INCENTIVE ZONING CASE STUDIES FROM OTHER CITIES

Prepared by BERK Consulting

To assist with the review of Bellevue's amenity zoning system, it is useful to examine other cities' examples of incentive zoning programs. This section provides broader context for considering how to update the incentive system in Bellevue and is organized as follows:

- A select review of practices in other cities
- A brief discussion of general policy considerations that are common to most incentive zoning programs.

Although all cities have different needs, this review includes summaries of those incentive tools that have been implemented in Seattle, Portland, Denver, Chicago, and Vancouver BC.

1.1 EXAMPLES FROM OTHER CITIES

The structures of incentive zoning programs vary widely across jurisdictions, reflecting local differences in policy goals, market and political conditions, and enabling state legislation. In addition, each city's incentive zoning program varies in its "incentive-ness" or "inclusionary-ness" based on how mandatory or optional the program is for developers. For example, Seattle, Portland, and parts of the Chicago program are optional, while parts of Chicago, Denver, and Vancouver are more mandatory.

The following is a brief summary of incentive and/or inclusionary zoning programs for these selected cities.

Seattle

The City of Seattle's incentive zoning program is primarily targeted at the provision of affordable housing. However, the program allows for other public amenities, which differ by geographic area. Affordable housing created through the program is intended to primarily serve Seattle's moderate-wage workers (those earning between 60% and 80% of area median income, or AMI).

There are two general provisions for the program. In zones with height of 85 feet or less, all benefit is direct to affordable housing. In zones with height greater than 85 feet, the benefit is split between affordable housing and other amenities. Commercial projects have 75% directed at affordable housing and 25% other benefits, and residential projects have 60% directed at affordable housing and 40% at other benefits. The other types of public benefits vary by zone but generally include open space, green street improvements, on-site amenities, or transfer of development rights (TDR to protect historic structures, create open space, or protection regional farms and forests), and child care facilities.

In addition, at certain threshold criteria, developers must also meet certain minimum requirements to use the incentive zoning program. These minimum requirements vary by zone, but generally include green building certification through LEED or Built Green and creation of a Transportation Management Plan.

The City also offers a fee in-lieu program but not in zones with less than an 85' height limit. Affordable housing provided on-site or off-site must be affordable for 50 years for a household making 80% of AMI for rental and 100% of AMI for occupant-owned units, except in Downtown where it is also 80% for occupant-owned units.

Program Highlights. To date, few projects have exercised the on-site performance option with only 44 units produced over the last five years that the program has been established. However, the fee in-lieu has generated $28.6 M, which has been leveraged into over 1,000 affordable units throughout the city.

Pricing Strategy. The City uses a residual land value analysis to assess a developer's ability-to-pay threshold for additional square footage above the base zoning as a benchmark for pricing. To achieve extra floor area by providing affordable housing, the developer can do one or more of the following:

- Provide affordable housing units on-site or off-site equal to 15.6% of the extra floor area obtained for commercial floor area and 14.0% for residential floor area
- Pay a fee-in-lieu of $18.75 per gross square foot of bonus floor area for commercial area or $15.15 for residential (note: these fees are being increased in South Lake Union to $24.43 and $21.68, respectively, and are proposed to be increased in Downtown as well)
- Purchase transfer of development rights (TDRs) to preserve existing affordable housing (for commercial only)

The value of the fee-in-lieu is then used to calibrate the value of the other non-housing public benefits.

HALA Recommendations. While the incentive system already targets affordable housing, Seattle's Housing Affordability and Livability Agenda (HALA) advisory committee recently proposed a broad set of recommendations designed to improve and expand affordable housing opportunities in the city.

These recommendations were tied to objectives for both the overall production of units and the creation and preservation of affordable units. HALA crafted an action plan, or "roadmap" to help Seattle achieve its housing needs over the 10 years and respond to the needs of low-income households, rapidly increasing population, residents being priced out, and inequality in housing.

Of particular note to incentive zoning was HALA's recommendation for adoption of a mandatory inclusionary housing program that would continue to provide incentives for affordable housing but would also require a portion of new buildings to either include affordable housing or to pay for affordable housing to be built elsewhere (depending on the type and location of the development). The stated intention would be to mitigate the impact on demand for affordable housing attributed to the new development.

Other HALA recommendations pertaining to incentive tools include:

- Bonuses allowed for reduction or removal of minimum parking requirements for residential development where appropriate.
- Incentives for contribution to the Regional Equitable Development Initiative (REDI) revolving loan fund to support land acquisition.
- Incentives for conversion of condo units to long-term affordable homeownership units.
- A focus on areas with underused development capacity, with bonuses awarded for implementing area-specific incentives.
- Incentives for including family-sized units in developments (potentially through exempting a certain number of 3-bedroom or larger units from the FAR calculations).
- Incentives for existing owners to improve their properties in exchange for an affordability covenant.
- Expansion of the affordable housing incentive zoning through upzoning in specific areas (e.g. transition zones, near green belts and open space, near schools, and within walking distance of frequent transit), areas with significant underused development capacity, and areas where there is a need.

- Exploration of state legislation that allows incentives, such as tax exemptions, to acquire, rehabilitate, preserve or deepen affordability of existing housing. *(Housing Affordability and Livability Agenda, 2015)*

As of the date of this paper, the HALA recommendations are still making their way through the Seattle legislative process.

Portland

The City of Portland has several different incentive zoning programs and transfer of development rights programs that allow additional density and/or building area for different parts of the city. A number of the incentives have been in place since 1988, when the program was first established. Relevant for this study is Portland's incentive zoning specific to the Central City Plan District, which generally includes the downtown, Peal District, South Waterfront, Lloyd District, and Central Eastside. The purpose of the incentive zoning in the Central City Plan District is to realize the development of facilities and amenities that implement Portland's Central City Plan. The City's program for the Central City Plan Area includes bonus floor area for 18 different bonus options, such as providing amenities, desired uses, larger residential units, affordable housing, open space, and below grade parking. Projects may use more than one option in most cases. Portland has established specific target areas for different bonus options within the Central City Plan District.

Program Highlights. A 2007 study of the City's programs by Johnson Gardner found that Central City bonus options were used 63 times between 1988 and 2006. More than half (34) of the options used were the residential use bonus option. All other options were used much less frequently. Eco-roofs were the second most used option with six cases. In addition, a summary of remarks from private and public stakeholders generally agreed that the program could benefit from increased simplicity and flexibility.

Portland's bonus program competes with the transfer of development rights program in the Central City which provides developers with a different option to increase density beyond the base zoning. The transfer of floor area process is conducted through a negotiated process. A 2007 City study found that transfer options were often more competitive based on price because the negotiated process led to a lower price for additional floor area. The implications of this are that the bonus program may be underutilized and the program's goals of implementing the Central City Plan objections may not be fully realized.

Pricing Strategy. The City uses ratios of bonus floor area based on the amount of amenity provided. The implicit value of bonus FAR is equal to the difference in the residual value of land underneath the development, when considered with and without the bonus FAR. The program also has fee options for contributions to the Affordable Housing Replacement Fund or the South Waterfront Public Open Space Fund, which are set at $20.50 per square foot of bonus floor area.

Denver

The City of Denver's incentive zoning program, the Inclusionary Housing Ordinance (IHO), requires private developers that provide 30 or more for-sale units, either through new construction or substantial rehabilitation at one location, to provide a certain percent of affordable units through on-site, off-site, or fee-in-lieu methods. A variety of incentives, described below, are coupled with this requirement. There are exemptions and alternatives for buildings with smaller unit counts. In addition, projects with fewer than 30 for-sale home or rental dwelling units, may voluntarily request the incentives available through the IHO.

On-site and off-site compliance methods require the concurrent development of a number of Moderately Priced Dwelling Units (MPDUs) equal to 10% of the development. In most circumstances, MPDU's are units affordable to households earning 80% or less of the area median income. These MPDUs must be sized (with two, three, and four bedrooms) in proportion to the development. For high cost structures, developers may be permitted to provide MPDUs that are of the same type as at least 90 percent of the market rate units in that development.

The IHO allows for three types of incentives for applicants developing MPDUs:

- **Standard cash incentives.** Each applicant developer is eligible to receive a $5,500 rebate for each sale or rental MPDU. Incentives must be paid after the sale has closed and the claim made in the calendar year in which the sale occurs.
- **Enhanced cash incentives.** Applicant developers who provide MPDUs are eligible to receive a $10,000 rebate for each for-sale unit that is affordable to households earning no more than 60% of Area Median Income (AMI).
- **Supplemental Density, Parking, and Expeditious review bonus incentives.** In addition to the standard and enhanced incentives above, applicant developers will be eligible for one or more supplemental incentives, which include a 10% density bonus, 20% parking reduction, and 180-day expedited review process, provided that provisions set forth in the zoning code and application requirements for expedited review are met.

Pricing Strategy. The fee-in-lieu is priced equal to 50% of the sales price per MPDU required that are not provided as part of the development. This price is based on an assumption that the profit margin on the sales of the MPDU would be no more than 50% of the sale price, thus making the effective cost of the MPDU less than that of the fund contribution. The sales price of the MPDU is based on the maximum sales price calculated by the city, not including homeowner association fees.

Vancouver, BC

Vancouver uses a system that is most removed from US examples, through extensive use of custom re-zones which reflect the different land use framework of Canadian planning. This is presented here by way of contrast with US incentive zoning systems, given that Vancouver is often held up as an international example of a livable city.

Community Amenity Contributions help build amenities such as park space, libraries, childcare facilities, community centers, transportation services, cultural facilities, and/or neighborhood housing demonstration projects to support additional residents and employees in growing areas of the city. Developers are required to provide community amenity contributions, cash, or in-kind contributions, when the City Council grants rezoning privileges. Rezones are needed when the development of the property does not conform to current regulations in its zone. Rezoning can be done in three ways:

- Change to a custom site-specific zone, which is intended for special uses or forms of development. The City has over 400 sites that have their own custom zone.
- Change from one standard zoning district to another, which is less common and primarily used to implement a Community Plan.
- Change to the rules of what is allowed in the existing zone, also known as a "text amendment".

There is a process for determining which specific amenities should be provided that has to be approved by the City Council. The negotiation process creates significant uncertainty for developers, who are not aware of how much money they need to set aside for amenity contributions when planning their projects. Making the amenity contribution rate fixed would be easier for the developer. However, from the city's perspective, the benefit of the negotiation-based process is that every transaction reflects the land value at the current time and place, ensuring the City receives the correct level of benefit.

Program Highlights. Overall, Community Amenity Contributions have produced many projects including:

- Creating parks and community gardens,
- Restoration and preservation of heritage buildings,
- Funding affordable housing,
- Transportation improvements and greenways,
- Increased public library space,
- Increasing the availability of child care, and
- Providing more community and cultural amenities.

Chicago

The City of Chicago has several different approaches to incentive zoning. Their program has evolved to more specifically focus on affordable housing while still covering many traditional urban design elements. The Downtown Affordable Housing Zone Bonus offers additional square footage for residential development projects in downtown zoning districts in exchange for affordable housing on-site or a financial contribution to the City's Affordable Housing Opportunity Fund. The FAR incentive program also covers an array of urban design elements.

In addition, the Chicago Public Schools Capital Improvement Program offers floor areas bonuses for construction of new public schools to promote private-sector participation due to issues of over-crowding and building decay of old public schools. Each program has a certain procedure and specific regulations that apply. The specifics of this program are negotiated on case by case basis.

Following a thorough review of the density bonus program in the early 2000s and responding to the need to create more affordable neighborhoods, the Affordable Housing Zoning Bonus was created in 2004 to support the City's Affordable Housing Opportunity Fund.

Pricing Strategy. The City of Chicago uses a few different methods for determining the prices for public benefits. One method is based on the ratio of square footage of amenity provided relative to the total lot size and FAR allowed. Another method uses a weighted equivalent cost-of-land approach, which set bonus floor area based on a developer's contribution for an amenity in relation to the value of the property within the appropriate geographic area. The City's affordable housing bonus also uses a separate method for on-site and off-site affordable housing.

1.2 POLICY CONSIDERATIONS OF AN INCENTIVE PROGRAM

All of the above programs are similar in that they try to offset the cost of providing a public benefit with some type of development incentive. In doing so, all the case studies needed to consider certain key policy factors. These will also be important considerations for Bellevue's incentive zoning update.

Geography. Some cities have restricted the program to certain areas or even to certain zones within an area. Further, some cities have different goals for different areas. Ideally this would be part of the discussion around program goals. Regardless, the structure and pricing of the program should be viewed within a broader context of where the City would like to incent growth while providing for the community benefits necessary to support higher levels of growth and activity.

Incentive zoning should be viewed from a program perspective relative to other places in the City and region where incentive zoning is in place so that overall city goals are supported (i.e. directing growth into desired areas). In addition, it should also be viewed through a development competiveness perspective. On the latter, there are two sides to the issue: 1) the City would like to "price" development competitively in the region so that it realizes the investment envisioned as part of its long-term growth plans; while balancing, 2) the City's need to support the types of vibrant communities by creating high quality physical and social built environments where high levels of human activity can thrive.

Incentive Zone Structure. When developing the basic structure of an incentive zoning program, there are four key issues that will determine how the system will operate.

- First, the city must decide on where the base (or by-right) zoning ends and where the incentive zoning begins.

- Second, the city must decide how much of the total zoning envelope should be achievable by the incentive zone increment.
- Third, for the development bonus to be enough of an incentive, the existing zoning should be sufficiently low, but not so low that the validity of the base zoning is called into question. Likewise, density bonuses should be large enough to attract new development but not so large that new densities cannot be served by community infrastructure.
- Fourth, the city will need to decide if there will be some prioritization of benefits (e.g. incentive must be earned in a certain order) and whether certain incentives will be capped.

Incentive Pricing and Implementation. Pricing is the most complex (and often controversial) aspect of incentive zoning. Valuing both the cost of providing the amenity (or public benefit) and the value of the incentive (typically additional floor area) so that the bonus value exceeds the amenity value is a challenging exercise. The value of floor area is dynamic and subject to many different and volatile factors. The value of an amenity is also difficult to determine since “costs” also evolve and differ by amenity.

Regardless, investment and development cycles are dynamic and unpredictable, and the city may want to weigh strategies that provide some flexibility so that the program stays relevant over time.