EXPANDING AFFORDABLE HOUSING THROUGH INCLUSIONARY ZONING: LESSONS FROM THE WASHINGTON METROPOLITAN AREA

Karen Destorel Brown

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I. Introduction

The past decade of strong economic growth brings paradox to many American families. While family income has generally risen, the cost of housing – particularly in the fastest-growing metropolitan areas – remains a serious issue. Nationwide, approximately thirteen million families had critical housing needs in 1999, shown by either paying 50 percent or more of their income toward rent or living in severely inadequate housing.[1] Over 3.7 million working families, some easily considered to be middle-class, were among those who faced critical housing problems.[2] This represents a 23 percent increase over 1997.

There are several trends that have propelled the nation's affordable housing crisis. First, and fundamentally, wages and incomes have not kept pace with increasing daily living costs such as transportation, health insurance, childcare, and, most importantly, housing. Second, the supply of affordable housing has fallen. The number of rental units affordable to extremely low-income families dropped by 5 percent between 1991 and 1997 — a loss of over 370,000 homes.[3] In 1997, only 36 units were affordable and available to every 100 families with incomes at or below 30 percent of area median income. Only 68 units were available and affordable to every 100 families below 50 percent of the median income. When looking at 17 metropolitan areas, researchers found that 200,000 working families could afford to buy homes priced between $50,000 and $75,000, yet only 32,000 homes in that price range were potentially available.

But affordable housing is not simply about raw numbers of units – although important. Dense concentrations of affordable housing can have a deleterious effect on neighborhoods, particularly those already riddled with pockets of concentrated poverty. These neighborhoods seldom provide their residents with a full range of economic opportunities or strong public services. Affordable housing needs to be located strategically to create economically integrated communities that allow households of modest means access to a range of opportunities – from good jobs and schools to transportation and safe streets.

Officials can use inclusionary zoning as one of a number of tools to meet the housing needs of low- and moderate-income working families. Inclusionary zoning creates affordable housing units without isolating poor and working families into economically segregated communities. These ordinances institutionalize something that middle- and upper-income homebuyers take for granted: housing is not just about sturdy walls and a sound roof, but also about neighborhoods and opportunities.

Linking affordable housing to market-rate, private development, inclusionary zoning increases the chance that low- and moderate-income families will live in healthy communities that appeal to people with resources and choice. Beneficiaries of these ordinances include not only

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[1] Barbara J. Lipman, Sandra J. Newman and Joseph M. Harkness, *Paycheck to Paycheck: Working Families and the Cost of Housing in America*, The Center for Housing Policy, June 2001, p. 6.
[2] Ibid.
[3] U.S. Department of Housing and Urban Development, *Rental Housing Assistance – The Worsening Crisis*, HUD, March 2000, p. 22.

minimum-wage workers, but also teachers, police officers, and service workers – productive citizens who form the foundation of any community.

These ordinances work, essentially, as trade-offs between a local government and a developer. A developer sells or rents a percentage of units in a new development at prices that low- to moderate-income families can afford, and, in return is usually given a "density bonus," which gives permission to build more units than local zoning regulations typically allow. Additional units are created because of increased density (units per acre), and not through the purchase of additional land. This "free land" acts as a subsidy, since land costs are not included in the rent or sales prices of affordable units. Developer participation may be voluntary or mandatory. This paper, however, focuses on mandatory inclusionary zoning ordinances; these are the ones that create the highest number of units.

Inclusionary zoning ordinances have a series of predetermined parameters: they apply only to developments with more than a certain number of units; the affordable units are available to families making a certain percentage of area median income or less; and acceptable rent and sales prices of affordable units are updated periodically to accommodate changing production costs. Affordable units must stay affordable for a specified time period, which usually differs for rental and sale units. If for-sale units were locked into an affordable price for too long, purchasers would not be able to realize a good return on their investment and the program would lose its appeal. However, some price-control period is necessary to keep units from disappearing from the affordable housing pool too quickly.

The drafters of these kinds of ordinances must determine the circumstances by which developers may be allowed to buy out of the program, and how much it will cost developers to do so. Instead of constructing units on site, developers may be permitted to pay a fee in lieu of providing units; provide units at another location; or provide land elsewhere for the construction of affordable units. Usually, these alternatives are allowed when they would result in the creation of substantially more affordable units than would have been created on site, or the inclusion of affordable units on this site (particularly in high-end residential developments) would provide an undue financial hardship for either the developer or the potential occupant. However, some buy-out provisions can actually interfere with the creation and equitable distribution of affordable housing units.

Many jurisdictions throughout the country have implemented inclusionary zoning ordinances, from Burlington, VT, to Santa Fe, NM, to dozens of communities in California. Nationwide, Montgomery County, MD, has been the most successful, with nearly 11,000 affordable housing units produced in the two and one-half decades since this ordinance was enacted. Most jurisdictions can trace some aspect of their inclusionary zoning ordinances to the Montgomery County program.

Focusing particularly on the Montgomery County ordinance and those found in three other Greater Washington area jurisdictions, this paper will: highlight the effectiveness of inclusionary zoning in several different jurisdictions; examine the obstacles facing new and old ordinances alike; and identify where opportunities for change exist to ensure ordinance longevity and productivity. By

illustrating how inclusionary zoning has been implemented in this area, we hope to inform those who want to implement inclusionary zoning in their jurisdictions, and to assist those who want to improve and preserve existing ordinances.

II. Washington Region Inclusionary Zoning

Four counties in the Greater Washington region have adopted inclusionary zoning ordinances: Montgomery and Prince George's counties in Maryland, and Fairfax and Loudoun counties in Virginia. These counties, and their inclusionary zoning ordinances, have and will continue to be greatly affected by area growth patterns.

The region's population grew by 16 percent during the 1990s, from 3.9 million to 4.5 million people. While the most populous counties, Fairfax, Montgomery, and Prince George's, experienced rapid growth ranging from 10 percent to 18 percent, the outer suburbs saw tremendous growth during the same period. Loudoun County nearly doubled its population over the last decade, growing by 97 percent, and Calvert and Stafford counties showed increases of 51 percent and 45 percent, respectively. The District was the only jurisdiction to see a decrease, showing a population loss of 6 percent from 1990 to 2000.

The population growth in the region was matched by tremendous job growth over the past decade. The area as a whole had 112,700 more jobs in 2000 than it did in 1999.[4] These jobs were not evenly distributed however: according to the Bureau of Labor Statistics, Northern Virginia had twice as many new jobs as suburban Maryland last year.[5] By contrast, suburban Maryland added more new residents than Northern Virginia, causing more people to commute in search of jobs.[6]

In addition to strong job growth, the Washington Metropolitan Statistical Area (MSA) enjoys a high median income -- $82,800 as of 2000, according to the Department of Housing and Urban Development (HUD).[7] HUD figures are used to determine income and rent limits for many housing programs, including the region's inclusionary zoning ordinances. Although the median income for the area is high, the wealth is spread unevenly across the region and within counties.

Highlights of Region's Ordinances

The following briefly summarizes the components of the inclusionary zoning programs found in Montgomery and Prince George's counties in Maryland, and Fairfax and Loudoun counties in Virginia. For the sake of consistency, the report provides program updates to 1999. Where available, more recent data are provided in footnotes. More in-depth accounts of the history of each of the following ordinances are provided in Appendix B. A map of the region is also provided in the appendix.

[4] Bureau of Labor Statistics, Local Area Employment Statistics tables.
[5] D'Vera Cohn, "A Growing Disparity," *The Washington Post*, March 22, 2001, p. A1.
[6] Ibid.
[7] US Department of Housing and Urban Affairs, *FY 2000 Income Limits and Section 8 Fair Market Rent*, http://www.huduser.org/datasets/il/fmr00/index.html. Recently released FY2001 median income for the Washington MSA is $85,600.

A. Montgomery County, MD

Enacted in 1974, Montgomery County's Moderately Priced Dwelling Unit (MPDU) ordinance is the oldest and most productive inclusionary zoning program in the country. Nearly 10,600 affordable housing units have been created as of 1999.[8] Inclusionary zoning ordinances around the country have long been modeled after the Montgomery County program. However, over the past several years Montgomery County has seen its yearly production levels and the number of existing moderately-priced units decline. As of 1999, only 3,805 units created by inclusionary zoning were still governed by mandatory affordability restrictions. Roughly 6,800 are no longer governed by inclusionary zoning requirements, or any other affordability restrictions. Because these units are smaller and have fewer amenities than market-rate units in the same developments, they should still be relatively affordable. No evidence, however, exists as to whether or not this is true in all cases, and affordable units located in expensive subdivisions are more likely than not to see their sales prices increase after the price-regulation period expires.

1. *Ordinance Requirements*

Montgomery County's inclusionary zoning ordinance applies throughout the County, with the minor exception of several incorporated towns, villages, and special taxing districts (the City of Rockville has its own similar ordinance). Montgomery County's ordinance applies to both single- and multi-family developments. Up until recently, the ordinance required that in developments of 50 or more residential dwellings, whether for rent or ownership, 12.5 to 15 percent of the units be set aside as affordable housing. In return for providing affordable units, developers are allowed a density bonus of up to 22 percent. A sliding scale system links the percentage of affordable units to the amount of density bonus units a developer can accommodate on the site.[9] Rental units must adhere to inclusionary zoning requirements for 20 years, while owner-occupied dwellings are regulated for 10 years. The ordinance only applies to residential zones with lots of less than one acre per unit, thereby making large-lot developments exempt.[10] Though inclusionary zoning covers most of Montgomery County, the 50-unit threshold, large-lot exemptions, and the difficulties many multifamily developers face when trying to include affordable units hinder the program's ability to place affordable housing in all developments.

In exceptional cases, a developer may fulfill inclusionary zoning requirements by either building more affordable units at other sites in the same or an adjoining planning area; providing land for affordable units in the same or an adjoining planning area; contributing to the county's Housing Initiative Fund (a housing trust fund); or any combination of the three that would result in the production of significantly more units. Since one of the goals of the program is to achieve an equitable distribution of affordable units throughout the area, the County has been reluctant to

[8] As of 2000, 10,781 affordable units have been created through inclusionary zoning in Montgomery County.
[9] In some instances, due to zoning or site constraints, a developer may not be able to build all of the bonus density units that are allowed under the inclusionary zoning ordinance. See the discussion of high-rise units, below.
[10] Areas zoned for large-lot developments usually are not served by public sewer and water systems, which makes it difficult to include affordable units because of the increased cost of infrastructure.

approve developers' requests to meet their MPDU requirements by contributing to the housing fund or building units off site.

Between 1989 and 1999, only 10 requests to provide affordable units in other locations were approved, and only in cases where homeowner association or condominium fees were unusually high. Additional fees associated with some ownership units no doubt would prove to be a hardship to low- or moderate-income owners.

One highly publicized battle over the placement of affordable units occurred during the development of Avenel, an expensive development located on a golf course.[11] The County originally agreed to let the developer finance construction of a Bethesda apartment building that would provide more units in a more accessible location, rather than construct 60 affordable units at Avenel. Broad-based support for the creation of affordable housing in all parts of the County led officials and the developer to withdraw the agreement. However, many feared that low- and moderate-income residents would have trouble paying Avenel's high homeowner association fees.

2. *Program Participants*

Montgomery County's program is targeted to households earning 65 percent or less of the area median income of $82,800 in fiscal year 2000, adjusted for family size. The income limits for the program are determined by the County Executive and currently range from $33,500 for one person to $52,000 for a family of five. As of 2000, potential owners of affordable units must earn at least $20,000 a year, thereby ensuring that they will be able to cover mortgage payments and other homeownership costs. Eligible participants cannot have owned a residential property in the past five years, and preference is given to those applicants who live or work in the County. Should the developer be unable to rent or sell an affordable unit to an eligible participant within 90 days, he or she may make the unit available to anyone, regardless of income. However, the unit must be offered at the predetermined affordable price, and all inclusionary zoning requirements remain in place.

3. *Sales of Affordable Units*

As noted above, affordable ownership units are regulated for 10 years. Owners of affordable units can sell before the 10-year timeframe expires; however, there are limits as to how much they can ask for the dwelling. The resale price cannot exceed the original sales price plus cost of living adjustments based on the Consumer Price Index (CPI), approved improvements, sales commission, and any closing costs not paid by the original seller. Also, units offered for sale prior to the 10-year limit must be offered exclusively for 60 days to eligible participants.

Once the 10-year timeframe expires, owners are free to sell their units with no price limitation. Owners of units built in 1989 or later can keep $10,000 (granted the total amount of profit

[11] Ann Mariano, "Montgomery Rescinds Exemption to Avenel; Plan Calls for Moderate-Income Housing," *The Washington Post*, January 19, 1991, p. E1.

is greater than this) or half the total profit, whichever is greater. Profit is defined as the sales price, minus the sum of: the original sales price, the cost of approved improvements, CPI adjustments, and sales commission. The remainder of the profit goes into the county's Housing Initiative Fund (HIF). The HIF uses revenue to help for- and non-profit developers purchase, build, and rehabilitate affordable housing, and to leverage other public and private funds. Since 1989, contributions from the MPDU program to the HIF totaled $1,302,500.[12]

As noted above, affordable units tend to be smaller and have fewer amenities than market-rate units located within the same development. This virtually guarantees that affordable units will have lower rents and resale prices than market-rate units. However, existing housing market conditions and the desirable location of these units usually raises rents and home prices. In an effort to maintain a supply of affordable units throughout the County, the County's public housing agency (the Housing Opportunities Commission (HOC)) may purchase up to 33 percent of affordable units and qualified non-profits can purchase what the HOC does not buy, up to 40 percent. Once purchased, these units are set aside as rentals for very low- to low-income households, and will always be in the County's affordable housing stock. HOC also provides below-market rate financing for eligible households or nonprofit organizations wishing to purchase a unit. As of 1999, the HOC has purchased 1,441 moderately priced dwelling units, nearly 14 percent of the total number of affordable units created.[13] These units are counted among the 3,805 existing moderately-priced units.

B. Fairfax County, VA

Fairfax County's current inclusionary zoning, or Affordable Dwelling Unit (ADU), ordinance was enacted in 1990 and has created 582 affordable units as of 1999. The County originally enacted an inclusionary zoning ordinance several years before Montgomery County, but the courts struck it down because the State did not give Fairfax County express authority to enact the program. Virginia is a "Dillon rule" state, which means that jurisdictions must seek state approval for new or revised zoning and planning authority. This is not the case in Maryland, a home rule state. Had Fairfax County's original ordinance been allowed to stand, hundreds more, if not thousands, of affordable units would have been created. (More details are provided in Appendix C.)

1. *Ordinance Requirements*

The ordinance applies to developments of 50 units or more in which the developer seeks some additional public action such as rezoning, special exception, or subdivision. This means that those developments that are allowed as of right, requiring no other public action, are not subject to the requirements of the inclusionary zoning ordinance, unlike Montgomery County. This has the

[12] Department of Housing and Community Affairs, *Montgomery County, Maryland Housing Policy: Montgomery County – The Place to Call Home*, DHCA, January 2001, p. 35. Contributions to the HIF from payments in lieu of units and sales of MPDUs came about because of a 1989 amendment to the inclusionary zoning ordinance; therefore, there were no contributions prior to this year.

[13] Research and Technology Center, *Inventory of Affordable Housing in Montgomery County*, Montgomery County-Maryland National Capital Park and Planning Commission, September 2000, p. 24. To date, HOC has purchased approximately 1,600 units, and three nonprofit organizations have purchased a total of 50 units.

effect of limiting the ordinance. Also, multi-family housing of four stories or more, with at least one elevator, are also exempt and the development must be located in an approved sewer service area.

Developers receive a 10 percent density bonus for those multi-family buildings that are not exempt if up to 6.25 percent of all units are affordable.[14] In single-family detached homes or townhouse-style developments, a developer is required to set aside up to 12.5 percent of the units for affordable housing, in return for a maximum density increase of 20 percent. As in Montgomery County, there is a sliding scale: the actual number of affordable units required depends on how much of the density bonus a developer can actually take advantage of on the development site. The Fairfax ordinance also considers the existing density of each project, exempting low-density developments from inclusionary zoning requirements.[15] A 1998 amendment requires that owned and rented units first occupied after March 31, 1998, must be affordable for 15 and 20 years, respectively. Units occupied prior to this date are controlled for 50 years.

As is the case in Montgomery County, Fairfax developers can buy out of the ADU program if they can demonstrate that the inclusion of affordable units presents a physical or financial hardship, or if the County's ADU Advisory Board finds that locating affordable units elsewhere would better benefit the public. Developers may provide land, money, or affordable units in another location, rather than include affordable units on-site.

2. *Program Participants*

Two-thirds of the affordable rental units in each Fairfax County development are reserved for households with incomes up to 70 percent of the Washington MSA median income and one-third of the units are reserved for households with incomes up to 50 percent of the area median. For-sale units are made available to families earning up to 70 percent of the median income. Currently, maximum income limits for units range from $29,950 for one person to $79,050 for a household of eight or more.[16] To be eligible for homeownership units, applicants may not already own residential property or have owned a home within the last three years, compared to five years in Montgomery County.

3. *Participant Requirements*

Unlike Montgomery County, Fairfax's ordinance stipulates that households living in affordable units rented under the ADU program must annually re-certify their eligibility. If the participant's income exceeds the eligibility requirement, the ADU lease is terminated. The landlord may decide to designate another unit as an affordable dwelling, thereby allowing the current renter

[14] Multi-family housing actually has the option of requesting 20 percent density increases and 12.5 percent affordable units but this option is rarely, if ever, used.
[15] Any development whose dwelling unit per acre ratio is at the low end of the density range allowed by the comprehensive plan does not have to include any affordable units.
[16] At 50 percent of the MSA median income, the maximum income limits on rentals ranges from $29,950 to $49,650; at 70 percent, the maximum rental and owner income limits range from $41,950 for one person to $79,050 for a household of eight or more.

to stay in place, at an increased rent. This provision helps to ensure that the program serves those households who were originally the program's intended beneficiaries. This is not to say, however, that a household earning more than the program's maximum allowable income would have an easier time finding housing that it could afford, especially in Fairfax, where housing costs are moving beyond the reach of even middle-income residents.[17]

4. *Sales of Affordable Units*

Owners of affordable units may sell their units before the 15-year regulation period expires. The sales price is limited to the original sales price plus a CPI adjustment, improvements costs and, in some cases, closing costs and brokerage fees. Like Montgomery County, for those sales occurring after the regulation period expires, half of the adjusted profits are put into the County's housing trust fund; however, there is no guaranteed minimum profit for the seller.

Fairfax County, like Montgomery, allows its housing authority and non-profits to purchase affordable units. The Fairfax County Redevelopment and Housing Authority (FCRHA) has the exclusive right to purchase one-third of newly created affordable units during their initial 90-day marketing period. The FCRHA has purchased 40 units in seven developments, located in four of the seven magisterial districts in the County. After 60 days, affordable units that have not been placed under contract by eligible purchasers or the FCRHA may be purchased by non-profits.[18] Units not sold at the end of the priority-marketing period may be sold to any income-eligible household. The FCRHA has the right to lease up to one-third of the affordable rental units, enabling the program to serve lower-income families. The FCRHA also is allowed the first option to buy a unit during the first sale after regulations have expired.

C. Loudoun County, VA

Of the four programs studied, Loudoun County's ordinance, enacted in 1993, is the most recent addition to the region's inclusionary zoning programs. As of 1999, 208 affordable units were created.[19] This ordinance was limited in scope from its inception, since it does not apply to Loudoun's seven incorporated towns, located in the western half of the County. Elected officials in these towns have not chosen to pass their own inclusionary zoning ordinances. A 2000 amendment in Loudoun County halved both the number of affordable units required and the density bonus provided. Tremendous growth in the past decade (Loudoun is the Nation's fourth-fastest growing county) has led officials to slow construction of all types, in an effort to preserve Loudoun's remaining rural countryside.

[17] Dan Eggen, "Feeling Pinched on $90,000," *The Washington Post*, March 12, 2001, p. B1.
[18] As of 2000, non-profits have not purchased any units.
[19] As of June 2001, a total of 509 affordable units have been created.

1. *Ordinance Requirements*

As is the case in Fairfax, Loudoun's inclusionary zoning ordinance currently applies to those developments where a rezoning, special exemption, or preliminary subdivision yields 50 or more units on a site served by public water and sewer. There is a host of exceptions that the ordinance does not apply to: multifamily structures with four or more stories and an elevator; developments that were considered at public hearings prior to 1993 or have approved proffers[20]; or requests for various types of amendments. In return for making 6.25 percent of a development's units affordable, a density bonus of 10 percent is provided. Developers who are exempt from the program may still opt to provide affordable units in return for the bonus.

Loudoun's ordinance allows developers of single-family detached units, at their own discretion, to provide money in lieu of providing units. Other developers may petition the County's ADU Advisory Board to be allowed to buy out of the program if they can demonstrate that the inclusion of affordable units presents a hardship, physically or financially, or that the public is better served by not including units on site. These developers may instead provide cash, units at another location, or land. In either case, only a fraction of affordable unit construction cost has to be given to the County.[21]

2. *Program Participants*

The program is targeted toward households earning 30 to 70 percent of the area median income for ownership units and 30 to 50 percent for rentals. Loudoun County gives affordable dwelling unit priority to people who live or work in the County, though few qualified applicants, whether they work in the County or not, have been turned away. While Loudoun modeled aspects of its ordinance after other ordinances in the region, its ordinance does not do as much to assist very low-income households. The 30 percent threshold precludes very low-income households from even renting an affordable dwelling unit, and there is no housing authority that can purchase affordable units (though the County, or its designee, may do so).

3. *Sales of Affordable Units*

Regulations on ownership units expire after 15 years. Like Montgomery and Fairfax, profits on units sold after this period are split between the homeowner and the County's housing trust fund. Homeowners may keep profits on units sold 50 years after the initial sale. As in Fairfax and Montgomery Counties, the Loudoun ordinance allows for the purchase of affordable units by the County, or its designee, which may include eligible nonprofits. These entities are entitled to purchase one-third of for-sale units for a 90-day period, with the remaining units offered to eligible

[20] Proffers are voluntary commitments that a developer makes to the County to assist in improving the public infrastructure needed to serve new residents or users of a development. Road improvement proffers, as well as proffers for schools, community centers, and library sites have become common. In this case, proffers also include money provided for the creation of affordable units.
[21] Cash contributions formula: (Construction Price of Prototypical ADU unit) x (0.25) x (# of ADU lots required) = cash contribution.

program participants. Any units that have not been sold or put under contract to be sold after 90 days may be offered to the County, or its designee, for 30 days.

Loudoun differs from the other two counties in that its ordinance allows developers to convert unsold affordable units to market-rate units 120 days after the zoning permit has been issued, provided the difference between the market-rate price and the ADU program sales price is split between the seller and the County of Loudoun Housing Trust. The clock on the affordable units may expire several months, and sometimes even a year, before the units are even constructed. This has the effect of restricting the supply of affordable units.

D. Prince George's County, MD[22]

Prince George's County's inclusionary zoning ordinance, which created 1,600 afforable units, was enacted in 1991 and repealed in 1996.[23] Because of concerns about too much density in certain areas of the County, the ordinance only applied to developments with 50 or more units in special low-density districts, including: comprehensive design zones, transit district overlay zones, mixed use transportation zones, and newly constructed developments in 12 different residential zones. As with the region's other ordinances, developments in single-family zones with large minimum lot requirements were excluded from the ordinance.

The program was intended to help those families earning below 70 percent of the median income for the Washington MSA. As in other counties, rental and for-sale units were held to inclusionary zoning requirements for a set time—in this case, 10 years. Developers were provided a density bonus of 10 percent in return for setting aside 10 percent of their units as affordable. Prince George's County's ordinance allowed developers to buy out of the program or include affordable units off site under specific circumstances: if the development had fees for resident services or facilities that would have proven prohibitively expensive for residents of affordable units; if the developer offered to provide significantly more affordable units off site; if the number of affordable units to be created was not economically feasible; if there would be compatibility issues between the affordable and market-rate units; and, if the inclusion of density bonus units on site exceeded the density maximum established by the zoning ordinance.

A comparison of the key elements of the four inclusionary zoning ordinances in the region is provided in Table 1:

[22] All information provided on Prince George's County is what was in effect when the ordinance was enacted and is included for comparison purposes only.
[23] County officials repealed the inclusionary zoning ordinance because they believed that Prince George's County had more than its fair share of the region's affordable housing.

TABLE 1: COMPARISON OF THE GREATER WASHINGTON REGION'S INCLUSIONARY ZONING ORDINANCES				
	Montgomery County	Fairfax County	Loudoun County	Prince George's County
Date Ordinance Passed	1974	1990	1993	1991, Repealed in 1996
Units Created (as of 1999)	10,600 72% owner-occupied units	582	208 61% owner-occupied units	1,600
Unit Threshold	50 units	50 units	50 units	50 units
Affordable Units Required	12.5-15%	6.25-12.5%	6.25%	10%
Density Bonus	≤ 22%	≤ 20%	10%	10%
Regulation Period	Rentals – 20 yrs. Sales – 10 yrs.	Rentals – 20 yrs. Sales – 15 yrs.	Rentals – 20 yrs. Sales – 15 yrs.	Rentals & Sales – 10 yrs.
Buy-Out Options	Yes – under certain circumstances	Yes – under certain circumstances	Yes – under certain circumstances	Yes – under certain circumstances
Income Targets	Up to 65% of MSA median income	Up to 70% of MSA median income	Between 30-70% of PMSA[24] median income for owners; 30-50% of PMSA median income for renters	Up to 70% of MSA median income
Average Unit Price	Rentals: $670-$1,050; Townhouses: $95,000; Detached: $120,000	Sale units: $60,000-$120,000	Sale Units: $75,000-$119,000	
Splitting of Profit on For-Sale Units	Profits on 1st sale after control period are split between the homeowner and the County	Profits on 1st sale after control period are split between the homeowner and the County	Profits on 1st sale after control period are split between the homeowner and the County	No
Targeting of Very Low-Income Households	Allows housing authority and non-profits to purchase a percentage of affordable units	Allows housing authority and non-profits to purchase a percentage of affordable units	Allows the county and nonprofits to purchase a percentage of affordable units	None

[24] Primary Metropolitan Statistical Area.

III. PAST RESULTS AND FUTURE CHALLENGES

A. Accomplishments to Date

When designed properly, inclusionary zoning can: 1) aid in the production of hundreds, if not thousands, of affordable units with few costs incurred by the jurisdiction; 2) provide affordable housing for low- to moderate-income households of diverse racial and ethnic backgrounds; and 3) locate affordable housing in areas that may not have had any otherwise. How well have the inclusionary zoning ordinances in the Greater Washington region realized these three outcomes?

1. Inclusionary zoning ordinances have produced, through 1999, over 11,000 affordable units in the Greater Washington region, with 93 percent in Montgomery County.

Inclusionary zoning accounts for nearly half of the combined, newly created affordable housing in Montgomery, Fairfax, and Loudoun counties, as Table 2 demonstrates, and has greatly improved housing options for low- and moderate-income households. However, as the table also shows, inclusionary zoning has different results in different counties. Since Fairfax and Loudoun's ordinances are still relatively new, they have not generated the same levels of production as Montgomery County, nor have they lost units because of the expiration of price-control periods. Still, inclusionary zoning, through 1999, accounted for 12 percent of newly created affordable units in Fairfax, and 30 percent of those in Loudoun. Though inclusionary zoning may not have the same impact in all jurisdictions, it is still a productive complement to existing affordable housing efforts.

TABLE 2: COMPARISON OF GREATER WASHINGTON REGION'S AFFORDABLE HOUSING PROGRAMS 1999						
	MPDU/ADU Units	Low Income Housing Tax Credits	Section 236 and 221(d) 3 Units	Section 8 Project Based Units	Total Units	MPDU/ADU as % of Total
Fairfax County	582	1,666	871	1,546	4,665	12%
Loudoun County	208	470	0	7	685	30%
Montgomery County	10,572	10,277*			20,849	51%
Total Units	11,362	14,837			26,199	43%

* Due to the difficulty in acquiring accurate numbers for each affordable housing program, the number used is a cumulative number provided by the Montgomery County Planning Department's Research and Technology Center. The 10,277 units are those produced with government funding, and include LIHTC units, Section 8, and Section 236 and 221(d). Unlike Fairfax and Loudoun Counties, the Montgomery total includes public housing and units financed through revenue bonds. For more details, please see *Inventory of Affordable Housing*, pp. 33-41.

Source: Metropolitan Washington Council of Governments' Housing Technical Committee; Housing Data Survey. Data is current through the end of 1999.

The added benefit of inclusionary zoning is that the costs associated with the construction of these affordable units do not fall to the regulating jurisdiction. Other than the cost of administering and enforcing the program, unit construction and financial responsibility belongs to developers, though the County waives certain fees.[25] Since the inception of the ordinance, affordable units created through inclusionary zoning in Montgomery County represents a $477.4 million investment in affordable housing by the private sector.[26]

2. ***Households from varied racial, ethnic, and economic backgrounds have benefited from inclusionary zoning programs.***

The region's inclusionary zoning ordinances provide affordable housing for low- and moderate-income households of diverse racial and ethnic backgrounds. A 1998 profile of 130 owners of affordable units in Montgomery County show that 45 percent of the purchasers were Asian, 23 percent were black, 20 percent were white, and 11 percent were Latino.[27] Purchasers came from varied economic backgrounds, with 16 percent earning between $36,001 and $49,000; 64 percent earning between $24,001 and $36,000; and 20 percent earning less than $24,000. The median household size was three persons, though 39 percent of the households had four or more persons.[28]

Like Montgomery County's, Fairfax's program serves a number of large households. From 1993 to 2000, 37 percent of the for-sale program participants were in households with four or more members.[29] The program also serves a racially diverse clientele: between 1993 and 2000, 41 percent of Fairfax's inclusionary housing purchasers were Asian, 26 percent were white, 23 percent were black, and 9 percent were Latino. The average family income of purchasers was $34,742. Single-parent households accounted for almost one-quarter of the purchasers, and 15 percent had lived in public housing or were Section 8 participants.

In Loudoun County, as of January 2000, the ADU program has housed 82 families in affordable rental units and 126 households in for-sale units.[30] Those served include teachers, custodians, computer and data workers, secretaries, and County employees. The average income of these households was $34,721 and the average income of the households on the waiting list for rental units, in June 2000, was $35,400. While this figure is still well within the targeted income

[25] For developments that include moderately priced dwelling units, the County waives the system charge for water and sewer extensions and the development impact fees associated with residential projects.
[26] Department of Housing and Community Affairs, *Technical Supplement to the Montgomery County, Maryland Housing Policy: Montgomery County – The Place to Call Home*, DHCA, January 2001, p. 21.
[27] Department of Housing and Community Affairs, *Profile of MPDU Purchasers – 1998*. DHCA, 1998.
[28] The occupants of affordable units were not always so diverse. The County had to take over the marketing of units from developers in 1984 to ensure that low- and moderate-income households were being housed. Rachel Garschick Klait, *Housing Mobility and Healthy Communities: Montgomery County, Maryland's Moderately Priced Dwelling Unit Program*, 1998 Tri-County Conference on Housing and Urban Issues, Washington, D.C: Fannie Mae Foundation, 1998, p.7.
[29] Information provided by Patty Schlener, Chief of Relocation Services, Fairfax County Department of Housing and Community Development.
[30] Loudoun County Housing Services, *Demographics for Homebuyers Opportunity Sales Program, Households Served as of February 1, 2000*, Loudoun County Housing Services, 2000.

range, it is important to note that from February to June 2000, the average income of households on the waiting list for affordable units rose by almost $9,000.

3. ***Affordable housing units have been well distributed throughout the counties.***

While the ultimate goal of any affordable housing program is the creation of units to serve the target population, the widespread placement of those units within a jurisdiction is also important. This broad distribution seems to have occurred in the four counties that have or have had inclusionary zoning ordinances. Thus, it seems that inclusionary zoning has promoted economic integration throughout these counties, and, given what we know about the racial backgrounds of the households that live in these units, it seems to have advanced racial integration as well.

Though address-specific information was not available for Montgomery County, Table 3 shows that the units are located in all but one planning area in the County. Germantown and Gaithersburg contain nearly half of the County's moderately priced dwelling units created through 1999. This stands to reason, since inclusionary zoning is tied to market-developments, and these two planning areas have been the sites of much of the County's residential construction over the past twenty years.[31]

[31] Research and Technology Center, *Inventory of Affordable Housing in Montgomery County*, Montgomery County-Maryland National Capital Park and Planning Commission, September 2000, p. 24

Table 3: MPDUs by Planning Area in Montgomery County Total and Currently Regulated Units, as of 1999

Planning Area	Total MPDUs Created	% of County Total	Existing MPDUs	HOC/Non Profit Owned Units	Total Existing MPDUs	% of County Total
Aspen Hill	558	5.3%	114	116	230	6.0%
Bethesda-Chevy Chase	230	2.2%	38	12	50	1.3%
Clarksburg	20	0.2%	20	0	20	0.5%
Cloverly	277	2.6%	6	57	63	1.7%
Damascus	238	2.3%	14	25	39	1.0%
Darnestown	255	2.4%	36	44	80	2.1%
Fairland	972	9.2%	57	74	131	3.4%
Four Corners	50	0.5%	15	0	15	0.4%
Gaithersburg	2,239	21.2%	486	343	829	21.8%
Germantown	2,800	26.5%	866	294	1,160	30.5%
Goshen	47	0.4%	13	11	24	0.6%
Kensington-Wheaton	235	2.2%	8	26	34	0.9%
North Bethesda	641	6.1%	236	51	287	7.5%
Olney	752	7.1%	191	129	320	8.4%
Potomac	395	3.7%	98	106	204	5.4%
Rock Creek	23	0.2%	16	7	23	0.6%
Seneca	12	0.1%	12	0	12	0.3%
Silver Spring/Takoma Park	0	0.0%	0	0	0	0.0%
Travilah	638	6.0%	124	118	242	6.4%
White Oak	190	1.8%	14	28	42	1.1%
Total	10,572	100.0%	2,364	1,441	3,805	100.0%

Source: *Inventory of Affordable Housing in Montgomery County*

Fairfax County's 582 affordable dwelling units are also well distributed, as they are located in each of the County's nine magisterial districts. As significant as where the units are located, is where they are not. County officials have long been concerned about the clustering of affordable housing and social services that exists along the Route 1 Corridor in southeast Fairfax, an area long targeted for revitalization. County data shows that affordable dwelling units are not located in this area because it was already largely developed before the ordinance was passed. In areas that expect to see continued growth, particularly in low-poverty neighborhoods, Fairfax's inclusionary zoning ordinance can ensure that affordable housing will be included.

Finally, the Prince George's County data shows that the vast majority of the 1,600 affordable units produced through inclusionary zoning were located outside the Capital Beltway, far from the County's high-poverty areas, far even from the areas where the working poor live. This supports one of the premises of inclusionary zoning, which is that when affordable units are part of market-rate developments, they will be located in economically healthy areas.

B. Challenges Facing the Region's Inclusionary Zoning Ordinances

Montgomery County's inclusionary zoning program is often cited as an example of a successful program. It has provided thousands of affordable units to people of diverse racial backgrounds, and whom are located throughout the County. However, Montgomery County now faces challenges that counties with newer ordinances have yet to confront. Montgomery County has not only lost units because of the expiration of the resale price controls, it has also seen, for various reasons, a leveling off of the production of affordable units created by inclusionary zoning. In fact, each of the region's existing inclusionary zoning ordinances faces difficulties.[32]

1. *Expiring price regulations bring an end to thousands of affordable units no longer governed by the program.*

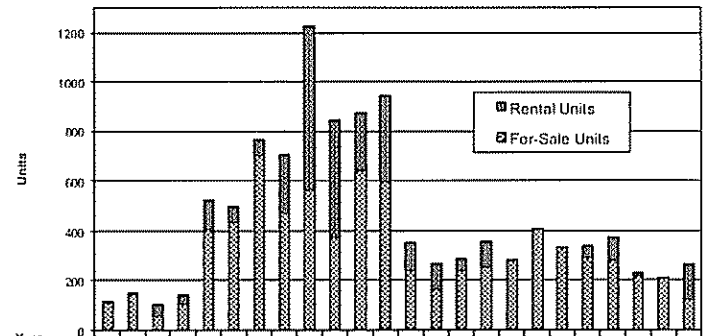
Montgomery County, the oldest inclusionary zoning ordinance in the region, is the first jurisdiction to see a large number of units leave its program because the 10- and 20-year price control periods on affordable ownership and rental units have run out. Table 3 shows that, as of 1999, the inclusionary zoning program regulated only 3,805 units, 38 percent (1,441) of which were owned by the HOC and non-profits. As long as the HOC or non-profits retain control of their units, they will always be available to low-income households. Between 1992 and 1999, 2,135 owner-occupied units were relinquished and only 1,598 were created. In the next ten years, over 2,000 for-sale affordable units will be lost.[33] The expiration of price restrictions is not yet a problem for the newer inclusionary zoning ordinances in Fairfax and Loudoun counties.

Most of the owner units that have been "lost" because of the expiration of price regulations were built during the mid-1980s. Montgomery County has tracked owner-occupied units built in 1989 or later, because, as explained above, an amendment to the inclusionary zoning provisions gives the HIF half of the profits on the sales of these units. As of November 2000, seven units were sold, at an average profit of $34,192. This translated into an addition of $100,750 to HIF's funds.[34] However, this is not nearly enough money to replace these units.

[32] For more information on possible objections to inclusionary zoning, and how these objections can be refuted, see *"Inclusionary Zoning: A Viable Solution to Affordable Housing Crisis?"* The Center for Housing Policy, October 2000.
[33] *Inventory of Affordable Housing*, p. 53.
[34] Information provided by Eric Larsen, Administrator of Montgomery County's Moderately Priced Dwelling Unit Ordinance, Montgomery County Department of Housing and Community Affairs. The $100,750 represents a portion of the total amount of funds contributed to the HIF through inclusionary zoning.

According to Figure 1, almost two-thirds (63 percent) of all affordable ownership units (and 68 percent of all affordable units) were constructed prior to 1989, and the County has not tracked their sales. Though the possibility remains that these units may still be affordable, there is no way of knowing for sure how many are still occupied by the original owner; and how many may have been sold at market-rate prices, thereby eliminating the units from the affordable housing pool.

Figure 1: Montgomey County MPDU Production



Year	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99
Rental Units	9	13	47	37	120	63	63	237	659	475	232	340	110	105	46	106	0	0	0	46	87	12	0	143
For-Sale Units	108	139	55	105	404	433	702	466	565	300	644	597	242	162	242	253	282	408	334	292	282	218	211	122

2. ***The number of affordable units created through inclusionary zoning will decline, as residential construction declines because of land restraints.***

As jurisdictions age and development occurs over time, there will naturally be a decrease in the amount of vacant, developable land. In Montgomery County, nearly 80 percent of the housing currently allowed by its zoning laws has been built already. Older jurisdictions, like Montgomery County, with most ordinance construction complete, will see a decrease in the number of affordable units produced as the number of residential units constructed each year declines. Though opportunities exist in the coming years for the production of additional moderately-priced dwelling units, including units constructed as part of redevelopment projects, production may never reach the levels seen during the mid 1980s. As large plots of vacant, developable land are harder to find, new residential developments in the area are becoming smaller, which means that fewer of them pass the 50-unit threshold that triggers inclusionary zoning requirements.

The situation could be exacerbated by growth management initiatives that do not take into account the need for housing affordability. Though each of the three counties have had to contend with some degree of growth management initiatives, Loudoun County provides a particularly stark example of how some land use rules can dramatically impact housing construction, and therefore affordability. County planners are working to control the rapid development that has taken place in Loudoun over the past several years. In the last decade alone, the County's population has nearly doubled to 169,599 residents, and almost half of the County's 63,745 residential units have been built.[35] In an effort to curb rapid development, Loudoun County has proposed revisions to its comprehensive plan, eliminating more than 40 percent of the homes that had been planned for the area and limiting future development to one house per 10, 20, or 25 acres, depending on location.[36] Given such requirements, not only would developments of 50 or more units be hard to find, it also would be nearly impossible for developers to build affordable dwelling units at a reasonable price. This, together with amendments that cut Loudoun's inclusionary zoning requirements in half, threaten the county's ability to add new affordable units to the housing stock.

The recent Loudoun County experience reinforces the notion that as growth management initiatives are designed, they must keep affordable housing goals in mind.[37] When the supply of affordable housing is limited in scale and limited in place, several things happen. First, many working poor get concentrated in particular parts of a metropolis, usually far from educational and employment opportunities. Second, the housing/jobs imbalance worsens area traffic congestion by forcing families to travel long distances to their place of employment. Third, the housing/jobs imbalance places enormous stresses on the region's employers by limiting the pool of workers who can live within a reasonable commuting distance. Fourth, affordable housing concentration forces moderate income families, who do not want to live in distressed areas yet cannot afford to live in high priced areas, to move further out in search of desirable housing and communities.

3. ***Production of affordable rental units, particularly in high-rises, dramatically declined in the late 1980s.***

Though high-rises are not exempt from Montgomery County's inclusionary zoning ordinance, as they are in Loudoun and Fairfax, the difficulties of including moderately priced dwelling units in high-rise developments have greatly limited the reach of inclusionary zoning, particularly with regard to rental units. Nearly 3,000 affordable rental units were produced through inclusionary zoning in Montgomery County, 85 percent of which were created prior to 1990. Figure 1 shows that there was a dramatic decline in affordable rental units after 1987, with total unit production leveling off at around 300 units per year. According to the Montgomery County Planning Department, multi-family housing completions declined by 31 percent, from 1,710 units per year in the 1980s to 1,180 per year during the 1990s, helping to explain the decline in affordable rental production. Nationwide,

[35] Loudoun County Department of Planning, Revised Comprehensive Plan, available at http://www.co.loudoun.va.us/bos/docs/boscompplanrevi./generalplan./index.htm
[36] Michael Laris, "Loudoun Panel Votes to Slash Housing Plans by 40 Percent," *The Washington Post*, March 18, 2001, page C8.
[37] Loudoun is now considering ways to strenghthen its' inclusionary zoning ordinance to ensure more affordable housing in the county. Please see page 24 for more details.

during the same periods, twice as many dwellings in structures with five or more units were completed in the 1980s than in the 1990s.[38]

Part of the decline in the creation of multi-family developments can be attributed to changes in residential project-production financing options. Changes to the tax code, enacted by the Tax Reform Act of 1986, made investment in real estate, new housing, and construction less attractive by removing the advantages that were once associated with these ventures. By limiting the tax write-offs investors had come to expect, among other things, the Tax Reform Act of 1986 led to declines in housing starts and the value of real estate as investors tried to get out of the market. The decline in the production of moderately priced dwelling units after 1987 (Figure 1) is a direct result of declining residential production, particularly multi-family construction, which was experienced in not only Montgomery County, but in the nation as a whole.

Changing finance options are only partly responsible for declining rental production. Existing requirements of some ordinances can work against production of affordable rental units. Framers of Montgomery County's inclusionary zoning ordinance may not have foreseen the advent of smaller projects or those constructed in dense urban settings as the County began to age.[39] This presents a problem, as County future developments will most likely be in-fill projects,[40] many of which will take the form of high-rise developments. A few aspects of the County's ordinance make it more difficult for high-rise developments to adhere to inclusionary zoning requirements. First, it was the ordinance's intent that the density bonus would create "free land" by allowing developers to construct more units without the purchase of additional land. Therefore, rents and sales prices of affordable units would not include land costs, making them less expensive then market-rate units. However, this free land is less valuable in high rises where land costs are about 10 percent of unit cost, compared to 30 percent in single-family dwellings.[41]

Second, the high construction costs associated with high-rises often make it financially unfeasible to include affordable units. While other housing types, such as townhouses, allow for economies of scale, apartments generally do not. Even for small apartments, certain fixed expenses remain: kitchens and bathrooms, and amenities such as elevators, community facilities, and health clubs.[42] As the law is currently written, the rent structure for affordable rentals is the same for high-rise and garden apartments, thereby failing to consider the higher costs associated with high-rise developments. In some areas, high-rises can cost 60 percent more to build and operate than garden

[38] All housing completions in Montgomery County declined from 7,250 units per year in the 1980s to 3,600 per year during the 1990s, helping to explain the decline in MPDUs. (In 1999, nearly 4 times as many multi-family housing units were produced compared to the prior year, explaining the jump in rental MPDUs that year.) Nationwide, 1.5 million housing units per year were completed in the 1980s, compared to 1.3 million per year in the 1990s.
[39] In "Little House in the Suburbs," *Governing*, April 2000, (available on the World Wide Web at http://www.governing.com/archive/2000/apr/housing.txt) Christopher Swope makes the argument that Montgomery County's ordinance was, "built on suburban sprawl," which makes it difficult to continue producing MPDUs at its previous rate.
[40] *Inventory of Affordable Housing*, p. 28.
[41] Presentation by Planning Commission on inclusionary zoning in Montgomery County, p. 15.
[42] Department of Housing and Community Affairs, *Technical Supplement to the Montgomery County, Maryland Housing Policy: Montgomery County – The Place to Call Home*, DHCA, January 2001, p. 24.

apartments.[43] If developers are unable to pass along to renters a sufficient amount of the construction costs, many will opt out of the program because of financial difficulties.

Third, the County's ordinance required that, under certain circumstances, developments in central business districts (CBD) must designate, without a legislated density bonus for providing the affordable units, 15 percent of their units as affordable as opposed to the 12.5 percent required in other areas. By requiring more affordable units in CBDs, areas where high-rises are likely to be found, the ordinance placed unfair hardship on developers. Finally, developers of high-rises are not always able to realize the full density bonus that inclusionary zoning regulations allow. Certain restrictions, such as height and density guidelines, can limit the ability of developers to build bonus units. Since the number of affordable units required is directly related to the density bonus percentage a developer can actually build, these limitations make the production of affordable units impossible in certain locations.

4. ***As with any affordable housing program, public sentiment can prohibit the location of affordable housing in an area.***

Inclusionary zoning ordinances sometimes face particularly stiff community opposition, because they call for affordable housing in all developments, including those designed for high-income households. What's more, some inclusionary zoning ordinances go further than most affordable housing programs, since affordable units purchased by housing authorities or non-profits are earmarked to be rentals for very low- to low-income households. This not only introduces lower-income families into communities, it introduces them as renters who are perceived as having less of a tie to the neighborhood than homeowners.[44]

Concerns about the amount of affordable housing in a jurisdiction, and whether this represents a "fair share," can also hinder affordable housing programs. A local example of this is the repeal of Prince George's County's inclusionary zoning ordinance. In 1996, County officials believed that Prince George's County needed to diversify its housing supply by promoting the development of high-end residential units. As part of a package of bills envisioned to redirect the County's future growth and "...end the county's image as the region's mecca for low-cost housing," officials aimed to reduce townhouse developments, which were seen as dominating the County's housing landscape, and end the MPDU programs.[45] The bills, in essence, cut the number of townhouses allowed per acre; increased the minimum allowable width and the overall size of units and lots; instituted stricter design criteria; and eliminated the MPDU program. Officials hoped that this action would prompt developers to construct more single-family homes, thereby attracting more middle- and upper-income residents and increasing the County's tax base.

[43] Presentation by Planning Commission on inclusionary zoning in Montgomery County, p. 18.
[44] Swope, p. 4-6.
[45] Terry M. Neal, "P.G. Bills Would Limit Town Houses," *The Washington Post*, September 1995, p. D1.

5. ***Financial difficulties faced by lower income families can hurt program effectiveness and even reduce the supply of affordable units.***

Some of the participants in inclusionary zoning programs encounter financial difficulties associated with homeownership, even though their homes have affordable prices. As with any affordable homeownership program, difficulties may include finding eligible applicants, getting them into affordable units, and keeping them there. Once selected, some participants may find that they do not qualify for mortgages, while others may lack the money necessary for down payments or closing costs. The most severe problem program participants can face is when they cannot continue to make mortgage payments, which eventually results in foreclosure.

While these issues present major problems for potential participants, waiting lists for affordable units are long, meaning that an eligible owner is likely to be found. Some ordinances, however, contain language that can threaten the availability of affordable units for those households that truly need them. In Montgomery County, if after 90 days an affordable unit is not assigned to an eligible participant, anyone, regardless of income, can be offered the unit.[45] In this case, the unit must still adhere to all ordinance requirements, but is not necessarily being used to house a low-income household. In Loudoun County, if an affordable dwelling is not sold in 120 days after the building permit has been issued, the developer can convert the unit to market-rate. Units could be converted to market-rate months, and sometimes even a year, before they are even constructed.

[45] The 90-day offering period may be extended if there are eligible applicants interested in the units. The lottery list must be exhausted before the units can be offered to the public.

IV. Recommendations

In the past two and one-half decades, inclusionary zoning has been used throughout the Greater Washington region as an effective means of creating affordable housing and more economically and racially diverse neighborhoods. However, inclusionary zoning ordinances face difficulties that threaten the current and future affordable housing stock. As market conditions, attitudes, and policies change, so too must inclusionary zoning ordinances if they are to remain productive. To that end, we recommend the following:

A. Encourage non-profits or other public agencies to purchase inclusionary housing units to permanently keep these homes affordable.

1. ***Purchase owner-occupied affordable units as soon as they come on the market.***

In order to stem the loss of units from the affordable housing stock, jurisdictions should consider a policy that would allow non-profits and housing authorities, or any other acceptable agency, to purchase affordable housing units once inclusionary zoning price limitations expire. Those ordinances that already allow such purchases, like Montgomery County, could further assist these agencies in purchasing units, particularly units located in affluent areas where it is unlikely that other affordable housing options will be developed. Currently, the Montgomery County HOC has the right to match the market-rate purchase offer on the first market-rate sale of units constructed after 1989. To date, this right of first refusal has been used primarily as a safeguard to ensure that the County is notified of the sale of affordable units. However, the County could develop innovative financing programs to use the right of first refusal option in a more active way. This would help preserve the affordability of these units and maintain some affordable housing for even lower income households.

2. ***Purchase newly constructed affordable units created through inclusionary zoning.***

As long as the housing authority and non-profits own the units, they will remain affordable. However, these entities have not always used this option to full advantage. Though the HOC has the ability to purchase up to one-third of new for-sale moderately priced dwelling units in Montgomery County, only 14 percent have been purchased as of 1999. The County has proposed the annual acquisition of 60 newly created affordable units by the HOC and non-profits, at a proposed cost of $1.8 million, $870,000 of which will be borne by the County.[47] Fairfax County's Department of Housing and Community Development is also considering purchasing affordable units and has requested $1 million, of the required $3 million, of County funds to purchase 28 units over the next several years.[48]

[47] Department of Housing and Community Affairs, *Montgomery County, Maryland Housing Policy: Montgomery County – The Place to Call Home*, DHCA, January 2001, p. 27.
[48] Fairfax County's Department of Management and Budget, "Capitol Improvement Program, Fiscal Year 2001-2005," http://www.co.fairfax.va.us/dmb/cipgm.htm

3. *Purchase affordable units under foreclosure.*

Just as expiring units could be bought by the jurisdiction, non-profits and community-based organizations, so too could foreclosed units. The County's Department of Housing and Community Affairs (DHCA) has proposed that foreclosed units be purchased by Montgomery County, taking advantage of the fact that HUD probably owns many of these units after foreclosure, since many were purchased with FHA and VA loans. With local government agencies and non-profits entitled to a 50 percent discount on HUD owned properties, DHCA suggested an outlay of $71,000 per unit to purchase and rehabilitate identified foreclosed properties.[49]

B. Amend inclusionary zoning ordinances to reflect changing development patterns within a jurisdiction.

1. *Change inclusionary zoning requirements so that they apply to smaller developments and sites; require large-lot developers to aid in the production of affordable units.*

Small residential projects and large-lot developments should not be exempt from aiding in the production of affordable units if the creation and distribution of these units is to be equitable. Local jurisdictions could lower the 50-unit threshold that triggers the requirement for developers to build affordable homes, thereby allowing affordable units to be built in places where smaller sites are becoming the norm. This is an action being considered by the Loudoun County Board of Supervisors, in light of proposed changes to the Comprehensive Plan, which they acknowledge, "...may add pressure to rising housing prices."[50]

There are several examples where lower thresholds have been implemented in inclusionary zoning ordinances. In Cambridge, MA, for instance, any residential development with ten or more units (new or converted) must make 15 percent of those units affordable to households whose incomes do not exceed 80 percent of the area median. In drawing up their inclusionary zoning ordinance, officials in Tallahassee, FL have not only lowered from 50 units to 25 the threshold that triggers inclusionary zoning, but, in an attempt to improve the effectiveness of their ordinance, they do not allow large developments of more than 100 units to opt out of the program by paying a fee.

Recognizing that the inclusion of affordable units may create an undue financial hardship, developers of small lots may be allowed to buy out of the program, provided they could show just cause as to why they cannot comply with the ordinance. Large-lot developers who find it impossible to build affordable dwellings can still play a part in the development of affordable units by making payments to the housing fund or by donating land to aid in the production of units elsewhere in the jurisdiction.

[49] Presentation by Planning Commission on inclusionary zoning in Montgomery County, p.2.
[50] Michael Loris, "Plan Would Cut Potential New Homes," *The Washington Post*, May 3, 2001, p. LZ1.

2. *Increase the likelihood of affordable units in high-rises.*

In late April 2001, the Montgomery County Council approved a bill that would lower the number of affordable units required in CBDs from 15 percent to 12.5 percent, and provided a density bonus for constructing affordable units. By holding developers in CBDs, where high-rises are likely to be built, to the same standards as other developers throughout the County, the Council hopes to spark the construction of affordable units near existing transportation and services. Loudoun County officials are also considering amending its inclusionary zoning ordinance as a way of increasing affordable housing. The County's Board of Supervisors is examining, among other measures, the feasibility of including affordable dwelling units in buildings with elevators that are four stories or higher, which are currently exempt from inclusionary zoning requirements.

To make it more feasible for high-rise developments to adhere to inclusionary zoning ordinances, the current rent structure could be amended to take into account the higher construction costs associated with high-rise rentals over other types of rentals. Even if rents of affordable units increased, they would still be considerably lower than those of market-rate units in the same building.

3. *Provide additional incentives.*

If current zoning regulations prohibit developers (including high-rise developers) from realizing the full density bonus provided under inclusionary zoning laws, local jurisdictions could provide incentives, such as tax abatements and zoning concessions, to ensure that developers are still compensated for providing affordable units.

4. *Review the compatibility of all development ordinances, codes, and plans.*

Jurisdictions that are serious about their affordable housing production should formulate an integrated approach, where all housing production programs, existing zoning regulations, and comprehensive and master plans for future development are reviewed together to assess their effects on one another.

C. Make affordable housing part of the community—both politically and aesthetically.

1. *Support housing coalitions that support inclusionary zoning ordinances and educate the public.*

Negative perceptions of affordable housing programs can only be changed when people understand a program, its participants, and its intended purpose. The affordable homes created through inclusionary zoning are not government subsidized housing but rather housing made affordable to many of the area's working families. Residents of inclusionary homes are often teachers and police officers, the very people who help to make up the foundation of a community.

Those wanting to implement inclusionary zoning ordinances can gain needed support by building coalitions that could make people aware of the benefits of inclusionary zoning. AHOME, a non-profit coalition of community businesses, developers, business organizations, unions, resident organizations, and other non-profit public service groups, did just this when they successfully lobbied to implement inclusionary zoning ordinances in Fairfax and Loudoun counties.

2. ***Ensure that homes created by inclusionary zoning blend into the community.***

Inclusionary zoning has worked to integrate households of various incomes into market-rate developments in a way that would be unobtrusive. Though in the beginning, affordable housing stood out among market-rate developments and was often clustered together, measures have been taken to ensure that communities feel no ill effect from the inclusion of affordable units. Montgomery County recognizes that the MPDU program will only be successful if the affordable units are well constructed and blend in with the market-rate units and therefore has allowed developers to go above and beyond the base construction guidelines for these units. While architectural upgrades increase the cost of inclusionary homes, efforts to make the homes fit in with the rest of the development are important for the sale of both the market-rate and affordable units and helps to ensure that the development appears as a unified whole. Proving that it is not impossible to include affordable units in expensive subdivisions, Fairfax County is home to a new development that places $125,000 townhomes next to single-family estates that sell for upwards of $800,000.[51] In return for providing affordable homes that mirror the more expensive housing in the community, developers are allowed to charge an extra 5 to 10 percent for the affordable homes. In this particular development, four townhomes are grouped together in a design that makes them nearly indistinguishable from the more expensive housing next door.

The ability to make affordable units more compatible with market-rate units also addresses another public argument, that property values are threatened when market-rate units are in close proximity to those that are not. A study of Fairfax and Montgomery counties, conducted by the Innovative Housing Institute, compared communities with and without moderately priced dwelling units, and found that the presence of affordable units had no effect on resale values of market-rate units.[52] Furthermore, the study found that the price trends of market rate homes located right next door to affordable homes were unaffected.

[51] Peter Whoriskey, "Find the Affordable Housing in This Picture," *The Washington Post*, August 17, 2001, p. A1.
[52] Joyce Siegel and The Grier Partnership, *The House Next Door*, http://www.inhousing.org/housenex.htm.

V. Conclusion

This review of inclusionary zoning ordinances in the Greater Washington region shows that attaching affordable dwellings to the production of market-rate units not only benefits low- and moderate-income individuals by providing them with housing they can afford, but also helps to create integrated communities where households of different incomes and racial backgrounds live within the same developments. Moreover, inclusionary zoning ordinances create affordable units away from neighborhoods of concentrated poverty, providing moderate-income households with access to areas of jobs and opportunity.

However, inclusionary zoning ordinances must adapt to changing development patterns—and this applies to ordinances in the Greater Washington area and throughout the nation. This can no longer be thought of as a program used in jurisdictions with vast amounts of open space. Inclusionary zoning must be made to work not only in suburban areas with unlimited land for housing development, but also in older, established jurisdictions that need in-fill development. How Greater Washington's housing leaders decide to adapt their inclusionary zoning ordinances could inform and enlighten other jurisdictions, and spur further debate around this and other housing programs.

APPENDIX A: MAP OF THE WASHINGTON, DC METROPOLITAN STATISTICAL AREA (SEE PDF LINK)

APPENDIX B: CASE STUDIES

Montgomery County, MD

Background[53]

Once just a bedroom suburb of Washington, D.C., Montgomery County, Maryland has grown into a suburban employment center and the most populous county in Maryland, with a 2000 population of 873,341. The County has become more racially diverse over the years, as minority population growth from 1990 to 2000 was 1.25 times the total population growth in the County. Minorities now represent 40 percent of the total County population. For residents choosing one race category (96.6 percent), the composition of the County was as follows: 64.8 percent white; 15.1 percent black; 11.3 percent Asian/Pacific Islander and 5.3 percent other.[54] The overall Hispanic population was 11.5 percent.

Montgomery is one of the wealthier counties in the country with an estimated 1999 median household income of nearly $72,000. Two of seven households had incomes of $100,000 or more in 1996 compared to one in 12 for the whole country. It's child poverty and overall poverty rates – 8.8 percent and 5.6 percent, respectively – are nearly half of the state rates.

As one would expect in a county with a high median income, housing costs are also high. The 1999 median home price was $205,000. The median cost for a new, single-family detached home was $364,000. Rental rates in the County were also high and ranged from an average of $729 for an efficiency to $1,167 for a three-bedroom apartment.

Though Montgomery County has long been known for its commitment to fair housing and its efforts to distribute affordable housing units throughout the jurisdiction, economic disparities still persist. However, as regional policy expert David Rusk notes, "County policies have prevented a steeper decline in the eastern county while bringing much greater racial and class diversity to the western county than laissez-faire market trends would ever have produced."[55]

History of MPDU Ordinance

As Montgomery County became more urbanized in the late 1960s and early 1970s, new housing prices were beyond the reach of many low- and moderate-income County residents. In response to concerns that it was becoming increasingly difficult to locate affordable housing, housing advocates, specifically the League of Women Voters and Suburban Maryland Fair Housing, pushed for measures to assist those households wanting to live in Montgomery County. In 1973,

[53] Demographic data in this section is from the Montgomery County Planning Department website: *Montgomery County at a Glance* at http://www.mc-mncppc.org and U.S Census Bureau, *State and County QuickFacts*.
[54] The 2000 Census was the first time respondents could identify themselves as being of more than one race. For all counties, the racial composition is based on those respondents who selected one race.
[55] David Rusk, *Inside Game, Outside Game*, Washington, D.C.: Brookings Institution Press, 1999, p. 200.

Montgomery County became the first jurisdiction in the country to successfully enact an inclusionary zoning ordinance, the MPDU ordinance.

The ordinance faced stiff opposition prior to becoming law. Many stakeholders, including the County Executive at the time, opposed the original MPDU law. Builders believed the inclusion of affordable units would cut into their profits and existing homeowners were afraid affordable housing would lower the value of their homes. There were also concerns about the constitutionality of the ordinance, and whether it was fair to require developers, rather than the County, to provide affordable housing. Despite this broad opposition, following nearly a year of modifications, a veto by the County Executive, and an override vote, the MPDU ordinance was enacted on January 21, 1974. The first units produced under the ordinance were offered for sale in 1976.

Ordinance Content and Administration

The Montgomery County ordinance originally applied to developments of 50 or more units and required that 15 percent of the units be affordable, in return for a density bonus of 20 percent. Price and rent controls on the units were set for five years, and developers were allowed to determine whether units would be offered for rent or for sale. The Housing Opportunities Commission, the County's public housing agency, could purchase up to 33 percent of for-sale affordable units for rental to very low- to low-income households. A 1981 amendment decreased the amount of affordable units required to 12.5 percent, but also increased the price control period to ten years. It also required that all affordable units in owner communities be offered for sale, as many developers tried to satisfy their affordable housing requirements by providing rental units in for-sale developments.

Amendments to the ordinance in 1989 gave developers more flexibility. A sliding scale for the percentage of affordable units in a development (between 12.5 and 15 percent) was implemented, based on the number of density bonus units a developer could actually build. The density bonus changed from 20 percent to a maximum of 22 percent and the price control period for rentals was lengthened to 20 years. Other significant changes include the following: after the price controls expire, half of the profits from the sale of an owner-occupied unit, first occupied after 1989, had to be paid to the Housing Initiative Fund; developers were allowed to spend more on for-sale units to ensure architectural compatibility with the market-rate units in the community, thereby increasing the sale price; alternative ways for developers to meet their MPDU requirements were allowed; and recognized nonprofit organizations were permitted to purchase moderately priced dwellings units, with the nonprofit and HOC allowance increased to 40 percent.

The Moderately Priced Housing Office, which is part of the Division of Housing and Code Enforcement, falls under the auspices of DHCA. This office is responsible for program administration, participant eligibility, the lottery system for participant selection, and enforcement of the ordinance requirements. The County Executive sets maximum income limits adjusted for household size, and rent and sale limits. The Director of the DHCA determines, among other things, when a developer may agree to an alternative to providing affordable units on site.

Fairfax County, VA

Background[56]

With a 2000 population of 969,749, an 18 percent increase over 1990, Fairfax is the most populous county in the Greater Washington region. The 2000 Census shows that minorities made up 36 percent of Fairfax' population and for the portion of the population that selected one racial category (96.3 percent), the composition was as follows: 70 percent white; 8.6 percent black; 13.1 percent Asian/Pacific Islander, and 4.5 percent other; with an overall Hispanic count of 11 percent.

Fairfax County was reported to be the wealthiest county in the country in 2000 with a median household income of nearly $91,000.[57] Nearly 40 percent of the County's households earn $100,000 or more, and overall and child poverty rates, 5.3 percent and 8.0 percent, respectively, are less than half the state levels.

In 2000, the average monthly rents ranged from $701 for an efficiency to a high of $1,275 for a three-bedroom apartment with a den, and the overall average rent in the County was $989. The median market value of owner-occupied housing was $226,825.

History of ADU Program

Fairfax County originally passed an inclusionary zoning ordinance before the much-heralded Montgomery County ordinance, but the Virginia courts struck it down. The court ruled that the inclusionary zoning ordinance "...exceeded the authority granted by statute to a local governing body since it was socio-economic zoning," and that the inclusionary ordinance constituted a taking of property without compensation.[58] The original Fairfax ordinance did not provide for a density bonus.

In 1986, AHOME (Affordable Housing Opportunity Means Everyone), a Fairfax-based coalition of community business leaders, citizens, developers, housing advocates, and employee unions, was created to help promote the need for affordable housing. The coalition's primary goal was the development and passage of the ADU ordinance in Fairfax and adjacent counties. AHOME members worked tirelessly at the state and county level to build support for this ordinance and it was ultimately passed in 1990.

In lobbying for the program, AHOME members recognized that they needed to address the Court's two earlier objections. The first objection was that the state had not expressly granted Fairfax County the right to pass an inclusionary zoning ordinance. Because Virginia is a "Dillon Rule" state, local planning and zoning authority, among other things, must be granted by the State. Since the original state-enabling legislation did not allow Fairfax to pass an inclusionary zoning ordinance, proponents had to lobby to amend the state-enabling legislation. A 1989 amendment to the Virginia

[56] Demographic and housing data is from Fairfax County, Virginia website at http://www.co.fairfax.va.us
[57] "Fairfax Grows More Affluent," *The Washington Post*, June 8, 2000. A Fairfax County estimate puts the 1997 median household income at $72,000 and the family median income at $84,000.
[58] 214 Va. 235, 198 S.E.2d 600.

code, which specifically granted jurisdictions the right to pass inclusionary zoning ordinances, alleviated this problem. The second objection, that the ordinance amounted to a taking without compensation, required revising the original ordinance, which resulted in the provision of a density bonus to compensate developers for building affordable units.

Enacted in 1990, Fairfax' inclusionary zoning ordinance originally applied to sites of 50 units or more that are subject to a rezoning, special exception, site plan, or subdivision plat application. However, multi-family buildings of four stories or more with at least one elevator are exempt from the ordinance. The control period for sale and rental units was exceptionally long – fifty years. A density bonus of 20 percent was allowed for single-family attached or detached units, and the maximum percentage of affordable units required was 12.5 percent. For non-elevator, multi-family buildings or elevator multi-family buildings less than four stories high, a 10 percent density bonus is allowed and up to 6.25 percent of all units are to be affordable.[59] The size of the development and percentage of inclusionary units were decided on a sliding scale that is based on the amount of density bonus actually used. Based on the sliding scale system, all developments that are at or below the low end of the specified density range end up with an affordable unit requirement of zero.

In 1998, amendments to the ordinance changed many aspects of the program, most importantly, the price control period, which is now 15 years for for-sale units and 20 years for rental units. To encourage marketing of units and architectural compatibility with the market rate units, the 1998 amendments included a sales commission or marketing allowance of 1.5 percent and a 2 percent allowance for funds to enhance the physical appearance of the affordable units.

Loudoun County, VA

Background

Loudoun County, Virginia is one of the fastest growing jurisdictions in the nation. The County's population grew from 24,549 in 1960 to 86,129 in 1990 and then nearly doubled to a 2000 count of 169,599.[60] Loudoun County is less racially diverse than many of its neighboring jurisdictions, including Fairfax and Montgomery counties, with minorities making up 20 percent of the population. In 2000, 97.6 percent of the residents chose one racial category. The composition was as follows: 82.8 percent white, 6.9 percent black, 5.4 percent Asian/Pacific Islander and 2.5 other. The total Hispanic population was 6 percent.

High technology growth in the Greater Washington region, and northern Virginia in particular, has helped to reshape Loudoun's economy and employment. Overall, the number of businesses in the County doubled during the 1990s and the number of jobs grew by an astounding 95 percent, sparking unprecedented commercial construction.[61] Residential construction also increased dramatically in the past decade. In 2000, there were 63,745 residential units in the County, half of

[59] Multi-family housing actually has the option of requesting 20 percent density increase and 12.5 percent affordable units but this option is rarely, if ever, used.
[60] Population data is taken from the US Census Bureau's 2000 Census.
[61] Loudoun County Planning Department, *Revised General Plan*, November 14, 2000.

which had been built in the 1990's. More than 6,000 new residential building permits were approved last year.[62] Single-family detached and attached housing prices have risen 12.5 and 9 percent respectively, over the previous year's figures.[63] While the County is relatively wealthy, with a 1999 median household income of $66,465, the dramatic rise in housing costs may make it difficult for even the County's middle-income residents to find housing they can afford.

Limited resources and a relatively small scope hamper the County's current affordable housing program. Loudoun County is the only Washington area jurisdiction that is not a HUD entitlement jurisdiction. Lack of entitlement status means that the County receives limited federal housing assistance through the state. The County's housing effort is further limited by the absence of both a local housing authority and an active nonprofit housing developer.

History of ADU Ordinance

Loudoun County had to go through many political battles to finally get its inclusionary zoning ordinance passed. AHOME, which was instrumental in the passage of Fairfax County's inclusionary ordinance, was also a critical player in Loudoun, helping to clear the way for the County to pass its affordable dwelling unit ordinance in 1993. Once instituted, however, the ordinance was weakened by amendments, which cut its affordable dwelling unit requirements and density bonus in half.

Loudoun's ADU Ordinance applies to any site served by public water and sewer with a pending application for rezoning and preliminary subdivisions or special exceptions that yield 50 or more units. The ordinance does not apply to multifamily structures with four or more stories and an elevator, developments that are grandfathered because they were considered at public hearings before 1993 or have approved proffers, nor preliminary subdivision applications that are part of a planned development housing district. Like Fairfax and Montgomery, profits on units sold after the control period are split between the homeowner and the County's housing trust fund while profit on units sold 50 years after the initial sale may all be kept by the homeowner.

The population, and subsequent building boom, caught the attention of local elected officials and residents who are currently engaged in a vigorous debate about how to control the pace and type of growth in the County. In 1999, a Transition Team was created to develop a smart growth strategy that would help the County control and plan for all types of growth. In an effort to, "...preserve our rural heritage, protect our natural resources and improve the quality of life for all our citizens," the team made recommendations in several areas.[64] Recommendations to amend the zoning ordinance included the review and revision of the ADU ordinance.

In July 2000, Loudoun County's Board of Supervisors passed amendments that would decrease the total number of units produced through the program. The density bonus and the number of affordable dwellings required was cut in half for single family detached and attached

[62] Loudoun County Department of Economic Development, *Summary Facts Loudoun County, Virginia*, 2000.
[63] Loudoun County Department of Financial Services and Economic Development.
[64] Final report of the Transition Team, *A Citizens Strategy for Smart Growth in Loudoun County*, January 5, 2000.

housing to 10 percent and 6.5 percent respectively. Two board of supervisors members were particularly vocal in their opposition to the ordinance, and stated that amendments to the ordinance were urgently needed to help implement smart growth in the Country. However, of the more than 40,000 homes already approved to be built in the County, only 2,300 are billed as affordable dwelling units and 1,200 are a result of the density bonus.[65]

The other major amendment allowed developers of single-family detached homes to buy out of the program. Developer contributions would be placed in the County's housing trust fund to provide down payment assistance to would be purchasers. It is too soon to assess the impact this amendment will have on the number of inclusionary units developed in the County. The exemption of single-family homes does, however, undermine the spirit of inclusionary ordinances, which are based on the belief that no community should be exempt from providing affordable housing.

Prince George's County, MD

Background[66]

Prince George's County, Maryland is the third largest Washington metropolitan area jurisdiction behind Fairfax and Montgomery Counties. The 2000 population for the County was 801,515, and the racial composition of residents who chose one race category (97.4 percent) was: 62.7 percent black, 27 percent white, 3.9 percent Asian or Pacific Islander and 3.7 percent other. Hispanics made up 7.1 percent of the population.

Prince George's County's median household income was estimated to be $47,882 in 1997. Though not the lowest-income jurisdiction in the Washington region, Prince George's County is second only to the District in terms of children (15.1 percent) and all persons (9.3 percent) living below the poverty level.

In 1996, Prince George's County's average house price, $128,657, was the lowest in the Washington metropolitan region.[67] The District of Columbia's average home price at that time was more than $50,000 higher. These figures undoubtedly played a part in County officials wanting to attract more high-end housing to the area, which ultimately lead to the MPDU ordinance being repealed.

[65] Loudoun County Planning Department, *Revised General Plan*, November 14, 2000.
[66] All population, income and poverty data is from the US Bureau of the Census.
[67] Washington Area Housing Partnership, "Where Can the Typical Service Sector Worker Afford to Buy a House?," *Capital Assets Briefing Book*, Washington, D.C.: Metropolitan Washington Council of Governments, 1996.

History of MPDU Ordinance

In 1990, a coalition of 42 churches and a Prince George's County Council member pushed for passage of Prince George's County's Moderately Priced Dwelling Unit Ordinance. To help educate Council members and provide evidence that the program could be successful, policy makers were given a tour of MPDU developments in Montgomery County. The ordinance applied only to new construction with 50 or more units in special low-density districts. A 10 percent density bonus was provided in return for 10 percent of the development's units being affordable. The ordinance did not contain a provision that allowed the housing authority or eligible nonprofits to purchase units.

The composition of the County's housing market and the economic constraints of a cap on property taxes played an important part in the ultimate repeal of the MPDU ordinance. Property taxes are limited by County law, to $2.40 for each $100 of assessed value. The cap places the County at a disadvantage since home values are much lower in Prince George's than other counties in the region. Furthermore, the restrictive nature of the law was strengthened in 1996 when County residents approved a measure that would require voter approval for any local tax increase.

Since County officials could not raise property taxes, they set about to raise the value of new homes coming into the market. In 1996, the County Executive assembled a Housing Policy Task Force, which endorsed the need for more high-end, quality housing in the County. The task force's recommendations have been the guiding force behind the County's housing policy for the past several years. In order to promote the development of more high priced housing, County officials limited the number of townhouses that could be developed and instituted measures that would increase the quality and hopefully the prices of the town homes that were allowed. They also repealed the MPDU ordinance. County officials wanted to attract middle- and upper-income residents by providing more upscale housing choices, which would result in higher property taxes.