



## NAHB | SOUTH CAROLINA SENATE BILL 309 | INCLUSIONARY ZONING | ANALYSIS

**Senate Bill 309** amends the current law to add code sections 6-7-510 by enacting the South Carolina Inclusionary Act and adding section 6-7-520 which authorizes counties and municipalities to use inclusionary zoning strategies to increase affordable housing availability.

**If this legislation passes** it will require a developer building a housing development to designate a certain number of units for low-income affordable housing.

### BACKGROUND:

Inclusionary zoning policies in the United States date back to 1971 in Fairfax County, Virginia.

<sup>1</sup> The Manhattan Institute's recent study shows that inclusionary zoning laws and regulations tend to slow down housing construction, drive up rent, and negatively affect the housing market overall. <sup>2</sup> Further, with less supply being built, there is more competition to purchase and rent, which drives up costs. Requiring builders to set aside a certain number of units for rent and sale at a set cost drives up the cost of new homes. In Sacramento County, a building permit will include a "Mitigation Fee," which is essentially a transportation tax that for a single-family unit can cost up to \$1,000 per unit and for a multi-family unit can cost up to \$700 per unit. There are fees like green building fees that places like California and Washington, D.C. which are calculated on the value of the construction at a certain percentage that increases the cost of building. While inclusionary zoning does waive certain fees, it doesn't necessarily cut all fees, and importantly, the land shortage and cost of land typically is overlooked when it's the largest component of the cost of a home. <sup>3</sup>

### THIS BILL:

**SB 309** adds sections 6-7-510 and 6-7-520 which implement inclusionary zoning into its South Carolina code section and authorizes counties and municipalities to independently implement

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<sup>1</sup> <https://www.cmap.illinois.gov/about/2040/supporting-materials/process-archive/strategy-papers/inclusionary-zoning/background-and-examples>

<sup>2</sup> <https://media4.manhattan-institute.org/sites/default/files/exclusionary-effects-inclusionary-zoning-CH.pdf>

<sup>3</sup> [https://www.urban.org/sites/default/files/publication/99647/inclusionary\\_zoning.\\_what\\_does\\_the\\_research\\_tell\\_us\\_about\\_the\\_effectiveness\\_of\\_local\\_action\\_2.pdf](https://www.urban.org/sites/default/files/publication/99647/inclusionary_zoning._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_2.pdf)



inclusionary zoning in their jurisdictions. Further, makes technical changes and provides definitions.

**Section 6-7-510:** Finds that in many jurisdictions in the state of South Carolina has a shortage of affordable housing that tailors to low and moderate-income families. Further findings are that the shortage of affordable housing for low to moderate-income families creates a danger to the “health,” “safety” and the “welfare” of the residents of the state.

**Section 6-7-520:** Provides definitions and provides authorization to counties and municipalities to implement inclusionary zoning.

**Affordable Housing:** *Means residential housing for rent or sale that is appropriately priced for rent or sale to a person or family whose income does not exceed eighty percent of the medium income for the local area, with adjustment for household size, according to the latest figures available from the United States Department of Housing and Urban Development.*

**Inclusionary Zoning:** *This means a zoning regulation, requirement, or conditions of development imposed by ordinance or regulation, or pursuant to a special or conditional permit, special exemption, or subdivision plan, that promotes the development of affordable dwelling units.*

Municipality or county may do the following:

- Adopt land use regulation or functional plan provision or impose, as a condition for approving a permit, a requirement that has the effect of establishing the sales or rent price for a new multi-family or single-family structure, or that requires a new multi-family or single-family structure to be designated for sale or rent as affordable housing.
- A Regulation, provision, or requirement adopted or imposed pursuant to this section:
  - (a) may not require more than 30% of housing units within a multi-family or single-family development to be sold or rented as affordable housing.

The specific percentage will be set by the local municipal or county zoning ordinance.
  - (b) provide developers with the option to pay a “fee in lieu” in an amount determined by the locals, rather than including affordable units within the overall development;
  - (c) Shall provide an expedited process for the developments that meet the percent of affordable housing units.
  - (d) An expedited and priority placement for the review of plans and other requirements can be permitted in the review and permitting process to the developer.



## State & Local Government Affairs

- Subsection 3: Developer Incentives (One or more of these incentives must be provided to the developer)
  - Density adjustment
  - Modification of height, floor area, or other site-specific requirements
  - Whole or partial waivers of system development charges, or impact or permit fees, set by the locality.
  - Tax adjustments
  - Other incentives are determined by the locality.
    - Does not restrict local authority to offer additional incentives to build affordable housing.
- A municipal or county is authorized to require recorded deed restrictions or requirements to items (2) of this subsection shall adopt and apply clear and objective standards, conditions, and procedures regulating the development of affordable housing units within its jurisdictions. The standards, conditions, and procedures may not have the effect, either individually or cumulatively, of discouraging the development of affordable housing units through unreasonable cost or delay.

Section 3: Takes effect immediately upon the Governor's Signature.

### ARGUMENTS in SUPPORT

Inclusionary Zoning Act provides an opportunity for the community and a developer to provide affordable units to the consumer. A municipality or a county overseeing the building authorization in their respective jurisdiction will place a required percentage of how many homes are to be built to a certain income demographic in development in exchange for waiving certain fees, housing sq. foot, permit fees, and even tax adjustments. There are over 866 jurisdictions across the United States that have some sort of inclusionary zoning act laws either requiring a developer to produce a certain number of units for affordable housing or providing a lottery system that they can apply to get certain incentives for building affordable housing for certain income ratio in their community.<sup>3</sup>

It is worth noting that since 1969, the Inclusionary Zoning Act has produced over 30,000 affordable housing units in Massachusetts.<sup>4</sup> The point of inclusionary zoning is to provide opportunity to disadvantaged communities into the housing market. Providing opportunities for individuals to move from a high-poverty area to a low-poverty area helps people to improve their health.<sup>5</sup> Further, having mixed socio-economic demographics in one area helps diversify the

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<sup>3</sup>[https://www.urban.org/sites/default/files/publication/99647/inclusionary\\_zoning.\\_what\\_does\\_the\\_research\\_tell\\_us\\_about\\_the\\_effectiveness\\_of\\_local\\_action\\_2.pdf](https://www.urban.org/sites/default/files/publication/99647/inclusionary_zoning._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_2.pdf)

<sup>4</sup><https://www.law.georgetown.edu/poverty-journal/wp-content/uploads/sites/25/2019/12/27-1-Zhang.pdf>

<sup>5</sup>[https://www.healthaffairs.org/doi/10.1377/hpb20180313.668759/full/hpb\\_2018\\_rwjf\\_04\\_w-1693419248052.pdf](https://www.healthaffairs.org/doi/10.1377/hpb20180313.668759/full/hpb_2018_rwjf_04_w-1693419248052.pdf)



community. After all, that's the beauty of capitalism and freedom, and Americanism that people can work and live in communities that they desire.

Further, the inclusionary zoning policies provide local governments with a tool to work to solve the housing shortage in their communities. Local governments tend to know better what works in their towns versus the states' policies of one size fits all. Allowing locals to pass policies that allow them to incorporate policies like inclusionary zoning, helps the locals partake in a direct impact of solving the housing affordability and attainability crisis.

### ARGUMENTS in OPPOSITION

The Inclusionary Zoning Act may seem like a policy that helps produce more housing, but data shows that it has the opposite effect. For example, in the last 25 years in New York alone after passing inclusionary zoning policies, the state has only produced 172 units per year<sup>6</sup>. This data alone begs the question: *If inclusionary zoning policies work, then why did the policy produce so few housing units in the U.S. these past 55 years?* And if state and local governments want to achieve affordability and truly provide opportunities to their constituents for housing, then why not simply make building housing affordable? Why not lower impact fees, not force a developer to build a fire station or a library on their dime, mitigate fees, lower the permit fees, and look at ways to expedite the system to build a home quicker?

Since inclusionary zoning provides expedited services of projects or waiver of certain fees, why can't that be simply open to all housing? Builders build homes for everyone, and they intend to help Americans achieve their American Dream of homeownership. Policies such as inclusionary zoning can have impacts on the housing market that can increase the cost of homes for everyone. For example, a developer can decide not to build in that community if a locality passes a stringent inclusionary zoning policy that doesn't bring profit. In return, landowners who may want to sell their land may not be able to sell at the rate at which the land is valued, leading to a trickle-down effect, in which case the landowner may not sell the land, leading to a land shortage for building. In the housing market long run, these scenarios can increase the cost of land and housing.

While inclusionary zoning proponents bring the policy in good faith, the unintended consequences tend to contradict the goal of building more housing. To achieve affordable housing, the mathematics are straightforward, supply and demand. This means, that if there are more homes built to suffice the demand, the market will level out making it affordable to purchase or rent. If there are fewer homes in the market and more buyers, they will outbid the

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<sup>6</sup><https://www.mercatus.org/research/policy-briefs/inclusionary-zoning-hurts-more-it-helps>



cost during the point of sale. Whether this is a newly built or a home that has been on the market more than once.

Further, most inclusionary zoning policies will include an “in-lieu” price which comes with a price tag to the developer. For example, a developer can pay \$200,000 in lieu costs per unit, and in San Jose, Calif. it can be roughly around \$90,000 per unit. These are driving the cost of a housing price per unit. Thus, making inclusionary zoning policies unaffordable in the long run for individuals to either build or buy.

### **SIMILAR LEGISLATION/LAWS:**

**Home Rule Authority:** Currently 20 states and Washington, D.C. Have some sort of inclusionary zoning policies---Alaska, Delaware, Hawaii, Maine, Montana, New Jersey, New York, Ohio, Pennsylvania, and West Virginia cities.

**Preempted (prohibit locals passing IZ policies):** Arizona, Colorado, Idaho, Indiana, Kansas, Texas, Tennessee, and Wisconsin

### **Similar Legislation:**

- [AB 1229 \(CA 2013, vetoed\): Land Use: Zoning Regulation](#)
- [HB 635 \(VA, 2023\): Inclusionary Zoning](#)
- [SB 1720 \(AZ, 2023\) Prohibition of Inclusionary Zoning](#)
- [SB 558 \(IN, 2017\): Prohibits Locals of Passing Inclusionary Zoning](#)

### **COURT CASES**

#### [The Board of Supervisors of Fairfax County vs. DeGroff Enterprises, Inc \(1973\)](#)

- First cited case to find “Inclusionary zoning act” as unconstitutional.

#### [Palmer Sixth Street Properties vs. City of Los Angeles \(2009\)](#)

- Also known as the Palmer case, the Palmer Sixth Street Properties sued the City of Los Angeles for their in-lieu fee of \$96,200 per unit fee, a violation of the Costa-Hawkins Act, California Court of Appeals found in favor of the Palmer Sixth Street Properties.

#### [Dartmond Cherk v Marin County California \(2019\)](#)- U.S. Supreme Court

- [NAHB: Brief of Amici Curiae](#)

**POTENTIAL SUPPORT**

Habitat for Humanity, State Association of Counties, Cities

**POTENTIAL OPPOSITION**

Home Builders Association; South Carolina Realtors Association, South Carolina Chamber of Commerce, Apartment Association