

TOWN OF BRUNSWICK, MAINE

HOUSING COMMITTEE

- AGENDA -

October 23, 2023 - 10:00 AM – 11:30 AM

TOWN COUNCIL CHAMBERS

THERE IS AN OPPORTUNITY FOR THE PUBLIC TO ATTEND THIS MEETING VIA ZOOM

Members of the public should follow this link to join via Zoom:

<https://us02web.zoom.us/j/82923464755?pwd=L0F4ZGRLVWIFVm1WakUrUWZtRE8rQT09>

10:00 AM | Welcome & Introductions

10:02 AM | Staff Updates

- AHSF Manual & Implementation
- Inclusionary Zoning – Fee-in-lieu
- Asylum Seeker Housing
- MCOG Housing Grant

10:40 AM | GOPIF Key Housing Initiatives – Committee Report

11:00 AM | Winter Warming Grant


11:10 AM | Committee Comment

11:20 AM | Public Comment

Adjourn

Next meeting: December 18, 2023 @ 10:00; Town Council Chambers

INTEROFFICE MEMORANDUM

TO: SALLY COSTELLO
FROM: JACOB SESKER 
SUBJECT: INCLUSIONARY ZONING FEE-IN-LIEU
DATE: OCTOBER 6, 2023
CC: JOHN ELDRIDGE

You asked me to consider potential structures for a fee-in-lieu of inclusionary zoning (IZ) units in the *for-sale* housing developments. This memorandum addresses several related policy issues and recommends a potential structure for such a program.

The conclusions and recommendations in this document represent my own analysis based on many years of work in Montgomery County, MD (which has the nation's longest running and best known IZ program) and based on a current review of policy documents and real estate data related to Portland and Cumberland County, Maine.

I. Background

In 2023, Brunswick adopted an "inclusionary zoning" amendment to the ordinance. One aspect of that amendment is that certain residential development projects are required to set aside a portion of units for low-income households.

As adopted, the requirement applies to rental residential projects in a growth district¹ that will create 15 or more net new dwelling units for rent through new construction, addition to existing structures, or conversion or interior reconstruction of existing structures. For such projects, 15% of total units must be affordable to households with incomes at or below 80% of the Area Median Income (AMI), and affordability of the units must be maintained for 30 years.

The following definitions are relevant:

¹ Not clear why the requirement only applies in the growth district.

Affordable housing: *A dwelling units offered for sale or for lease at a rate deemed affordable for households earning less than or equal to the Area Median Income for the Brunswick Metropolitan Area (“very low,” “low,” or “moderate” income households) at the time of sale or lease.*

- A. *A unit offered for sale is “affordable” if its proposed sale price results in monthly housing costs (including mortgage principal and interest payments, mortgage insurance costs, homeowners’ insurance costs and real estate taxes) that do not exceed 28% of the Area Median Income for the Brunswick Metropolitan Area. Determination of mortgage amounts and payments are to be based upon down payment rates and interest rates generally available to low- and moderate-income households.*
- B. *A unit offered for rent is “affordable” if its proposed monthly housing costs (including rent and basic utility and energy costs) do not exceed 30 percent of the Area Median Income for the Brunswick Metropolitan Area.*
- C. *Where bonuses are sought based upon affordability to very low, low, or moderate-income households, the applicable Area Median Income for that income threshold shall apply....*

Very Low Income Household: *A household with a gross income of less than or equal to 50 percent of the applicable Area Median Income for the Brunswick Metropolitan Area at the time of the lease or sale.*

Low Income Household: *A household with a gross income more than 50 percent but less than or equal to 80 percent of the applicable Area Median Income for the Brunswick Metropolitan Area at the time of lease or sale.*

Moderate Income Household: *A household with a gross income more than 80 and less than or equal to 120 percent of the applicable Area Median Income for the Brunswick Metropolitan Area at the time of lease or sale.*

In addition to establishing the requirements described above, the law also establishes a zoning bonus density scheme and allows for reduced parking and fees for certain projects that provide affordable units. The Town of Brunswick has also established an Affordable Housing Support Fund and has the authority to use credit enhancements to facilitate delivery of certain housing products that exceed minimum standards.

II. Policy analysis

Considerations

The Town of Brunswick could establish an inclusionary zoning requirement that applies to for sale residential development projects. Before doing so, the Town should consider the following:

- The housing affordability crisis facing Maine’s communities.

- Whether adding new costs or requirements is likely to make some projects financially infeasible, thereby reducing the supply of new housing.
- The impact that such a program would have on land values and the cost of housing outside of the “controlled” market. Past research has shown that the costs of requirements such as inclusionary zoning generally get passed along through two channels: reduced values of residential land (and therefore reduced growth in assessed values of land), and higher costs for market rate units.
- IZ programs in the *for-sale* market are significantly more complex than IZ programs in the *for-rent* market. Examples include:
 - How to deal with condo and HOA fees.
 - How to monitor who is actually living in the units.
 - How to establish and enforce a maximum sale price for IZ units during the control period.
 - How to establish a right of first refusal program (e.g., in the event that a low-income purchaser defaults on their mortgage).

If the Town of Brunswick decides to establish an IZ requirement for new *for-sale* developments, the Town will need to establish the following:

- Whether to mirror the requirements that currently apply to rental developments only (i.e., applies to projects creating 15 or more net new units in a growth district, 15% of units affordable at 80% of AMI, 30-year control period).
- Whether it is open to, or would prefer, a payment or fee in lieu of the required units.
- The amount of any such payment or fee in lieu of affordable units.

IZ versus tax versus impact fees

Before proceeding, it is worth pausing to review why the Town of Brunswick would try to accomplish this policy objective via zoning rather than via other governmental powers.

- A tax is primarily a revenue raising measure. Local governments need authorization to tax, and the legislature has not authorized local governments in Maine to charge an affordable housing impact tax to generate revenue for local affordable housing funds.
- A fee, such as an impact fee, must generally be connected to the problem it will purportedly be used to address, and the fee must be roughly proportional to the impact of the project. While the actual terminology and judicial tests differ somewhat from state to state, nexus and proportionality concerns are relevant anywhere.
- Using zoning power to address the issue as a matter of health/safety/welfare is the simplest way to address the issue. With affordable housing, this can be done by requiring that a certain percentage of units in a new development meet legislatively established affordability standards.

There is little question that the zoning power is the power best suited for accomplishing the Town's desired objective. However, the reality of implementing an inclusionary zoning program in the for-sale market is that it is quite complicated – administration and enforcement of such a program can require resources that would be better directed to at-risk populations and can be very difficult for small communities.

Complexities of for-sale IZ programs

For several reasons, such programs can stretch the staffing, technical, and fiscal capacity of small-town local governments. Some of those reasons are outlined below:

1. Condo and HOA fees

The average monthly cost of living in a common ownership community is around \$3,500 per unit per year, or \$291 per month. Nationally, homeowners' association (HOA) fees are typically in the neighborhood of \$150 to \$300 per month, while condominium fees are typically around \$300 to \$500 per month.

Given that general tax dollars are scarce and are a source of funding for critical needs across the community, many communities with inclusionary zoning programs have established standards and processes for reviewing HOA and condo fees and agreements. For example, [Portland, Maine](#) requires submission of HOA/condo documents along with a review of proposed budgets, and stipulates certain requirements related to voting rights. Some jurisdictions have struggled with issues such as the portion of HOA or condo fees that are associated with on-site fitness or aquatic facilities.

2. Monitoring

In my experience, most communities with IZ programs also require periodic (annual) certifications from the qualifying homeowner that they still live in the unit and may also periodically inspect or visit to ensure that owners are not renting out the units. Many jurisdictions also monitor sites such as Craigslist for indications that IZ units are being rented out.

3. Establishing a maximum sale price

During the control period, the unit must be affordable. Since many owners do not live in the unit for the entire control period, processes and formulae must be established in order to ensure that sales of those units comply with the IZ program. This is necessary because a purpose of the IZ program is to meet the housing needs of low-income households (a separate purpose is social/economic integration and inclusivity); typically, the purpose of IZ programs is not to enrich a small number of fortunate low-income households via a wealth-building program.

4. Right of first refusal

Jurisdictions with IZ requirements in the *for-sale* market typically establish a right of first refusal. This enables the local government to purchase the unit in the event of mortgage

default, market dysfunction, or to preserve the units as affordable when a sale occurs near the end of the control period.

Economic efficiency and cost effectiveness

An additional consideration is overall economic efficiency and cost effectiveness. It is more cost effective to acquire existing units than it is to build new units. The public's interest is meeting the needs of as many low-income households as possible rather than imposing costs on the private sector that could result in economic "dead weight."

Using a recent Brunswick apartment project as an example, the cost of building a new multi-family unit is approximately \$200,000. By looking at valuations and transactions in the Brunswick and Portland areas, the cost of acquiring an existing apartment unit (of any age) is (on average) \$100,000. Allowing projects to meet the IZ requirement by paying a fee that can be used to acquire or preserve existing rental units is more cost effective than requiring them to provide on-site units, especially when the various complications associated with IZ requirements in the for-sale market are considered.

III. Program design illustration

If the Town of Brunswick establishes an IZ requirement that applies to *for-sale* developments, it would likely design the program so that it mirrors the existing IZ requirements for *for-rent* developments.

A 20-unit development would be required to provide 3 units (15% of total) that are affordable to households at or below 80% of Area Median Income. Providing those units on-site would cost the developer approximately \$600,000. A substantial portion of that cost would be spread out across the remaining 17 market rate units. Assuming annual cost of common ownership community fees of \$3,500 per unit, the annual HOA/condo fee cost that would need to be borne by either the low-income household or the Town of Brunswick would be approximately \$10,500 per year. Additional costs to the Town and its taxpayers would include the cost of personnel and/or contractors to establish and manage the increasingly complex housing programs in Brunswick.

Alternatively, if the Town were to create a fee-in-lieu program and set the fee at the cost of acquiring the average existing rental unit, the cost to the project would be \$300,000 spread out across 20 market rate units. The Town could avoid the cost of HOA/condo fees in this scenario. While the Town would probably still need to establish a program that could accommodate in-kind compliance with the IZ program, it could avoid many or most of the costs associated with managing the program. The \$300,000 would be paid to the Affordable Housing Support Fund and could be used to acquire existing units to meet the growing need for affordable housing in the community.

The lower cost option would be much more attractive to property developers. While such a program would not be achieving project/subdivision level economic integration, it would enable the town to acquire units to promote a more inclusive community overall.

