[Name of municipality], Tompkins County, New York
Inclusionary Zoning Ordinance [April 2009]

1. Title

This ordinance shall be known and may be cited as the "Inclusionary Zoning Ordinance of the [name of municipality]."

2. Purpose

The purpose of this ordinance is to promote public welfare by providing safe, decent, and affordable housing for all incomes; to ensure enough housing, especially for low-income households; to mitigate housing shortage and balance the demand and supply of housing by constructing more housing units; and to integrate all residents of the County regardless of their income levels.

3. Definitions

Affordable housing: A dwelling unit for which renters or homebuyers pay no more than 30% of their annual gross income on housing.

Affordable unit: A dwelling unit that is constructed under this ordinance and rented or sold at affordable rents or affordable prices to low-income and moderate-income households.

Area Median Income (AMI): The midpoint in distribution of gross annual income in a specific area, Tompkins County in this case. AMI is determined by the US Department of Housing and Urban Development and used to determine eligible households for affordable units.

Developer: An individual or group, including for-profit and non-profit organizations, that construct housing units.

Dwelling unit: An independent living space comprised of one or more rooms with private bath and kitchen facilities.

For-sale unit: A dwelling unit that is constructed to be sold to individuals or organizations.

Household, low-income: A household whose income is more than 50% but does not exceed 80% of the area median income.

Household, moderate-income: A household whose income is more than 80% but does not exceed 120% of the area median income.

In-lieu fee: A fee that a developer shall pay if the developer does not construct the required amount of affordable units. In order to foster an expansion of affordable units, the fees are allocated to the Tompkins County Housing Affordability Fund and the Tompkins County Housing Trust Fund.

Market rate unit: A dwelling unit that is rented or sold at rents or prices determined by the market.

Rental unit: A dwelling unit that is constructed for rental purposes.

Residential Development: Creation of one or more dwelling units for single-family, two-family, and multi-family residences.

4. Requirements

4.1. Housing provision

A. All new residential developments of 10 or more units are required to provide at least 10% of the project's total units as affordable housing to low-income households. The required percentage shall increase to 15% in five years after the adoption and 20% in ten years after the adoption of this ordinance.

B. If the formula results in any decimal fraction, all fractions shall be rounded up.

C. The following table shall represent the minimum number of required affordable units in relationship to the total number of units.

Number of total units (units)	Number of affordable units (units)
5-10	1
11-20	2
21-30	3
31-40	4
41-50	5
51-60	6
61-70	7
71-80	8
81-90	9
90-100	10

D. The number of total units shall be calculated on a 5-year basis. If 10 units are constructed as part of the same housing development within 5 years, the development shall be subject to the affordable housing requirement.

E. All requirements are applied identically to for-sale units and rental units. There is no requirement for the ratio of for-sale units to rental units.

4.2. Income targeting

- All affordable units shall be rented or sold to low-income households whose incomes are between 50% and 80% of the area median income. No specific mix of income groups is required within the range of 50% to 80% of the area median income. Developers may allocate their affordable units to various income groups.

4.3. Alternatives to construction of required affordable units: The [name of local government] highly encourages developers to construct affordable units within the project area, as required by this ordinance.

However, alternatives are offered in order to make developments more practical and to promote a variety of market mechanisms.

- In-lieu fees: In lieu of the construction of affordable units on site, developers may allocate funds to the Tompkins County Affordability Fund and the Tompkins County Housing Trust Fund. (Refer to "the Tompkins County Housing Affordability Fund and the Tompkins County Housing Trust Fund" in the front page for the description of the funds.) The In-lieu fee per one required affordable unit should be calculated based on the square feet of the required affordable units.[1] Developers shall make their in-lieu fee payment within 3 months after the issuance of building permits.

- Off-site construction: Developers may choose to construct affordable units in another site within the same municipality. The rate of the required affordable units to the total units is higher than the rate for on-site construction. Currently the rate for off-site construction is 20%. The rate shall increase to 25% five years after the adoption of the ordinance and 30% ten years after the adoption of this ordinance.

5. Affordable units

5.1. Location of affordable units: All affordable units shall be constructed on site, unless the developer chooses off-site construction. All affordable units shall be dispersed throughout the project by being integrated with the market rate units.

5.2. Completion of construction: All affordable units shall be constructed concurrently with the market rate units. Progress rates of affordable units shall be the same as that of the market rate units.

5.3. Exterior appearance: Affordable units shall be constructed with identical exterior design and materials that are used in the market rate units. Similar landscaping, garages and additional extras shall be applied to both affordable units and the market rate units.

5.4. Interior appearance: Interior materials and amenities in the affordable units may be different from those used in the market rate units, provided that:

- Number of bedrooms shall be proportional between affordable units and market rate units.

- Size of affordable units may be smaller than that of the market rate units, but shall be at least 80% of the size of the market rate units in the project or larger than minimum standards expressed in the following table, which ever is smaller.

Number of bedrooms	Unit size (square feet)
Studio	600
1	800
2	1000
3	1200
4 and more	1400

[1] The required square feet of the affordable units shall be calculated based on the table under Section 5.4 of this ordinance. $ per square foot of the affordable units with a maximum fee of $ per project shall be imposed. In case that the calculation results in any fraction, the amount of payment shall not be rounded up or down. In-lieu fees shall be tied to inflation and subject to change every year and may be found at [website address of the municipality].

6. Period of Affordability

6.1. Rental affordable units: All rental affordable units shall remain affordable in perpetuity. Initial developers may sell the rental affordable units to individuals or organizations. However, the subsequent owners shall maintain the units as affordable rental units to low-income households. The new owners shall not sell the units as either market rate units or affordable for-sale units. [Model language for deed restriction.]

6.2. For-sale affordable units: All for-sale affordable units shall remain affordable for at least five years from the initial sale. Owners, including initial owners, may sell their units at anytime, but new buyers shall be limited to low-income households for the first five years.

Note: However, the [name of municipality] fundamentally pursues perpetual affordability of all for-sale affordable units affordable in perpetuity. Therefore, if the [name of municipality] is able to assign proper number of staff for tracking, longer than 5-year limitation is desirable.

7. Approval Procedure

7.1. Developers shall provide documentation to receive an approval for the development. All application procedures shall be the same as the general application for a building permit. However, the developer shall submit additional documentation as follows:

- Site plan including the number, sizes, types of all affordable units.
- Site plan including allocation of the affordable units and the market rate units.
- Timeline of construction for each of the affordable units and the market rate units
- Proof of funds to pay in-lieu fees, if applicable.
- Proof of funds to construct off-site affordable units including land acquisition and construction costs, if applicable.
- Location and characteristics for off-site construction of affordable units, if applicable.
- Development plan and site plan for the off-site construction of affordable units, if applicable.
- Developers shall provide financial guarantees for in-lieu fees and off-site construction.

7.2. Developers shall abide by all of the requirements under this ordinance, prior to the issuance of a building permit. The [name of municipality] and the developer shall sign a legally binding agreement. The submission of the agreement shall be completed along with that of other documentation.

8. Enforcement

8.1. A development plan shall not be approved, and therefore a building permit shall not be issued, unless the development plan satisfies the requirements under this ordinance. The [name of municipality] may deny, suspend, or revoke any development plan if the plan violates this ordinance.

8.2. The [name of municipality] may cancel any approved development plan or issued building permit if it fails to maintain the requirements for the required period of time; and may take legal action to stop or cancel the approval of the building permit.

9. Appeals

9.1. Any person aggrieved by any denial, suspension, or revocation of approval of the development plan under this ordinance may appeal to the appropriate municipal board to hear such appeal.

9.2. Any person aggrieved by a final determination under this ordinance may appeal to the New York State Court system for a review of such determination.

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Appendix A: Inclusionary Housing Programs

Jurisdiction	Characteristic	Year	Population	Outcome	Trigger	Set Aside	Income	Length	Incentives
Davis, CA		1990	60,308		5 units	10%	<50% AMI *(2/7 units)* 50-80% AMI *(5/7 units)*	Permanent	25% Density Bonus
Sacramento, CA		2000	407,018	649 (2004)	9 units	15%	<50% AMI *(2/3 units)* 50-80% AMI *(1/3 units)*	30 yrs	25% Density Bonus Expedited review Reduced water/sewer fees Relaxed design guidelines Priority for subsidies
San Diego, CA		1992; 2003	1,233,341	1,200 $300,000 funds (2004)	10 units	10%	<65% AMI (rental) <100% AMI (own)	55 yrs	
San Francisco, CA		1992; 2002	776,733	578 (2004)	10 units	10%	< 80% AMI (rental) <120% AMI (Own)	50 yrs	Fee waivers
South San Francisco, CA		2001	60,552		5 units	20%	50-80% AMI *(2/5 units)* <80-120% AMI *(3/5 units)*		
Pleasanton, CA	Mandatory	1978	66482	300 units	15 units	15 (Multi-family) 20 (Single-family)			Fee waiver or deferral Design modification Second mortgages Priority processing
Morgan Hill, CA	Mandatory	1991	33559	302 units				30 years	Density bonus up to 25 percent
Roseville, CA	Incentive	1988	106266	2000 units		10			
Boulder, CO	Mandatory	1980; 1999	99,093	56 units (2003)	1 unit	20%	<80% AMI	Permanent	Density bonus: one additional unit per affordable unit
Denver, CO		2002	554,636	3,395 (2004)	30 units	10% *(for-sale)* *10% (rental-voluntary)*	<80% AMI *(<3 stories)* <95% AMI *(4+ stories)* <65% AMI (*rentals)*	15 yrs	20% Density Bonus *(single family)* 10% Density Bonus *(multi-family)* $5000/for-sale unit *(up to ½ of all units)* $10,000/rental unit *(to <50% AMI)* $10,000/rental unit *(to <50% AMI)* Expedited review Reduced parking requirements
Boston, MA	Mandatory	2000	589,141	246 $1.8 million funds (2004)	10 units	10%	<80% AMI *(½ units)* 80-120% AMI *(½ units)*	Maximum legally allowed	None except - Increased height and FAR only in financial district

Cambridge, MA		1998	101,355	141 (2004)	10 units	15%	<65% AMI *(10-30% AMI using additional resources)*	Permanent	30% Density Bonus (½ market, ½ affordable)
Newton, MA	Mandatory	1977	80143	225 units	1 unit	10		99 years or permanency	Density bonus up to 25 percent
Montgomery County, MD	Mandatory	1973	717827	1210 units	50 units	12.5	< 65% AMI		Density bonus up to 22% Fee waivers Lower min. lot area Reduced property axes in high-rises
Santa Fe, NM		1998	62,203		1 unit	11-16%	Av.65%AMI	Resale restrictions	11-16% Density Bonus Simplified paperwork Fee waivers
East Fishkill, NY	Mandatory	2002							Density bonus up to 15 percent
Hastings-on-Hudson, NY	Mandatory	2001	7648		10 units	10			
New York City, NY	Mandatory	2005	8274527	2000 units		20	< 80% AMI	Permanency	1.25 square feet of bonus floor area per each square foot of affordable housing units
Southampton, NY	Incentive	2003	54712			20	30% - 80% AMI		
Southold, NY	Mandatory				5 units				Density bonus: one additional unit per affordable unit built in excess of 10%
Fairfax County, VA		1990	969,749	1/3 of the units go to <40% AMI	50 units	6.25-12.5%	<50% AMI *(1/3 rentals)* <70% AMI *(2/3 rentals)* <70% AMI *(own)* *(25-40% AMI using additional resources*	15 yrs (own) 20 yrs (rent) 50 yrs (prior to 1998)	20% Density Bonus
Loudon County, VA		1993; 2000	169,599	203 (1999)	50 units	6.50%	30-70% AMI (own) 30-50% AMI (rent)	15 yrs (own) 20 yrs (rent)	10% Density Bonus

Sources:
Mandatory Inclusionary Housing Programs
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(Referred from Local zoning ordinances, proposed New York State legislation, "Practice Inclusionary Zoning Part Two," Zoning Practice, American Planning Association, October 2004 and "Zoning Affordability: the Challenges of Inclusionary Zoning," Zoning News, American Planning Association, August 2003)

Summary of the Tompkins County Housing Needs Assessment and Tompkins County Housing Strategy

The U.S. Department of Housing and Urban Development (HUD) defines housing as "affordable" if a household pays no more than 30% of income on housing. If a household pays more than 30% of income on housing, they are not able to spend their income on non-housing necessities such as food, health care, or transportation. Therefore, they are considered "cost-burdened".

The Tompkins County Affordable Housing Needs Assessment (August 2006) researched if housing in the County is "affordable". Based on 1999 Census data, 40% of households in the County spend more than a third of their income on housing and 20% of households spend more than half of their income on housing. It is anticipated that the County needs at least 3,900 new non-student housing units between 2005 and 2014. Specific needs by income levels are as follows:

- 38 % of 3,900 housing units need to be affordable to households with up to 50% of median income
- 16 % for households making between 50% and 80% of median income
- 21 % for households making between 80% and 120% of median income
- 25% market-rate housing

The demand growth per year is similar to the average supply rate over the 1990s (328 units per year). Therefore, the number of housing units itself is not a significant concern. However, the market-based provision of housing only offers housing for households who earn more than the area median income (approximately $50,000). Combined with the rapid growth in home prices and the low growth in income, the low- and moderate-income households are anticipated to face a housing shortage as well as a cost-burdened market.

Due to the shortage of affordable housing, workers in Tompkins County live outside the County where home prices are lower than those of Tompkins County. The mismatch of homes and workplaces results in heavy in-commuter traffic. In addition, the housing shortage can cause poor school performance by children in unstable housing and the large need for shelter for the homeless. In order to mitigate this problem, Tompkins County should implement policies and take action to promote affordable housing for households at the area median income or less.

Tompkins County suggests four strategies to solve current housing problems.

First, local municipalities should use inclusionary and incentive zoning to assign at least 20% of the total market rate units to households earning less than 80% of the area median income and at least 40% to households earning less than 120% of the area median income. In order to offset affordable housing development costs for developers, the municipalities may provide density bonuses and streamlined approval processes.

Secondly, with support from public and private sectors, the County should establish a Community Housing Trust to own land on which housing for households earning less than 80% of the area median income can be built.

Thirdly, the municipalities should encourage major employers to provide assistance to their employees who purchase houses near transportation nodes in terms of low-interest loans, down-payment subsidies, or closing-cost assistance.

Fourthly, with support from public and private sectors, the County should establish a Community Housing Affordability Fund to assist non-profit housing developers who provide housing for those who earn less than 80% of the area median income.

The Tompkins County Housing Affordability Fund and the Tompkins County Housing Trust Fund

A coalition of organizations, municipal leaders and others have established the Tompkins County Housing Development Action (TCHDA) Group. The group has developed two funds, the Tompkins County Housing Affordability Fund and the Tompkins County Housing Trust Fund, to be used to meet affordable housing needs of those who earn less than 80% of the area median income throughout the County. Tompkins County, Cornell University and the City of Ithaca have appropriated $2.4 million to be used for affordable housing funding awards to be made in 2008. For-profit and non-profit developers may apply for one or both funds.

The Tompkins County Housing Affordability Fund is a locally funded and administered fund that assists with the development costs associated with residential and mix-use real estate development projects. Funds are offered as a 0% interest loan. Funds can be used for the cost of options or purchase of land (with option for permanent ownership by the Community Housing Trust); environmental assessment; site design; building design; approvals; permits; financing; legal costs and other necessary and reasonable pre-development expenses.

The Tompkins County Housing Trust Fund is a locally funded and administered fund that promotes newly constructed or rehabilitated homes to remain affordable to future generations of buyers. Permanent affordability is retained by separating the ownership of the land from the ownership of the house, whereby only the house is purchased by the homebuyers, and by restricting the amount of equity that a homeowner can take from the house upon sale. Funds are offered as a grant that does not need to be repaid. Funds can be used for the cost of land if the housing unit remains permanently affordable through the Community Housing Trust or another acceptable mechanism. Applicants are encouraged to partner with Ithaca Neighborhood Housing Services (INHS) as the preferred agency that serves as a housing trust.

Despite the difference between the purposes of the two funds, the funds are collected and distributed through the same procedure as follows:

- Notice of Funding Availability (NOFA) is made available.
- An informative conference is held for clarifying the application process and answering questions from prospective applicants.
- Applicants submit their applications.
- A screening committee gives scores to each project based on the evaluation criteria, chooses top applications, and forwards them to the funding entity for final approval.
- The funding entity approves funding.

Specific information may be found at http://www.tompkins-co.org/planning.