spearheaded this report and voted unanimously to endorse the recommendations contained herein.

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I. Executive Summary

While the lack of affordable housing in Boston has been a chronic problem, recent years have proved critical to a workforce that has struggled to find homes that it can afford. In 2004, nearly half (47%) of Boston tenants spent more than 30% of their incomes on rent.[1] Many families are paying beyond their means to stay in Boston, while others, especially young professionals, are leaving the city in search of cheaper housing. Between 2000 and 2004, Boston lost 18% of its population aged 20 to 34 and 11% of its overall population.[2]

The City of Boston has employed its *Inclusionary Development Policy* to combat this problem. The policy requires developers to set aside 13% of each residential project as affordable housing in exchange for increased density allowances and other negotiated cost-offsetting bonuses. The City targets these affordable units to moderate-income and middle-income families, those earning up to $99,000.

Boston's policy has brought about measured success, having produced more than 600 affordable units and raised $11 million toward affordable housing production since 2000. However, cities across the Commonwealth and across the nation have generated higher production rates and stronger earnings, demonstrating that there is room for improvement here in Boston.

Key Findings

1. *Boston's Inclusionary Development Policy has one of the highest income targets in the nation. A family of four can earn up to $99,000 annually and be eligible for subsidized housing under the program.*

2. *Boston is the only major city in the nation that administers inclusionary zoning through an executive order. All other cities adopted their policies via an ordinance or bylaw, which are more detailed and harder to overturn.*

3. *The current $97,000 per unit cash-out fee is not sufficient to cover the subsidy required to construct an affordable housing unit elsewhere in Boston. Roughly $150,000 in subsidy is needed to produce a single affordable unit.*

4. *Ad hoc and non-transparent administration of the city's Inclusionary Development Policy has slowed the efficiency of private and non-profit developers.*

With the goal of making the policy more productive and more efficient, this report will (1) document the real and potential accomplishments of the Boston's Inclusionary Development Policy, (2) analyze the policy in comparison to inclusionary zoning in other cities, and (3) recommend key improvements to the policy based on the findings herein. A summary of these recommendations is below.

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[1] United States Census Bureau. *American Community Survey 2004*

[2] Ibid

Recommendations

1. ***Adopt a stronger cash-out fee that is based on a sliding scale***
   To make the fee worth the housing it replaces and generate additional revenue for affordable housing construction. The city stands to raise $42 million to $50 million by 2010 under this fee structure.

2. ***Establish a clear, defined, and consistent process for allocating inclusionary funds***
   To ensure accountability and regularity on which housing developers can depend

3. ***Increase targeting to low-income and moderate-income households***
   To better meet the need of Boston's working families

4. ***Raise the set-aside requirement to 15%***
   To increase the number of units that are built through inclusionary development

5. ***Codify the City's Inclusionary Development Policy into an ordinance***
   To give the policy permanence and to establish clear parameters and protocol for the policy

6. ***Clarify rules relevant to housing developers***
   To ensure predictability and to make it easier to build housing

II. Affordability and the housing market

That housing in Boston comes at an exorbitant price is old news, yet the impact of the ongoing affordability crisis continues to be felt with growing depth. A study released by Northeastern University in September 2005 found Boston to be the most expensive city in the country, surpassing even New York, San Francisco, and Washington, DC. The study found that in 2004, a family of four required an income of $64,656 to cover basic needs.[3] Boston's median household income in 2004 was $45,892.[4] The study also affirmed the widely-held assessment that Boston's high living expenses are attributed primarily to skyrocketing housing costs. "Led by its high cost of housing, the Boston metropolitan area, has by 2004, the highest cost of living of any metro region in the entire nation."[5]

A. Rental market is unaffordable

For renters, the cost of shelter is becoming increasingly burdensome, and a growing majority is spending beyond its means. Renters comprise 60% of Boston's housing market and earn an average of $34,800 per year. The median advertised rent for a two-bedroom Boston apartment in 2004 was $1,475.[6] Rents have stabilized into a slight and steady climb since escalating sharply in the late nineties, a time when the vacancy rate plummeted to below 1%. However, rents remain at extremely high levels, despite that the vacancy rate has cooled to 5.4%.[7]

According to federal guidelines, housing is considered "affordable" when a household pays no more than 30% of its gross income on housing. In 2004 however, 47% of Boston tenants spent more than 30% of their incomes on rent.[8] In that same year, the median advertised rent for a two-bedroom apartment in all of Boston's twenty neighborhoods exceeded 30% of the median renter income. In the Back Bay and Beacon Hill neighborhoods, rent would consume 76% of the income of a tenant earning the median renter income; in the South End it would consume 67%, and in Roxbury it would consume 66%.

B. Homeownership market is unaffordable

Opportunity in the homeownership market is scarce for Boston residents with low and moderate incomes. In 1998, it took an annual income of $55,500 to afford the median selling price for a single-family home, according to the Mayor's Office.[9] By 2003, the annual income required was $105,300. That year, only a quarter of Bostonians earned that much.[10] Today, the median priced Boston home now goes for $369,000 according to the National Association of Homebuilders (down from a peak of

[3] Center for Urban and Regional Policy, Northeastern University

[4] United States Census Bureau. *American Community Survey 2004*

[5] Heudorfer, Bonnie and Barry Bluestone. *The Greater Boston Housing Report Card 2004: An Assessment of Progress on Housing in the Greater Boston Area.* Center for Urban and Regional Policy, Northeastern University. September 2005.

[6] Ibid

[7] Vacancy rate data from Reis.com as of 1Q 2005.

[8] United States Census Bureau. *American Community Survey 2004*

[9] City of Boston. *Leading the Way II: A Report on Boston's Housing Strategy FY2004-FY2007.*

[10] Ibid

$380,000 in 3Q 2005).[11] To afford a home at this price, an annual income of $112,581 is required.[12] The vast majority of Boston's workforce earns well below this figure. An elementary school teacher, for example, earns an average of $50,000 per year; a police officer earns $48,000 per year; a nurse earns $40,000 per year; and a retail salesperson earns $26,000 per year.[13]

C. Consequences of exclusivity

The depth and duration of Boston's affordability crisis have significant and quantifiable economic consequences. The effect of an unaffordable housing market is manifested through the exodus of local residents, and therefore the local workforce. Population depletion is currently starving Boston of the professional talent and service workers that it needs to remain competitive with rival cities. Boston was home to over 589,000 in the year 2000. In four years it lost 11% of its population and now houses just 524,000.[14] More importantly, housing costs are unarguably the main catalyst for this out-migration. In a recent study, the Donahue Institute found that 46% of all Boston residents are currently considering leaving the city due to the high cost of housing. That is four times the number of residents who considered leaving six years ago for the same reason.[15]

Population decline means a squeeze on the workforce. Local employers are finding it increasingly difficult to attract and maintain the talent they need. The middle class, in addition to the working poor, cannot afford to live in Boston. Graduates from the city's top institutions are taking their talent out of the city where the cost of housing is cheaper. The decline in the population of Boston's young people comes at a time when the national population of young people has kept stable. Between 2000 and 2004, Boston lost 18% of its residents aged twenty to thirty-four, while the national population of young people has remained steady. "Continued out-migration may solve the housing problem by reducing demand, but the cost to the Commonwealth's long-term prosperity of losing its workforce is practically incalculable," said a report published by the Center for Urban and Regional Policy at Northeastern University.[16]

While out-migration has increased rapidly since 2000, fueled by an exodus of young people, in-migration has remained steady. Many of these immigrants have taken low-wage jobs, earning less than is needed to afford fair market rents. For example, in Boston, a construction laborer earns an hourly wage of $18, a groundskeeper earns $13, and a dishwasher earns $9. All of these wages are well below the $24 hourly wage that is required to afford the fair market rent for a two-bedroom apartment, which currently stands at $1,266.[17]

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[11] National Association of Home Builders' Housing Opportunity Index for 4Q 2005

[12] National Housing Conference. Annual income needed to qualify for a mortgage calculated using the average prevailing interest rate, assuming a 10% downpayment and the use of private mortgage insurance, and includes principal, interest, taxes and insurance.

[13] National Housing Conference. Wage data are as of February, 2005 and were obtained from a proprietary database of salary information by geographic location maintained by Salary.com

[14] United States Census Bureau. *American Community Survey 2004*

[15] University of Massachusetts, Donahue Institute. January, 2005.

[16] Heudorfer, Bonnie and Barry Bluestone. *The Greater Boston Housing Report Card 2004: An Assessment of Progress on Housing in the Greater Boston Area.* Center for Urban and Regional Policy, Northeastern University. September 2005.

[17] National Housing Conference. Wage data are as of February, 2005 and were obtained from a proprietary database of salary information by geographic location maintained by Salary.com

Boston's housing affordability crisis is widely recognized and well documented. Public agencies and community based organizations alike have initiated programs aimed at creating and preserving affordable housing in the city of Boston. Five years ago, the City established an Inclusionary Development Policy targeted at a middle class that has been fleeing the city. By creating housing opportunities for moderate-income and middle-income families, the City intended to mitigate Boston's mid-market housing shortage that affects a demographic whose earning power is too high to qualify for subsidized housing, but too low to afford market-rate housing. The balance of the report describes this policy, its implementation, its flaws, and how it compares to similar policies in other cities. Finally, the report proposes reforms that will improve the policy.

III. Boston's Inclusionary Development Policy

Inclusionary zoning is a public policy that sets aside portions of a residential development for sale or rent at affordable rates. An ordinance or bylaw defines the parameters of the policy, including the percentage of the development that is set aside as affordable, the definition of affordable, and so forth. To offset the economic burden that an inclusionary zoning policy places upon private developers, jurisdictions offer compensation such as density bonuses, expedited permitting, and zoning variances. Under specified circumstances, many jurisdictions allow developers to construct affordable units offsite or pay a fee in lieu of construction. The fee is deposited into a fund that supports the creation or preservation of affordable housing elsewhere in the jurisdiction.

Boston adopted its version of inclusionary zoning in 2000, dubbing it "inclusionary development" (presumably because the policy was not codified into the city's zoning code and thus is not a zoning provision). It followed many Massachusetts cities and towns, as well as several major cities nationwide. The first jurisdiction to adopt inclusionary zoning was Montgomery County, Maryland. It did so in 1974, and since then similar programs have been initiated across the country, most of them modeled after Montgomery County's ordinance. Today, there are programs in a number of major cities across the country including San Francisco and Denver, as well as nearby Somerville, Cambridge, and Brookline. In all, more than 100 Massachusetts towns and cities have inclusionary zoning provisions.[18]

The Massachusetts Office for Commonwealth Development endorsed inclusionary zoning as a strategy for smart growth in its recently published *Smart Growth Toolkit.* It described inclusionary zoning as "an effective tool that can be used by municipalities to ensure adequate affordable units are included in the normal course of real estate development."

In terms of production rates, Boston's Inclusionary Development Policy has made a significant contribution to the city's affordable housing stock. Compared to other jurisdictions examined in this study, Boston's production rate is slightly above average at 121 units per year, and its overall production of 606 units is higher than all other jurisdictions that adopted an inclusionary zoning law in 2000. However, weaknesses in the policy have gained growing attention as its effects become more

[18] Massachusetts Office for Commonwealth Development. *Massachusetts Smart Growth Toolkit.* Horsley Witten Group. 2005.

apparent. Residents of onsite inclusionary units struggle to pay condo fees and special assessment fees associated with market-rate residences. As a result of the policy's middle-class focus, residents of inclusionary units earn far more than the city's median income. Most of the constructed inclusionary units have one or two bedrooms, the size of which prevents families from buying or renting these homes. Finally, unclear and ad hoc oversight has made it difficult to leverage subsidies to build affordable housing.

A. Boston's policy promotes mixed income housing

Boston's Inclusionary Development Policy was established through an executive order issued by Mayor Thomas Menino in February 2000. The policy applies to all proposed housing developments of 10 or more units that are located within the city limits, excluding as-of-right developments. The policy mandates that 13% of all units within the development be affordable to "moderate-income" and "middle-income" buyers or renters (the policy originally called for 10% of the units to be affordable, but that number was increased to 13% in September 2003).

Half of the affordable units in a given project must be rented or sold to parties at a "middle-income" tier. The other half must be rented or sold to parties at a "moderate-income" tier. The City's definition of these tiers is adjusted for a family size. For a family of four, "middle-income" ranges from $66,000 to $99,000 and "moderate-income" is considered anything below $66,000. See Appendix B for income, sale price, and rent limits.

Boston's Inclusionary Development Policy

Type of Law	executive order
Threshold	10 units, zoning relief sought
Set-Aside Requirement	13.04% of total proposed units
Income Target	½ at 80% AMI (below $66,000) ½ at 80% to 120% AMI ($66,000 to $99,000)
Terms of Affordability	perpetuity
Incentives	subject to negotiation
Cash-out fee	$97,000 per unit for 15% of proposed units
Off-Site Construction	15% of total proposed units

The City's Inclusionary Development Policy has produced 606 affordable units as of February 2005, according to the most recent available data produced by the Boston Municipal Research Bureau (BMRB). This figure is corroborated by an interview with Geoff Lewis of the Boston Redevelopment Authority.[19] Eighty-nine percent (539) of these units were constructed onsite. In projects where affordable units were completed offsite, almost all offsite units were constructed in the same neighborhood as the original project. The BMRB also reported several instances in which a developer exceeded its affordable housing obligation in exchange for "zoning relief." It notes that no projects have been completed since the cash-out fee was raised to $97,000 in February 2005, yet the rate of affordable unit production has exceeded the original 10% requirement set forth in Mayor Menino's 2000 executive order. The BMRB reports that 11% of new units produced since the policy took effect are affordable units.

[19] G. Lewis, personal interview, September 30th, 2005.

B. The BRA permits alternatives to onsite affordability requirements

At the discretion of the director of the Boston Redevelopment Authority (BRA), a developer may complete its affordable housing obligation by (a) constructing inclusionary units offsite in a number equal to the number of onsite units that would otherwise have been built, or (b) paying a cash-out fee to the BRA in the amount of $97,000 per unit for 15% of the total number of units in the development. While these alternatives are available to developers, the BRA strongly favors onsite development and sees alternatives to onsite construction, especially cash-out fees, as a last resort. In an internal memo acquired by the Boston Globe, BRA director Mark Maloney stated, "It is BRA policy that the affordable units should be presumed to be created onsite."[20] Cash-out fees were allowed in 21 projects (29%) completed under the city's Inclusionary Development Policy at an average of $416,700 per project.[21] Clippership Wharf in East Boston is one of these projects. With groundbreaking expected this spring, this $190 million waterfront development will bring 400 condominiums to Maverick Square. The BRA allowed developer Noddle Island LLP to complete 30 units offsite in the adjacent renovation of the Maverick Street public housing project along with a $1.6 million contribution to its construction. "Clippership will bring much-needed housing to this neighborhood," said Maloney.[22] Deals like Clippership Wharf have committed a total of $11.13 million to the BRA's affordable housing fund.[23]

By intent, Mayor Menino's executive order does not define the grounds upon which alternatives to onsite construction are granted, or the procedure for requesting an alternative. It "was intentionally crafted to give us the flexibility to make compromises," stated Maloney.[24] Due to the lack of a predefined stipulations or protocol, it is common practice for a developer to enter ad hoc negotiation with the BRA director to determine a solution that is amenable to both parties. Each project is a unique combination of onsite units, offsite units, and/or cash-out fee.

Although the BRA maintains a conditional approach to the permission of alternatives to onsite construction, Mayor Menino's executive order explicitly defines a cash-out fee. It specifies that any contribution to the BRA must equal $97,000 per unit for 15% of all units in the development. This fee is defined as "the average total public subsidy per new construction affordable housing unit permitted by the City of Boston for the previous calendar year."[25] It is supposed to be adjusted annually to reflect changes in market conditions although it has only been updated once since 2000 (the fee was originally set at $52,000 but was increased to $97,000 in February 2005).[26]

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[20] Rezendes, Michael and Beth Healy. "City Tries Closing Gap in Affordable Housing Efforts" Boston Globe 14 February 2005.

[21] Extrapolated from data from the Boston Municipal Research Bureau, 2005.

[22] Boston Business Journal. "East Boston's Clippership Wharf gets BRA OK" Boston Business Journal 18 November 2003.

[23] Correspondence with Geoff Lewis. December 19th, 2005.

[24] Rezendes, Michael and Beth Healy. "City Tries Closing Gap in Affordable Housing Efforts" Boston Globe 14 February 2005.

[25] City of Boston, Office of the Mayor Thomas M. Menino. *Executive Order of Mayor Thomas M. Menino: An Order Relative to the Affordable Housing Cost Factor.* 2 February 2005.

[26] While the *affordable housing cost factor is officially* $97,000 per unit, the fee translates into a slightly higher number for approved developers. For example, take a proposed development of 100 units. Abiding to the 13% set-aside requirement of Mayor Menino's executive order, the developer's affordable housing obligation is 13 units. To meet this obligation, it must pay $97,000 per unit for 15% of the total number of units in the development ($97,000 x 15 units) for a total of $1,455,000. Therefore, the cost per affordable unit ($1,455,000 / 13 units) under the current *affordable housing cost factor* is $111,923.

C. Funds raised through inclusionary development support affordable housing

Money garnered from cash-out fees is placed in an inclusionary development fund that is managed by the BRA. This fund has raised $11.13 million in total since it was established five years ago.[27] The money is used to (a) fund various BRA programs that support the creation or preservation of affordable housing, and (b) subsidize individual housing projects that are managed by nonprofit or for-profit developers. When money from the inclusionary development fund is channeled through BRA programs, it exclusively targets moderate income households. The definition of "middle-income" is adjusted for family size. For a four-person family, this denotes annual earnings from $66,000 to $99,000. See Appendix B for complete income limits.

The BRA funds several initiatives with money raised through cash-out fees.

1. **Project funding:** The BRA uses most of its cash-out fee revenue for to support affordable housing projects on an ad hoc basis. To date, the BRA has expended $3.9 million on three affordable housing projects: Carlton Wharf in East Boston (30 units), Laboure in South Boston, and Susan Bailis in the Fenway neighborhood (54 units). It has committed $1.8 million more to four other projects: Bowdoin Geneva III (10 units) in Dorchester, Norwell-Whitfield Homes (23 units) in Dorchester, Roslindale Field (11 units) in Roslindale, and 2451 Washington (15 units) in Roxbury. See table below for details. The BRA issues funds on a case-by-case basis when approached by an affordable housing developer. There is no formal application process, written or otherwise. The BRA insists that these funds be dedicated to middle-income units.

Inclusionary Funds Expended and Committed by the BRA as of Feb. 22, 2006

Project Name	*Funds Expended*	*Funds Committed*	*Units Affordable*	*Neighborhood*	*Developer*
Bowdoin Geneva III		$280,000	10	Dorchester	Dorchester Bay EDC/Viet-AID
Carlton Wharf	$1,560,000		30	East Boston	E. Boston CDC/Trinity Financial
Laboure	$1,853,000		N/A	N/A	N/A
Norwell-Whitfield Homes		$200,000	23	Dorchester	Codman Square NDC
Roslindale Field		$443,000	11	Roslindale	Southwest Boston CDC
Susan Bailis	$527,000		54	Fenway	Fenway CDC
2451 Washington St.		$850,000	15	Roxbury	Madison Park DC
Total:	$3,940,000	$1,773,000	143		

[27] Correspondence with Geoffrey Lewis. December 19th, 2005.

2. **Rental Housing Acquisition Program:** This $1 million program offers zero interest short-term loans to non-profit developers competing for purchase rights to rental units. The developer must agree to limit rent increases to the combined index for 30 years, and must repay the loan upon initial closing. Money from the inclusionary development fund "allows a community development corporation to show access to earnest money and get housing opportunities off the market," said Geoffrey Lewis of the BRA.[28]

3. **Affordable Housing Acquisition Fund:** This is a $700,000 revolving loan fund that allows the BRA to purchase properties that stand to lose affordability deed restrictions. Once purchased, the BRA resells the properties with a new deed restriction that preserves affordability. Revenue from the sale is returned to the Affordable Housing Acquisition Fund.

4. **Middle Income Housing Program** This program was capitalized with $5 million at one point, but is currently on hold. The program was designed for the BRA to issue soft-second mortgages to individuals and organizations that bought multi-family homes under the condition that the buyer rented to middle-income tenants. The BRA planned to control rent levels and rent increases.

IV. Boston's policy compared to other jurisdictions' across the nation

In most cities, inclusionary zoning is administered through an ordinance that encourages or requires that a portion of the units in a new housing development be sold or rented at below market rate prices so that they are affordable to parties earning some percentage of the area median income. Due to the economic burden that this requirement places upon the developers, most jurisdictions offer a form of compensation to counterbalance the costs that inclusionary requirements bring to the developers. The City of Sacramento, for example, aims to "apply available incentives to qualifying projects in a manner that, to the extent feasible, offsets the cost of providing the inclusionary housing component."[29] Typically, these incentives include density bonuses, expedited permitting, and zoning variances, as ways to ensure the financial feasibility of a project and to remove the bureaucratic barriers that commonly slow developers. Under specified circumstances, many cities allow developers to construct affordable units offsite or pay a fee in lieu of construction. The fee often goes to an affordable housing fund that can be accessed by other groups interested in constructing affordable units. These are the universal components of inclusionary programs, but the incorporation of these components varies from place to place.

[28] G. Lewis, personal interview, September 30th, 2005.
[29] Sacramento City Code. Chapter 17.190.

MACDC has conducted a survey of other inclusionary programs to compare Boston's policy with other jurisdictions. The jurisdictions included in the sample are either comparable in size to Boston or are located within Boston's regional housing market. Appendix A summarizes the results of our sample. In general, Boston's Inclusionary Development Policy is similar to those in other cities, with a few important distinctions. The key findings from this research are as follows.

A. Housing production

Housing production rates vary widely from place to place. In absolute numbers, Montgomery County is the most productive jurisdiction in the country, where over 11,000 affordable units are attributed to its inclusionary zoning program (although expiring use has claimed many of these units). However, it is more accurate to measure production by annual rates rather than overall totals because inclusionary zoning programs were adopted at varying points in time. In terms of annual production, Denver tops this list, averaging 1,132 units per year. Montgomery County averages 387 units per year, and Sacramento averages 155 units per year. Boston is the fourth most productive jurisdiction in our sample of eight, averaging 121 units per year. The population of the jurisdiction in question should be noted when considering these figures because major cities can absorb higher production rates than smaller jurisdictions. For example, Boston has a higher production rate than Cambridge; 121 units per year compared to 33 units per year. But using per capita terms, we see that Boston averages one unit for every 4,300 people annually. Cambridge averages one unit for every 3,000 annually. See Appendix C for complete table.

B. Cash-out fees

The calculation of a cash-out fee is generally defined in a statutory provision in an inclusionary zoning ordinance, or in the case of Boston, an executive order. Generally, the inclusionary zoning statute will spell out the calculation or value of the cash-out fee, which is then applied to the development project, usually on a unit per unit basis. In other words, it calculates the number of inclusionary units a developer would have been required to create on-site, and then applies the formula for each of those units to come up with a lump sum fee.

By legal standards, a cash-out fee is considered an *exaction*. In cases of mandatory programs, such as Boston, federal guidelines require a cash-out fee to bear some nexus to the need that it is designed to replace to provide some insurance that the exaction is fair. Generally speaking, the fee must be tied in some way to the value of the affordable unit.

From a theoretical standpoint, that value is commonly considered to be the difference between a unit's market-rate price and affordable-rate price. This logic asserts that the subsidy a developer pays for building an affordable unit is the financial loss the developer stands to bear from selling or renting the unit below its natural market rate. In practical terms, this means the value of a cash-out fee would then relate to the losses a developer would suffer by building affordable units. Somerville and Peabody structure cash-out fees on this basis.

This could result in a significant payment in Boston, where the difference between the price of a market unit and the price of an affordable unit can approach seven figures. For example, owners of the InterContinental Boston hotel, whose upper floors are slated to open this summer as 141 luxury condominiums, plan to market two-bedroom units at a price of $1.4 million to $1.6 million.[30] Under the City's Inclusionary Development Policy, affordable two-bedroom units in the InterContinental would sell for $175,000 to $300,000.[31] Thus, the developer stands to loose between $1.1 million and $1.4 million on every onsite affordable unit.

A majority of jurisdictions allow developers to complete their affordable housing obligation through the payment of a cash-out fee. However, general standards for the permission of cash-out fees are rigorous. Before allowing a cash-out fee, many jurisdictions will prioritize other options such as offsite development, or in locations where land is precious, a donation of developable property.

To be approved for a cash-out fee, a developer is often required to demonstrate economic hardship, i.e. prove that the project is not financially feasible if the affordable housing obligations are met. Such is the case in neighboring Cambridge, where its inclusionary zoning law prohibits cash-out fees except in "certain exceptional circumstances" wherein the developer demonstrates to the planning board that the cost of constructing onsite units would create "significant hardship."[32] In other words, rarely does a developer have the power to choose a cash-out fee. An administrative body, usually part of the housing or community development agency, reviews applications for alternatives to onsite construction and has the ultimate say in the matter.

Although standards for the permission of cash-out fees are universally strict, exceptions are made regularly. The city of Boulder, roughly half the size of Boston, adopted an inclusionary zoning program in the same year as Boston. Since inception, the program has raised $1.5 million in cash-out fees from 50 developments. That money has subsidized the creation of roughly 400 affordable units.[33]

The stronger cash-out fees match the value of the affordable unit not built, allowing the fee to subsidize the same number of units in a separate project. In Boston, the city's cash-out fee of $97,000 is worth far less than the subsidy required to deliver an affordable unit. "Subsidizing the construction of a single affordable unit in Boston can cost $150,000."[34] Thus, the cash-out fee alone cannot ensure an equivalent production of affordable housing offsite.

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[30] Reidy, Chris. "Luxury Hotel Project Underway, Waterfront Building to Wrap Around Big Dig Vent System." The Boston Globe. October 6, 2004.

[31] Rezendes, Michael and Beth Healy. "City Tries Closing Gap in Affordable Housing Efforts." Boston Globe. February 14, 2005.

[32] City of Cambridge, Massachusetts Zoning Ordinance Chapter 11.203.2(e).

[33] Webster, Jessica L. *Success in Affordable Housing: The Metro Denver Experience.* Business and Professional People for the Public Interest. Chicago. February, 2005.

[34] The Boston Foundation. *The Boston Indicators Project.* 2006.

Other jurisdictions ensure that cash-out fees result in a net gain of affordable units through explicit provisions in their inclusionary zoning ordinances. The Code of Montgomery County, for example, states that a developer who is allowed to meet its affordable housing obligation through a cash-out must make a contribution to the Housing Initiative Fund of an amount that will produce "significantly more" affordable units.

C. Administration

Explicit provisions in the zoning code of all jurisdictions in our sample detail oversight protocol and reporting mandates for the body charged with administering the policy. These provisions typically include an annual report to the city council, project tracking, intake process guidelines, and role specifications of city departments and agencies. In Montgomery County for example, "the Department must maintain a list of all moderately priced dwelling units constructed, sold or rented under this Chapter."[35]

Mayor Menino's executive order is uncommon in that it lacks such process-defining provisions. It simply states, "I request the BRA to adopt the above order as its policy in connection with residential development projects undertaken by it."[36] The Inclusionary Development Policy is documented with general figures in the BRA's annual report, and the Authority holds public board meetings that are limited to chosen topics. From a national perspective, however, the BRA does less reporting than most.

D. Income targeting

Boston's policy serves families that earn more than families served by inclusionary programs in any other city in our survey. A family of four in Boston can earn up to $99,000 annually and purchase or rent inclusionary housing. Most other cities in our survey had far lower income targets, despite having similar area median incomes. A family of four residing in Cambridge, which operates in the same regional housing market as Boston, can earn no more than $54,000 annually to be eligible for inclusionary housing in that city. Aside from Boston ($99,000) and San Francisco ($95,000), all jurisdictions in our survey set their income target below $70,000. All jurisdictions in our sample base their income target on area median income, but none other than Boston set their target higher than 100% of area median income. See Appendix A for complete analysis.

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[35] Montgomery County Code, Chapter 25A-10.

[36] City of Boston, Office of the Mayor Thomas M. Menino. *Executive Order of Mayor Thomas M. Menino: An Order Relative to Affordable Housingr.* 29 February 2000.

E. Set-aside requirements

All of the jurisdictions surveyed have set-aside requirements ranging from 10 to 15% (Cambridge and Sacramento: 15%; Somerville and Montgomery Co: 12.5%; Denver, San Diego and San Francisco: 10%). Thus, Boston's requirement of 13% is in the middle range of other cities. However, Boston's requirement is lower than set-aside requirements elsewhere in Massachusetts, such as Newton and Dennis (25%), and Belmont, Peabody and Tewksbury (15%).[37]

Other affordable housing laws maintain higher set-asides as well. Massachusetts state law Chapter 40B requires 25% affordability and Massachusetts state law Chapter 40R requires 20% affordability. Chapter 40B and 40R are not inclusionary laws per se, but they work on the same principle as does inclusionary zoning: using the private market to subsidize the production of affordable units.

F. Ordinance

Every other jurisdiction in our survey has established their inclusionary zoning policy as an ordinance or bylaw. Only Boston has done so through an executive order. As a result, most other cities have much more detailed and standardized rules about how the policy should be implemented, whereas Boston has a much less specific set of policies.

G. Use of inclusionary funds

Jurisdictions that allow cash-out fees direct revenue from these fees to a fund that supports affordable housing construction or preservation. For example, Washington, DC's Department of Housing and Community Development recently established an acquisition fund where a portion of the cash-out fees deposited into the housing production trust fund can be accessed by non-profit developers as a no-interest loan to acquire land before they have any development financing in place. As detailed earlier, the BRA administers a similar program that aims to lower acquisition hurdles.

V. Stakeholder concerns and MACDC's recommendations

Boston's Inclusionary Development Policy is a far-reaching mandate that affects both the private and nonprofit sectors. Its pervasiveness has led to an array of stakeholders with varied and sometimes competing interests. Private developers feel the impact most directly because their projects must adhere to inclusionary standards such as set-asides and income targets. Nonprofit developers are less affected on the front end because their housing projects regularly exceed inclusionary standards. However, the nonprofit sector has a significant stake in the affordable housing funds that are established through inclusionary programs. Tenant groups, representing prospective residents of inclusionary units, have an interest in targeting inclusionary policy at their constituents. Groups

[37] North Shore Housing Trust, 2005.

representing low-income populations advocate for deeper income targeting. Neighborhood activists are concerned with the impact these developments have on their communities on such issues as traffic, parking, and gentrification. Finally, public officials are concerned with shaping inclusionary policy to address the city-wide housing challenges.

Crafting an inclusionary zoning policy that appeases the interests of all these groups is a daunting task. While it is unlikely that everyone can be pleased, compromises can be struck. Considering the concerns of the stakeholders of Boston's Inclusionary Development Policy, most importantly Boston residents, MACDC has developed a set of recommendations for improving inclusionary development in Boston. These recommendations are listed below.

A. Adopt a stronger cash-out fee that is based on a sliding scale

A cash-out fee is a monetary alternative to the bricks and mortar construction of an inclusionary unit. Its purpose is (1) to provide a substitute to onsite construction in situations where it is not feasible, and (2) to raise money to replace the forgone unit in another project. The integrity of a cash-out fee rests upon the assumption that the value of the fee is at least equal to the value of the subsidy required to build the forgone unit elsewhere. The current value of a cash-out fee is $97,000 per unit. However, typical developments demand $150,000 per unit in public subsidies to ensure the financial feasibility of the project. In addition to being worth less than the housing it is suppose to replace, the current cash-out fee is a fixed fee that does not bear any nexus to the unique financial structures of each development. Developers marketing their units at $1 million face the same fee as developers marketing their units at $250,000. Since the price of an affordable unit is fixed, this creates a strong incentive for developers of luxury units to cash out because they stand to lose more by constructing affordable units onsite.

To correct this problem, MACDC proposes a sliding fee that is contingent on a percentage of the differential between per unit affordable sale price and per unit market sale price. With a base $150,000, the fee would increase as the market sales price of a unit increases—the more luxurious the project, the more money delivered to the inclusionary development fund. If the percentage were set at 50%, a two-bedroom unit with a market rate sales price of $325,000 would incur a fee of $150,000. If that same unit yielded a market rate sales price of $500,000, it would incur a fee of $240,000. And if that unit sold for $1 million it would incur a fee of $490,000.[38] In all, the BRA stands to raise $42 million to $50 million by 2010 under this fee structure.[39]

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[38] These calculations are based upon the following formula: (B – A) + [(B – C) · 0.5] = G where A = per unit affordable sale price as determined by the US Department of Housing and Urban Development and currently stands at $172,500, B = per unit market sale price, C = estimated average per unit total development cost, D = base subsidy [(B at C) } – A], E = sales price above C, F = per unit exaction (E · 0.5), and G = cash-out fee (D + F). MACDC does not officially endorse or claim ownership of this formula. The purpose of its inclusion is strictly demonstrative of how a sliding cash-out fee can be structured.

[39] These figures are based on the following facts and assumptions. Since the city adopted its Inclusionary Development Policy in 2000, the BRA permitted 169.6 cash-out fees. The demonstrative cash-out fee has a base of $250,000 and an estimated ceiling of $490,000. The mode fee value is likely to fall at a lesser point of this range. If the BRA allows the same number of cash-out fees in the next five years as it did in the last five and the sliding fee is adopted, between $42 million (169.6 x $150,000) and $50 million (169.6 x $300,000) will be raised for affordable housing.

B. Establish a clear, defined, and consistent process for allocating inclusionary funds

Boston's development community contends that the BRA's process for allocating inclusionary funds lacks clarity and transparency. A key part of the problem, it says, is that the BRA has not provided clear and consistent information about how to access these funds. The BRA does not hold application rounds, issue a uniform application form, or publish its criteria for reviewing requests for inclusionary money. Instead, it takes a self-described "you call us" approach. While the BRA favors this method for its lack of paperwork and red tape, practitioners struggle with its inconsistency and unpredictability.

Local and national experts alike consistently stress the importance of clarity, predictability, and defined process. "Alternatives to onsite construction should be utilized in an established context with guidelines that are clearly articulated. Allowing alternatives to be used in an ad hoc manner…compromises the effectiveness of inclusionary zoning," stated inclusionary zoning think tank PolicyLink.[40] As detailed earlier, most jurisdictions codify such procedures in transparency provisions in their zoning code. The Massachusetts Office for Commonwealth Development endorses such provisions in its model inclusionary housing bylaw, where it recommends "specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed."[41]

MACDC proposes that the BRA reform its oversight of funds raised through its Inclusionary Development Policy so that its protocol is in line with the recommendations of the Massachusetts Office for Commonwealth Development, the likes of which are commonly accepted at the national level.

C. Increase targeting to low-income and moderate-income households

MACDC proposes that new revenue generated from adopting a cash-out fee formula similar to the formula described within this report, i.e. additional money raised above the current $97,000 fee, be deposited into the Neighborhood Housing Trust Fund (NHTF). NHTF supports affordable housing production through linkage fees. Funded projects rent or sell to parties earning below $66,000 (the BRA currently uses cash-out fee revenues to serve parties earning $66,000 to $99,000). In addition to achieving deeper affordability, the Neighborhood Housing Trust Fund has a track record of efficiency and accountability, and is well-known in the development community. MACDC feels strongly that this proposal is a win-win for all in that it will (1) serve low-income Bostonians while preserving the program's middle-income focus and (2) clarify the allocation process for all parties involved in constructing affordable housing.

[40] Fox, Radhika K. and Kalima Rose. *Expanding Housing Opportunity in Washington, DC: The Case for Inclusionary Zoning.* PolicyLink 2003.
[41] Massachusetts Office for Commonwealth Development. *Massachusetts Smart Growth Toolkit.* Horsley Witten Group. 2005.

D. Codify inclusionary development into a city ordinance

Boston is the only city in our sample that administers inclusionary development through an executive order. All of the jurisdictions in our sample and presumptively all jurisdictions nationwide established inclusionary regulations through a municipal ordinance or bylaw. This approach has become the standard because it ensures the sustainability of inclusionary regulations through mayoral changes and shifting political climates. Inclusionary zoning via ordinance is assumed on the national scale, evidence of which is the use of "zoning" in its title. Here in Massachusetts, the Office for Commonwealth Development endorses this method of implementation, asserting that "the zoning structure begins as a mandatory inclusionary zoning provision."[42]

E. Raise the set-aside requirement

MACDC proposes that the City raise the set aside requirement to at least 15%. This would bring it in line with Cambridge and closer to the Massachusetts state laws that apply to similar housing market contexts.

F. Clarify the rules that apply to developers

Transparency is crucial to developers. "Clear procedural policies help developers plan for their projects with knowledge of what is expected," says PolicyLink. "Having a good policy on the books is meaningless unless a jurisdiction has a deep commitment to administering the policy in a clear and consistent manner."[43] Private developers need to know when onsite construction is compulsory and when a cash-out fee is an option. Uncertainty about the aforementioned stifles pro forma calculations and can put projects over budget by running up carrying costs. Therefore, MACDC proposes that the BRA negotiate with developers in a more established and transparent manner.

VI. Conclusion

With over 600 units in its portfolio, Boston's Inclusionary Development Policy has made an important contribution to the city's affordable housing stock. It has also raised money for the creation of more affordable units. But several shortfalls have become apparent over the course of the policy's five-year history. Many of the residents of onsite inclusionary units struggle to pay condo fees and special assessment fees associated with luxury residences. Most downtown inclusionary units have only one or two bedrooms, which are too small for most families. The program's affordability parameters mean that these units are still not affordable to most Bostonians. Lastly, ad hoc and unclear implementation has slowed the distribution of inclusionary funds to non profit developers.

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[42] Ibid

[43] Fox, Radhika K. and Kalima Rose. *Expanding Housing Opportunity in Washington, DC: The Case for Inclusionary Zoning.* PolicyLink 2003.

While its performance has made a measurable impact, Boston can learn from the other jurisdictions examined within this report, many of which have more effective inclusionary zoning policies. For example, other jurisdictions have higher set-aside requirements, lower income targeting, stronger cash out provisions, and more transparent implementation rules.

Simple adjustments to Boston's Inclusionary Development Policy will make it vastly more effective. A higher cash-out fee, a larger set-aside requirement, transparent and predicitable oversight, and codification are key changes the City can make to improve its policy. The City has demonstrated that inclusionary development works in Boston, but now is the time to make it work better.

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APPENDIX A: Comparison Table of Inclusionary Policies

City	Type of Law	Threshold	Set-aside Requirement	Income Target (% of AMI)	Terms of Affordability	Incentives	Cash-out Fee Type	Cash-out Fee Formula	Off-Site Construction
Boston Pop: 523,683 AMI: 82,600	executive order	10 units	13%	80% (1/2) 80% - 120% (1/2)	perpetuity	zoning relief subject to negotiation	fixed	$97,000 • (A • .15) A = total proposed units	requires approval from BRA director and is subject to negotiation, must equal 15% of all proposed units
Cambridge Pop: 101,355 AMI: 82,600	ordinance	10 units	15%	65%	50 yrs	30% density bonus	not permitted	N/A	not permitted unless "significant hardship" can be demonstrated
Denver Pop: 544,759 AMI: 71,650	ordinance	30 units	10%	80% (<3 stories) 95% (>3 stories) 65% (rental)	15 yrs	10% density bonus; cash reimbursement; expedited review; reduced parking requirements	sliding	B • (A • .50) A = per unit affordable sales price B = number of affordable units required	number of units built must exceed on-site requirments
Montgomery County, MD Pop: 918,881 AMI: 89,300	ordinance	35 units	12.5% to 15%	determined periodically by County Executive	30 yrs (for sale) 99 yrs (rental)	density bonus	arbitrary	an amount that will produce "significantly more" affordable units	must build "significantly more" affordable units in same or ajoining planning area
Sacramento[1] Pop: 405,444 AMI: 64,100	ordinance	10 units	15%	50% - 80% (1/3) 50% (2/3)	30 yrs	25% density bonus; expedited permit process; fee waivers; relaxed design guidelines	not permitted	N/A	requires approval from planning director, and must be located in same "new growth" area as on-site development
San Diego Pop: 1,220,734 AMI: 63,400	ordinance	10 units	10%	100% (for sale) 65% (rental)	55 yrs	none specified	fixed	$1.00 / square foot (year one) $1.75 / square foot (year two) $2.50 / square foot (year three)	must (a) encourage an "economically balanced" community and (b) qualify as transit oriented development
San Francisco Pop: 731,978 AMI: 95,000	ordinance	10 units	10% or 12% depending on use	60% (rental) 100% (for sale)	50 yrs	fee waivers	arbitrary	determined systematically by Mayor's Office of Housing	must (a) include 1.5 or 1.7 times that of on-site requirement, depending on type and (b) be proximate to on-site development
Somerville Pop: 77,478 AMI: 82,600	ordinance	8 units	12.5%	50% (1/2) 80%(1/2)	perpetuity	density bonus, expedited review, fee waivers	sliding	A • (B − C) A = number of affordable units B = per unit market price C = per unit affordable price	requires approval from Special Permit Granting Authority, must meet or exceed on-site requirement

* US Census Bureau 2003

** US Department of Housing and Urban Development 2005

[1] Sacramento's program only applies to designated "new growth areas"

APPENDIX B: Income, Sale Price, and Rent Limits

Current Federal Income Limits for Boston Metropolitan Statistical Area

Persons in Family	Percent of Metropolitan Area Median Income (AMI)		
	80%	100%	120%
1	$46,240	$57,800	$69,360
2	$52,880	$66,100	$79,320
3	$59,480	$74,350	$89,220
4	$66,080	$82,600	$99,120
5	$71,360	$89,200	$107,040

Current Maximum Affordable Sales Prices

Number of Bedrooms	Percent of Metropolitan Area Median Income (AMI)		
	80%	100%	120%
0	$137,700	$174,800	$211,900
1	$155,200	$197,600	$240,000
2	$172,500	$220,200	$267,900
3	$189,800	$242,800	$295,800
4	$202,900	$260,200	$317,400

Current Maximum Affordable Rents

Number of Bedrooms	Percent of Metropolitan Area Median Income (AMI)		
	80%	100%	120%
0	$1,156	$1,445	$1,734
1	$1,322	$1,653	$1,983
2	$1,487	$1,859	$2,231
3	$1,652	$1,065	$2,478
4	$1,784	$2,230	$2,676

APPENDIX C: Production Statistics for Inclusionary Zoning Programs

Jurisdiction	State	Total Units Produced	Units produced as of	Source	Year law adopted	Annual production rate	Per capita annual production rate (number of people for every one unit built annually)
Boston	MA	606	2005	BMRB	2000	121 units	4,328
Boulder	CO	380	2005	BPI	2000	156 units	1,733
Cambridge	MA	131	2003	PolicyLink	1999	33 units	3,071
Davis	CA	1,500	2003	PolicyLink	1987	94 units	642
Denver	CO	3,395	2005	PolicyLink	2002	1,132 units	481
Fairfax Co.	VA	1,735	2003	PolicyLink	1990	133 units	7,490
Loudoun Co.	VA	707	2003	PolicyLink	1993	71 units	2,389
Montgomery Co.	MD	11,210	2003	PolicyLink	1974	387 units	2,374
Prince George's Co.	MD	1,608	*1996	PolicyLink	1991	320 units	2,579
Sacramento	CA	465	2003	BPI	2000	155 units	2,616
San Diego	CA	1,200	2003	BPI	1992	109 units	11,199
San Francisco	CA	90	2003	BPI	2002	90 units	8,133
Somerville	MA	45	2005	City of Somerville	1991	3 units	25,826

* Law was repealed in 1996

APPENDIX D: Affordability Definition and Application Table

AFFORDABLE INCOME

4-person household in Boston MSA	Annual Income	Monthly Income	30% of Monthly Income
70% of Area Median Income	$57,820	$4,818	$1,446
80% of Area Median Income	$66,080	$5,507	$1,652

MAXIMIM SELLING PRICES*

	Example #1	Example #2	Example #3
House Price	$165,000.00	$176,800.00	$190,000.00
Down Payment at 5%	$8,250.00	$8,840.00	$9,500.00
Mortgage Amount	$156,750.00	$167,960.00	$180,500.00
Principal and Interest	$965.14	$1,034.16	$1,111.37
Real Estate Taxes	$138.00	$186.00	$222.00
Private Mortgage Insurance	$102.00	$109.00	$117.00
Homeowners Insurance	$83.00	$59.00	$63.00
Association/Condo Fee	$60.00	$100.00	$170.00
Total Monthly Housing Costs	$1,348.14	$1,488.16	$1,683.37
Affordable to 70% AMI?	Yes	No	No
Affordable to 80% AMI?	Yes	Yes	No

*Mortgage terms: 30-year fixed term at 6.5%. Acceptable intrest rates should not be lower than .25% above the latest prevailing rate for a 30 year fixed rte mortgage as indicated by Freddie Mac's Weekly Mortgage Market Survey, which can be accessed at http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputYr.jsp

Source: Massachusetts Department of Housing and Community Development. http://www.mass.gov/dhcd/ToolKit/AffSale/default.htm