MEMO

Date: October 11, 2019
To: Members of the Housing Opportunities for All Workgroup
From: Enterprise Advisors
Re: Policy options for inclusionary housing and right-of-first refusal

Background
Through December 2019, the Housing Opportunities for All Workgroup will be examining four policy-related actions in greater detail from *Housing Opportunity for All*, Prince George's County's comprehensive housing strategy.

This memo discusses two of the four policy actions:
- Cross-cutting action 1.5.
  Establish stronger, market-informed inclusionary housing requirements.
- Targeted action 2.6.
  Strengthen the County's and partners' ability to purchase affordable rental properties at-risk of converting to market-rate housing (i.e., right-of-first refusal provisions)

It outlines their respective policy objectives statement as defined by Workgroup members and introduces the policy options that Workgroup members will be discussing at their next meeting on October 18, 2019.

POLICY ACTION #1
C 1.5. Establish stronger, market-informed inclusionary housing requirements.

Context
No inclusionary housing policy currently exists in Prince George's County. The County previously offered increased density in exchange for below-market workforce housing or commercial units for small businesses, but these were eliminated in the County's updated zoning code. The County has an opportunity to use inclusionary housing to capitalize on its varied submarket conditions and large-scale public investments and assets, including existing and planned transit.

Policy objective statement
An inclusionary housing policy in Prince George's County would support rental and homeownership opportunities from a local and regional perspective. The policy should be informed by a study that examines what overlaying incentives would work best for developers in varied market conditions, and attract and retain residents, examples of other policy models, and the County's history of using inclusionary zoning practices.

Policy overview
According to the Lincoln Land Institute, "inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying

the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development." While sometimes also called inclusionary zoning, because it can be implemented through zoning, it may be implemented outside of the zoning code (through a separate program or policy).

Using market-based approaches, such as an inclusionary housing policy, relies on private-market activity to help produce income-restricted units. However, market-based policies, especially those designed around incentives, often do not produce many income-restricted units, because they are not aligned with market realities, such as if a project is financially viable, how a municipality may grow, and how market conditions may change. As a result, an inclusionary housing policy needs to be tailored to local conditions, including what private, market-based development will support.

Inclusionary housing policies are the result of multifaceted choices related to five main components:

1. ***Program structure*** - The structure of an inclusionary housing policy or program can be mandatory (where a certain share of new units is required to be affordable to households at a specified income level, including workforce households); voluntary or incentive-based (where valuable incentives are offered in exchange for units); or fee-based (where developers pay a fee rather than build units). More than 80 percent of inclusionary housing programs across the country are structured as mandatory programs and most are administered through land use requirements.
2. ***Requirements*** - Requirements refer to what developers will be asked to provide in exchange for building income-restricted units. Requirements set standards for the share of affordable or workforce units included in a project; affordability level; affordability period; and design standards, such as acceptable variations among income-restricted and market-rate units.
3. ***Incentives*** - Incentives refer to what the county will offer developers to help offset the cost of building income-restricted units. Incentives may be additional density; reduced or waived parking requirements; other zoning variances; expedited permitting; waived fees; tax abatements; or direct subsidy.
4. ***Applicability*** - Often incorporated into program structure, applicability means where and what project size and tenure (renter and owner) inclusionary housing requirements apply to. Geographic targeting—having inclusionary housing programs apply to specific neighborhoods or areas instead of an entire jurisdiction—is part of applicability.
5. ***Alternatives*** - Alternatives refer to what options a developer has to deviate from the requirements. Potential alternatives include constructing inclusionary units off-site; paying a fee in-lieu; or dedicating land.

Policy components for further discussion among Workgroup members

This section includes examples of policy language from around the Washington, DC region, and questions to consider in advance of the next Workgroup meeting.

Discussion at October's Workgroup meeting will focus on four key components of an inclusionary housing policy: 1) program structure; 2) applicability; 3) requirements; and 4) options for alternatives. More detailed policy options related to requirements, such as setaside threshold, type and amount of incentives, and applicable geographies will be determined through a market feasibility study, which will be completed in 2020.

Questions for consideration:

- **Program structure:**
  - Should Prince George's County consider a mandatory program, voluntary program, or fee-based program?
    - Consider the potential tradeoffs associated with each structure.
    - In your opinion, which program structure has the most potential to meet the policy objective of creating rental and homeownership opportunities?
- **Applicability**
  - What properties should an inclusionary housing policy apply to?
    - Consider property size and tenure.
    - Are there any properties that should be exempted from the policy?
  - What place-based priorities (e.g., Purple Line Corridor, TOD areas, Opportunity Zones), if any, should be incorporated into the policy?
- **Requirements**
  - What population should income-restricted units produced through an inclusionary housing policy serve?
    - Consider income levels, including workforce households; household type; special needs; etc.
  - How long should the affordability requirements be in effect (i.e., affordability period)?
  - Are variations between income-restricted units and market-rate units produced through the County's inclusionary housing policy acceptable?
    - If so, what variations are acceptable?
- **Options for alternatives**
  - Should the policy offer alternatives to the requirements for developers?
    - If so, what types of alternatives should be available to developers using this program (e.g., be able to build or preserve units offsite, pay a fee-in-lieu)?

Policy examples

Fairfax County, VA | § 2-800. Affordable Dwelling Unit Program
Full policy available here (click link).

Arlington County, VA | § 15.5.8. Affordable Housing Ordinance
Full policy available here (click link).

Montgomery County, MD | Chapter 25A.00.02. Moderately Priced Dwelling Unit Program
Full policy available here (click link).

District of Columbia | Chapter 14-22. Inclusionary Housing
Full policy available here (click link).

Background resources

- Webinar on Montgomery County's Moderately Priced Dwelling Unit Program
- Affordable Housing-Walking the Inclusionary-Zoning Tightrope (click link to listen or download to Apple Podcasts)
- Inclusionary Housing: The Basics
- Inclusionary Upzoning: Tying Growth to Affordability
- Inclusionary Housing Calculator 2.0

POLICY ACTION #2

T 2.6. Strengthen the County's and partners' ability to purchase affordable rental properties at-risk of converting to market-rate housing (i.e., right-of-first refusal provisions).

Context

Prince George's County has an existing right-of-first refusal policy that aims to advance revitalization and preserve housing opportunities for low- and moderate-income households. When the owner of a multi-family property of 20 units or more decides to sell, this policy grants the Director of DHCD the right to purchase the property on the same terms and conditions as a private offer before such an offer can be completed by the seller and the private buyer. To date, the County has not been able to use this tool due to its limited financing for property acquisition.

Policy objective statement

Stronger right-of-first refusal provisions in Prince George's County would be used to maintain quality housing that serves a diverse selection of income (AMI) groups (including low- and moderate-income and market-rate).

Policy overview

Broadly, right-of-first refusal provisions are used to preserve rental housing. They can be used to preserve ongoing affordability of income-restricted rental properties or to preserve unsubsidized rental properties, helping preserve the overall rental supply and in some cases, convert them to income-restricted properties.[1]

These policies give designated buyers an exclusive period to make an offer on the property (sometimes called "right-of-first-offer") or the option to match any offer made by a private buyer. [2] The County's current right-of-first refusal policy offers the latter option (to match an offer). It doesn't provide a right-of-first-offer.

[1] Local Housing Solutions. (n.d.). Policy Library: Rights of first refusal. Available at www.localhousingsolutions.org/act/housing-policy-library/act-housing-policy-library-rights-of-first-refusal-overview/act-housing-policy-library-rights-to-first-refusal-overview-rights-to-first-refusal/

[2] See Note 1.

Eligible buyers may include nonprofit or for-profit developers and state or local government agencies—which typically require a longer timeframe to assemble financing or an in stronger housing markets, face challenges competing against private-sector investors. Tenants associations, such as in the cases of Washington, DC and Montgomery County, are also able to exercise right-of-first refusal.

Right-of-first refusal provisions are the result of choices related to three main components:

1. ***Approach*** - Approach refers to the mechanism by which rental properties are made available to eligible buyers. Approaches vary from general notification about a sale to right-of-first refusal to right-of-first offer. This part of the policy also sets other notification requirements, such as who should be notified and timelines for notification about a sale. Longer notice requirements help enable government agencies or mission-driven buyers to assemble the financing they will need to purchase the property.
2. ***Coverage*** - Coverage refers to the circumstances that trigger right-of-first refusal authority: 1) preservation of income-restricted rental housing; 2) preservation of rental housing in general; or 3) both. The County's currently policy focuses on broader rental housing preservation among multifamily buildings of 20 units or more. While its provisions would assist with preserving income-restricted affordable rental properties, the current policy does not explicitly include preservation of income-restricted properties as a key objective.
3. ***Eligibility*** - Eligibility refers to the types of organizations that are eligible to purchase properties, as well as the criteria that will be considered by the county or its designee when determining whether to exercise the right or approve the offer. Criteria ranges from a buyer's development track record to readiness to buy a property. Some jurisdictions incorporate place-based criteria, such as proximity to transit service or in neighborhoods with changing housing markets, in their policies. The County's current right-of-first refusal policy does not set any criteria to assess offers.

Other considerations, such as access to capital and tenant protections, are critical for successful implementation.

Policy components for further discussion among Workgroup members

This section includes examples of policy language from around the Washington, DC region, and questions to consider in advance of the next Workgroup meeting.

Discussion at October's Workgroup meeting will focus on three key components of right-of-first refusal provisions: 1) identifying eligible designees; 2) guidance or other criteria to assess when to exercise the right; and 3) notification provisions. This section includes examples of policy language from around the Washington, DC region, and questions to consider in advance of the next Workgroup meeting.

Some representatives from the Purple Line Corridor Coalition met in August 2019 to discuss ways to strengthen the County's existing right-of-first refusal policy as written. Their ideas focused on:

- Setting priorities for at-risk properties (i.e., when would the County make an offer?)
- Developing a request-for-qualifications process for potential designees so it's easier to reassign the right

Questions for consideration:

- **Eligible buyers**
  - In addition to the Director of DHCD, what other entities should be eligible to use right-of-first refusal provisions?
    - Consider specific entities (e.g., public housing authority) or broader types of entities (e.g., nonprofits, tenant associations, developers). For instance, Montgomery County's right-of-first refusal policy for rental housing specifies three potential buyers: 1) Montgomery County; 2) Housing Opportunities Commission; and 3) any existing tenant organization.
    - What other considerations should factor into whether an entity (other than the Director of DHCD) is eligible to use right-of-first refusal?
- **Criteria to assess when to exercise right-of-first refusal**
  - What properties should be priorities for using right-of-first refusal?
    - Consider properties with expiring subsidies, such as the Low-Income Housing Tax Credit; property size; property type; location; and population served.
- **Notification provisions**
  - Should the County extend its notification requirements for sellers?
    - If so, how long should the County extend them for?
  - Should the County incorporate the right-of-first offer into its right-of-first refusal provisions? Right-of-first offer gives eligible buyers exclusive rights to make an offer within a specific period of time, prior to using right-of-first refusal.
  - Should the County incorporate additional notification provisions for tenants?
    - If so, what provisions should be incorporated (e.g., notice of sale, timing to give notice)?

Policy examples

Montgomery County, MD | § 53A-4. Right-of-first refusal to buy rental housing
Full policy available here (click link).

Montgomery County, MD | § 11A-3. Right-of-first refusal to purchase rental facilities
Full policy available here (click link).

Washington, DC | Chapter 14-24. District Opportunity to Purchase Act (DOPA).
Full policy available here (click link).
Summary of amendments and evolution of implementation considerations (click link).

Background resources

- Rights of first refusal: Overview
- State and Local Preservation Initiatives
- Op-ed: America's real-estate system pushes rents up and people out. There's another way.