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## The Implications of Inclusionary Zoning in the City of Buffalo

By Jon Pierowicz

The City of Buffalo is currently debating how best to increase the amount of affordable housing within the City. Over the last decade, the City has experienced a significant amount of redevelopment and reinvestment. This activity has resulted in an increase in both property values and rents. While rents in the City still remain relatively low compared to the other regions of the country, City officials have expressed concern about a need for more affordable housing options. One proposed solution to this problem is the implementation of an inclusionary zoning requirement in Buffalo. The Common Council has held hearings on the topic, and Mayor Brown and the Office of Strategic Planning are in the process of finalizing their own proposal to address the issue.

Inclusionary zoning is a catchall term used for policies that utilize market-rate development projects as a means to increase affordable housing. Inclusionary zoning policies can roughly be divided into two types: mandatory and voluntary. Under a mandatory inclusionary zoning policy, a developer building a residential project would be required to charge a lower rent in some percentage of the units. For example, in Chicago, 10 percent of all units in residential projects with 10 or more units are required to be affordable, and that percentage rises to 20 percent if financial assistance is provided to the developer.

In contrast, a voluntary inclusionary zoning policy consists of the consensual exchange of benefits, such as a density bonus, tax incentives or granting of zoning variances, for the inclusion of some proportion of affordable units in a project (e.g., 10 percent). An example of this would be a city granting a developer a density bonus of 25 percent in exchange for apportioning 20 percent of the units as affordable housing. This approach, which is used in New York City, helps the developer defray the costs of making some portion of a project affordable housing.

A key threshold issue in any inclusionary zoning policy is how to define "affordable" units. In the inclusionary zoning context, "affordable" units are usually defined as being within the means of a person making some percentage of the area median income ("AMI"), typically between 30 percent and 120 percent of AMI. The most commonly cited measure of AMI is produced by the U.S. Department of Housing and Urban Development ("HUD"). According to HUD, Erie County's 2017 median family income is \$68,200. So, if the City chose to mandate that developers make available units that are affordable to a person making 30 percent of AMI, which is an income of approximately \$20,460, these affordable units would have a rent of approximately \$512 per month (which assumes a person has the ability to allocate 30 percent of their income to housing).

A few other elements are often incorporated into a municipality's inclusionary zoning policy. Many cities define the length of time the affordability element of the project must be maintained with specific compliance requirements. Some programs permit off-site housing which allows a developer to build the affordable housing

portion of a project at a location that is different from the site of the proposed market-rate housing project. This could have the effect of increasing affordable housing in the city while still keeping market-rate residential projects economically viable – a significant challenge in Buffalo because of comparatively low market rents (despite a recent increase, Buffalo still has an average rent below that of Syracuse, Detroit and Rochester).

Thus, Buffalo presents some unique challenges for any administration seeking to implement inclusionary zoning policies. Typically, areas which have had success with inclusionary zoning have enjoyed growing populations while having some of the highest rents in the country. Developers in places like San

Francisco and Montgomery County, Maryland could effectively subsidize the creation of affordable housing because they were able to obtain very high rents in their market-rate units while still enjoying high demand due to a growing population. Buffalo, by contrast, is still losing population despite its recent resurgence. Buffalo's population decreased by approximately 11 percent between 1990 and 2000, and approximately another 11 percent between 2000 and 2010. While the rates of loss have been less in recent years (Buffalo only lost an estimated 1.7 percent of its population between 2010 and 2016), the City is still experiencing a decline.

In addition to relatively low rents, the Buffalo Niagara Region also has among

the highest construction costs in the country, making development of market-rate housing a difficult proposition at best, even without imposing a mandatory affordable housing requirement. As such, should the City of Buffalo decide to implement inclusionary zoning, it will be vital that the policy promotes cooperation and flexibility between developers and the City in order to quickly adapt to changing market forces and the unique challenges to development in this area.

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