

Inclusionary Zoning – City of Allentown

Research was conducted of various communities in Pennsylvania to determine their use of inclusionary zoning and if it is having an impact by improving access to affordable housing. Cities in Pennsylvania of similar density to Allentown were chosen. In some cases staff for the city that was contacted did not respond to requests for information, instead the zoning ordinance or other documents were obtained through internet research and reviewed for recommendations, provisions or regulation for affordable housing. Several communities were found that have inclusionary zoning ordinances. The types of ordinances vary. They are typically overlay ordinances, meaning that there is an underlying zone with other regulations. The inclusionary zone typically will overlay residential zones that allow high density housing. The inclusionary zone applies to new construction, new adaptive reuse and new residential conversions at a set minimum number of units (25 units or more as an example). Existing multifamily residential buildings above the minimum number are not required to comply with the ordinance. In other words the zoning ordinance cannot be applied retroactively. Many inclusionary ordinances have an incentive and in fact some ordinances only have the incentive, with no mandatory requirement to comply. The incentive is typically relaxation of bulk, area and setback requirements and/or increased density (more units) than are otherwise allowed in the underlying zone. Some inclusionary zoning ordinance allow the developer to opt out and instead pay a fee to housing fund to be used to construct affordable housing at other locations in the community.

Bethlehem

The nearby City of Bethlehem has provisions in its zoning ordinance for affordable housing. Bethlehem uses the term “workforce housing” rather than affordable housing. Workforce housing is defined in Bethlehem’s zoning ordinance using HUD’s method for calculating low to moderate income families. This is based on the Area Median Income (AMI) and number of persons in the family. The AMI is the median household income for the Metropolitan Statistical Area. Low to moderate income is defined by HUD as a family earning less than 80% of the AMI. The Bethlehem ordinance has incentives for workforce housing as outlined here:

ARTICLE 1307

WORKFORCE HOUSING INCENTIVE

1307.01 Workforce dwellings are rental or owner-occupied dwelling units that meet the standards of this Article 1307.

This Article 1307 shall only apply within the CM-LTN, IR-R, RT, CB and CS zoning districts. All of the requirements of this Ordinance shall continue to apply, except for provisions specifically modified by this Article 1307.

1307.02 This Article 1307 shall only be available if a development will include 20 or more new dwelling units. If a minimum of 10% of the total dwelling units in a development will be sold or leased as workforce dwellings, then a density bonus shall be allowed. If more than 30 percent of the total dwelling units in a development are workforce housing units, the density bonus shall only be available for that first 30 percent of the total dwelling units. The density bonus shall be that for every workforce dwelling unit, 1.5 additional dwelling units shall be allowed in the development beyond the number of dwelling units that would otherwise be allowed. However, in no case shall the total density of the development exceed a minimum average lot area of 1,000 square feet of lot area per dwelling unit. The restrictions of this Article shall be established and enforced by lease and by deed. The bonus may be rounded to the nearest whole number. The following are examples of how these provisions are intended to function:

(a) If a development is permitted to have the minimum 20 dwelling units and the applicant chooses to use the 30 percent workforce (WF) housing (14 market rate ("MR") + 6 WF), they may construct 6 x 1.5, or 9 additional units:

29 units total (23 MR + 6 WF)

(b) If a development is permitted to have 40 dwelling units total (36 MR + 4 WF), the applicant may construct 4 x 1.5, or 6 additional units:

46 units total (42 MR + 4 WF)

(c) If a development is permitted to have 100 dwelling units total (90 MR + 10 WF), the applicant may construct 10 x 1.5, or 15 additional units:

115 units total (105 MR + 10 WF)

(d) If a development is permitted to have 100 dwelling units total and the applicant chooses to build 30 WF units (70 MR + 30 WF), using the maximum 30 percent workforce bonus provision, the applicant may construct 30 x 1.5, or 45 additional units:

145 units total (115 MR + 30 WF)

(e) If a development is permitted to have 100 dwelling units total and the applicant chooses to build 40 WF units (60 + 40 WF), they may construct 30 x 1.5, or 45 additional units

1307.03 A workforce dwelling unit shall be affordable to households with an income not to exceed 80 percent of the Area Median Income for the Allentown-Bethlehem-Easton Metropolitan Statistical Area as estimated annually by the US Department of Housing and Urban Development, or its successor estimate. Income shall be based upon the calendar year prior to the date of the sale or rental. Households whose income does not exceed 80 percent of such Area Median Income as adjusted for household size are eligible to purchase or lease a workforce dwelling unit.

1307.04 For a rental workforce dwelling unit, the monthly rent payment and any maintenance fees shall not exceed an amount equivalent to the Fair Market Rents for the number of bedrooms, for the Metropolitan Statistical Area as published annually by the U.S. Department of Housing & Urban Development, or its successor measurement. Costs for utilities are not included in such maximum.

1307.05 For owner-occupied workforce housing units, the Administrative Agency shall establish a maximum sales price for the initial sale of the dwelling unit. The maximum sales price shall be affordable to a household with total household income that is no more than 80 percent of the Area Median Income, as calculated above. Such affordable sales price shall be based upon a currently available typical 30 year fixed rate mortgage, a down payment of no more than 15 percent of the purchase price, an estimate of property taxes and homeowner insurance premiums, and an estimate of any homeowners/condominium association fees. The sales price shall be set so that the total of such costs at the time of the initial sale will not exceed 30 percent of the gross income by a household earning 80 percent of the Area Median Income.

1307.06 In order to lease or purchase a workforce dwelling unit, the household must receive a "Certificate of Qualification" from the City-designated Administrative Agency. The Administrative Agency shall be a non-profit organization, governmental bureau or agency or housing authority that has agreed to accept responsibility for such matter and has been designated by the City of Bethlehem Department of Community and Economic Development as being the designated Administrative Agency.

(a) The owner shall provide the Administrative Agency with a minimum of 60 days of advance written notice of the seller's intent to put a workforce dwelling on the market. For owner-occupied workforce housing units, the Administrative Agency shall establish a maximum sales price for any re-sale of each dwelling unit. The seller shall reimburse the Administrative Agency for the cost of a professional appraisal of the current market value of the dwelling unit. Such maximum sales price shall be based upon the actual sales price paid by the owner, plus 50 percent of the change in the market value of the dwelling unit from the time of most recent previous sale to the present day. In addition, the sales price may include the costs directly associated with the actual sale of the dwelling, including any realtor commissions.

1307.07 The restriction upon the workforce dwelling units shall continue for 20 years after each workforce dwelling unit is initially occupied. At the end of such 20 year period, the sales or rental prices of the workforce dwelling units shall not be restricted, and the proceeds of sales shall be controlled by the then-current owner. The restriction upon the workforce housing shall apply at the time of the initial lease or sale of the dwelling units and any subsequent sale, lease or sublease of the dwelling units to a different household. The income determination shall be based upon the income of the inhabitants of the dwelling unit during the calendar year prior to the sale or lease, regardless of changes in income that may occur by that same household in subsequent years. This Article shall not require a household to move out of a workforce dwelling unit because their income has increased.

1307.08 The applicant shall as part of its zoning application, provide documentation as to how this program shall be funded, monitored, implemented and enforced and shall agree that the program conditions and requirements will be made a condition of City approval. Applicants must contract with the Administrative Agency to oversee compliance with this section, with that Administrative Agency responsible to periodically certify compliance in writing to the City Department of Community and Economic Development.

1307.09 The proposed workforce dwelling units shall be integrated throughout the development, as opposed to being isolated to one portion of a development or one floor of a building. The workforce dwelling units shall have the same exterior facade materials as market rate dwellings in the development, and be indistinguishable in appearance. The workforce housing units shall have no greater percentage of multi-family units than the market rate dwellings.

1307.10 The workforce dwelling unit shall be occupied by the household that has a "Certificate of Qualification" as their primary place of residence. Any sale, lease or sublease shall require re-certification of the owner/tenant by the Administrative Agency. The owner shall have the right to select a buyer or tenant provided the requirements of this Article are met.

This ordinance for Bethlehem does not require affordable units in the zoning overlay. It relies strictly on a density bonus incentive for projects of 20 units or more. The staff person from the City of Bethlehem who provided the above information stated that since it was adopted no developer has taken advantage of the workforce housing incentive. The ordinance has been in effect since 2012.

Pittsburgh

Pittsburgh, like Allentown has been going through a revitalization. Pittsburgh formed a task force, hired consultants and did an extensive study of the issue of affordable housing culminating in a Findings and Recommendations Report that was completed in 2016. A summary of the recommendations in the Pittsburgh report are listed here:

The Pittsburgh Housing Trust Fund. The Task Force recommends that a Trust Fund be established, including oversight by both a governing and advisory board, through the Urban Redevelopment Authority. The Fund would set an initial target of raising \$10 million annually. The funds would be focused on helping those most in need by ensuring:

- 50% of the funds should be targeted to families and individuals earning at or below 30% of Area Median Income (AMI);
- 25% of the funds should be targeted to families and individuals earning at or below 50% of AMI; and
- 25% of the funds should be targeted to families and individuals earning at or below 80% of AMI.

To maximize the impact of these dollars, the Trust Fund will be a significant source of investment that is able to build upon and expand existing programs and resources.

Increased Utilization of the 4% Low Income Housing Tax Credit. The most significant tool for the production of affordable housing in the United States is the Low Income Housing Tax Credit (LIHTC) program. One

of its programs, the 4% tax credit is underutilized. The AHTF recommends a number of approaches to both address these challenges as well as to increase the awareness of the 4% LIHTC in order to expand its utilization in mixed-income projects, the preservation of existing affordable housing, and the rehabilitation of existing housing stock.

Inclusionary Housing. Recognizing the varied markets across the Pittsburgh's 90 neighborhoods, the AHTF recommends several tools that are able to increase the development of mixed-income communities through the following inclusionary housing mechanisms. Prioritizing the inclusion of affordable housing on all developments throughout the City of 25 units or greater that receive public benefits, including but not limited to tax abatements, Tax Incremental Finance (TIF), height and density bonuses. The amount of affordable units would be set at a level commensurate with the amount of public subsidy.

Creating standard criteria for Affordable Housing Opportunity Overlay zones for the strongest markets for new market-rate housing development that would require inclusion of affordable units. The amount of affordable units would be set at a level that leverages the market momentum to build mixed-income developments.

The affordable units would be for households at or below 50% AMI for rental units and households at 80% AMI or below for home ownership.

Preservation of Existing Affordable Housing. Pittsburgh has more than 15,000 deed- or income-restricted affordable housing units (D/IR) as well as naturally occurring affordable housing spread across the City. However, the AHTF recognizes that to make significant progress in increasing the available housing opportunities for low- to moderate-income households, we must be able to effectively monitor (in the case of D/IR) and preserve the affordable housing we already have in addition to producing new units. Moreover, the costs of preserving a unit are, on average, significantly less than the costs of building a new one.

Protection of Existing Homeowners and Tenants. Programs to protect existing resident -- both homeowners and tenants -- could be used in all city neighborhoods, through initiatives including controls over reassessment spikes; the Rental Registration ordinance; just cause eviction protections and notification requirements for tenants of developments receiving direct public subsidy; and other tenant protection and relocation assistance initiatives.

While Pittsburgh does not currently have an inclusionary zoning ordinance the report recommends an Affordable Housing Opportunity Overlay. The work done by the City of Pittsburgh should be emulated by Allentown. It is recommended that Allentown consider creating a task force on affordable housing and do a thorough analysis of the issue. This can be done with consultants or use of current planning and zoning staff. The resulting document to include the existing affordable housing inventory and conditions, an assessment of the need for affordable housing, and recommendations to address the problem. In the case of Pittsburgh's study the result included recommendations for options other than an inclusionary zoning ordinance.

State College

The Borough of State College has an inclusionary zoning ordinance that requires that projects with 6 units or more have at least 10 % of the units with rents that meet the HUD definition of low to moderate income. The images below are excerpts from the State College ordinance. State College does have a density bonus and relaxed area and setback requirements as incentives in exchange for affordable units. It is not known how effective this ordinance is, but it differs from the Bethlehem ordinance in that it is more regulatory, but there is a fee-in-lieu option. If a developer does not want to comply they can pay a fee-in-lieu for not including affordable units. The amount that the developer has to pay is set by Council. The fees collected are used by the Borough to construct or assist with construction of affordable housing at other locations in the Borough.

a. Applicability. Within the R-1, R-2, R-3, R-3B, R-3H, R-4, R-O, R-OA, UPD, UV, CP-1, CP-2, C and CID Zoning Districts all of the following types of land development that contain six (6) or more additional residential dwelling units shall also contain inclusionary units as determined by the calculation in paragraph b below: (Exception: Dwelling units that are owned, rented or leased by The Pennsylvania State University for the sole purpose of housing full-time enrolled students in the UPD Zoning district.)

(1) New residential construction, regardless of the type of dwelling unit.

(2) New mixed-use development with a residential component.

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

(4) Conversion of an existing residential structure regardless of dwelling type to a multiple-family residential structure.

(5) Conversion of a non-residential property to a residential property.

b. Calculation of Inclusionary Units. To calculate the minimum number of inclusionary units required in any land development listed in paragraph a., Applicability, above,

the total number of proposed units shall be multiplied by 10% percent (10%). If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next whole number, and a fraction of less than 0.5 shall be rounded down to the next whole number. (See the table in paragraph Section 4a (8) for the percentage of the type of inclusionary units to be provided to specific qualified households.)

c. Alternatives to On-Site Construction of Inclusionary Units. The use of alternatives to on-site construction of inclusionary units in whole or in part will result in the same reduction in whole or in part of the bonus units permitted on site.

(1) Fee in-Lieu Inclusionary Housing.

(a) An applicant may pay a fee in-lieu constructing some or all of the required minimum number of inclusionary units required in any development listed in paragraph a, Applicability, above.

The following Cities were contacted and/or research conducted and were, however found to not have inclusionary zoning: Easton, Reading, and Lancaster. As part of a more detailed plan for affordable housing in Allentown other cities could be contacted regarding their inclusionary zoning ordinances and the effectiveness of these ordinances measured in more detail.