

Research Protocol for CityHealth: Inclusionary Zoning Laws

Prepared by Center for Public Health Law Research

Published December 2020

CITYHEALTH: INCLUSIONARY ZONING LAWS

Published December 2020

Research Protocol

- I. **Dates of Protocol:** July 14, 2016; October 20, 2016; February 3, 2017; January 29, 2018; October 7, 2019; October 30, 2019; November 11, 2019; November 19, 2020
- II. **Scope:** Compile statutes, ordinances, and policies on Inclusionary Zoning laws across the 40 largest cities, their respective counties, 25 states and the District of Columbia. The purpose of the CityHealth project is to collect important public health policies and determine what makes a healthy city. For a particular health policy, the goal is to display the state, county, and city law involved in shaping this policy at the city level. This dataset contains coding questions examining Inclusionary Zoning laws. This is a cross-sectional dataset capturing currently effective law valid through June 1, 2020.
- III. **Primary Data Collection**
 - a. **Original project dates:** April 27, 2016 – July 14, 2016
 - b. **Original dates covered in the dataset:** March 21, 1988 – April 1, 2016
 - c. **Data collection methods:** The team building this dataset consisted of three team members: two legal researchers (“Researchers”) and one supervisor (“Supervisor”) overseeing the quality control process.
 - d. **Databases used:** Searches conducted using Westlaw Next, city and county codes, and general Complete Streets websites; the laws were then collected from state-specific legislature websites. County and city laws were collected from official government websites, municode.com and amlegal.com. Policies were collected from the Department websites.
 - e. **Search terms:** “inclusionary zoning”, “inclusionary housing”, “affordable housing”, city zoning law, zoning set-aside, in lieu fee, impact fee, affordable housing fund, incentive zoning, off-site set aside
 - i. Key word searches were supplemented by examination of the table of contents of each relevant section of the law identified.
 - ii. Once all the relevant laws were identified in each jurisdiction, a master sheet was created for each jurisdiction that summarized the relevant laws within the scope at each jurisdictional level. This summary included the statutory history for each law and the effective date for that version of the law.
 - f. **Information about initial returns and additional inclusion or exclusion criteria:**
 - i. The team first searched for city, county, and state laws that specifically mentioned an “inclusionary zoning” policy. In addition to “inclusionary zoning,” the team looked for laws detailing an “inclusionary housing” or “affordable housing” policy. An inclusionary zoning law means a law that

requires developers to allocate an amount of a development to affordable housing for low and/or moderate income families. The team collected all inclusionary zoning laws, mandatory and voluntary, despite ultimately coding the mandatory laws requiring compliance. The team also included state preemption laws the explicitly prevented cities from passing legislation requiring inclusionary zoning. The team excluded laws the only provided a benefit or incentive to developers such as a density bonus or tax credit.

- ii. One researcher found that on January 3, 2008, the Philadelphia City Council passed a mandatory inclusionary zoning ordinance which would become effective upon adoption of developer incentives, such as building code modifications, expedited permitting, enacting tax credits, and the provision of land for affordable units at reduced or nominal consideration. Philadelphia, PA Code § 7-112 supports the intent of the legislation to recognize that developers are foregoing income and that it is the city's intent to develop programs to minimize that burden. As of April 1, 2016, however, the City and the residential housing developers have not come to an agreement about the developer incentives, meaning that the mandatory inclusionary zoning law has not taken effect. The Researcher did pull these laws, but will not code their content until the laws take effect.
- iii. The team determined that researchers should include laws where the developer is able to avoid paying a fee by building properties that met certain specifications and thresholds for affordable housing if that fee would go to an affordable housing fund. If that fee was going to a source other than an affordable housing fund the law was not included.

IV. Coding

- a. **Development of coding scheme:** The Researchers and Supervisor drafted coding questions and circulated them for review until all parties felt they had been sufficiently refined. Once the coding questions were finalized, they were entered into the MonQcle.
 - i. **For the question, "What percentage of units must be set aside as below the market rate,"** when a city used a percentage of gross floor area instead of a percentage of units, we coded the same as if the city had used units. We then added a caution note explaining that the city used percent of gross floor area as a unit of measurement.
 - ii. **For the questions, "What percentage of units must be set-aside as below the market rate," and "Is the developer permitted to build a percentage of units off-site,"** the percentages were added together for when a single project developer was required to set-aside a certain percentage for different groups. For example, if the law stated that 10% of units must be set-aside for low-income units and 6% must be set-aside for moderate-income units, we added the percentages for a total of 16% to capture the total percentage of the development affordable housing.
 - iii. **For the question, "What percentage of units must be set-aside when off-site building is permitted,"** most cities that require an increase when units are permitted to be build off-site just provided the percentage amount in the law. New York City, however, requires that when units are built off-site, the number of units will be "increased by an amount equal to five percent of the residential floor area within such MIH [mandatory inclusionary housing] development, multiplied by the percentage of the affordable floor area that is provided on an MIH site that is not an MIH zoning lot." So for New York City, this question was coded by multiplying 5% by the required 25-30%. A caution note was also added to explain the coding decision.

- b. **Coding methods:** The Researchers were responsible for coding 20 cities each, including the respective state and county laws. Both Researchers independently coded their assigned jurisdictions. After coding their first five jurisdictions each, the Researchers 100 percent redundantly coded the states to evaluate the questions and responses. The Supervisor checked all research against the redundant research conducted by the other Researcher and credible secondary sources tracking Complete Streets programs.
- c. **Quality control:** The Supervisor oversaw the quality of the data by downloading the data from the MonQcle into Microsoft Excel and reviewing it in order to find caution flags, missing answer choices, and errors in the coding. An original coding review sheet was sent to the Researchers for their review. Issues in the coding were discussed by the Researchers in coding meetings and resolved accordingly.
 - i. The Supervisor reviewed the redundant coding by downloading the data from the MonQcle into Microsoft Excel and comparing the records, variable by variable, looking for divergences. When a divergence was identified, it was discussed with the researchers. The reason for the divergence was identified and resolved. A measure of divergence was calculated by the Researcher and the redundant record was deleted.
 - 1. The rate of divergence on July 13, 2016 was 10.86%. Once all of these issues were resolved, the entries were re-coded accordingly.
 - 2. After this round of redundant coding, the team met with the clients to discuss the question set. Collectively, the decision was made to focus the dataset on the mandatory inclusionary zoning programs only. Therefore, the team edited the initial question to ask if there was a "mandatory inclusionary zoning law" and entries were re-coded to add caution notes indicating cities with a voluntary program only.
 - 3. The team decided during the redundant coding review meeting that the coding answers should reflect laws that apply to for-sale units only, instead of noting all of the different standards that may apply to rental units for each question.
 - ii. After the first round of redundant coding was complete, the Supervisor asked the Researchers to go back and check all their original coding. The Supervisor then assigned 4 more states to be redundantly coded to ensure that the rate of divergence was below 5%. The Supervisor followed the process above to review the new round of redundant coding.
 - 1. The rate of divergence on July 13, 2016 for the second round of redundant coding was 4.17%. Once all of these issues were resolved, the entries were re-coded accordingly.
 - iii. The Supervisor then did a final check of the original coding for all states and ensured that the state coding was consistent for the Arizona, California, Tennessee, and Texas entries since these states had multiple cities included in this dataset.

V. October 2016 Update

- a. **Data collection methods:** One Researcher conducted research to determine if any states had enacted relevant legislation effective through October 1, 2016, and to identify pending legislation that may be close to passage. The Researcher used the same search terms stated above.
- b. **Coding updated findings:** The Researcher found that laws were amended in the following cities: Washington, D.C., San Francisco, San Diego, Seattle, Portland, Nashville, and Memphis. Each city record was updated and re-coded.

- i. In Seattle, the Mayor signed a mandatory inclusionary housing law on August 17, 2016. The percentage of units that must be created below the market rate will be based on the values inserted into Table A and B of Seattle, WA 23.58C.050. As of October 1, 2016, the current law does not currently have those values. Table A will show the percentage of units that must be built in the downtown and Table B will provide the percentage for outside of downtown. Until the table adds the value, we will code Seattle as "None specified" for the percentage of units created below the market rate.
- c. **Quality control:** The Supervisor originally assigned three cities for redundant coding. The initial rate of divergence on October 19, 2016 was 11.11%, so the team met to discuss the issues and better define the coding scheme. The Supervisor assigned another three records for redundant coding and the divergence rate dropped to 2.70% on October 21, 2016.

VI. February 2017 Update

- a. Prior to publication, the team evaluated the scope to ensure consistency and coverage of inclusionary zoning laws. In this update, we have expanded the scope to include "Housing Impact Fees" which are effectively similar to mandatory inclusionary zoning laws. Some of the newest laws, for example in California, require a developer to pay a fee in exchange for a building permit approval and without receiving any benefit or incentive. Generally, developers can waive or reduce the fee if they construct affordable housing. This option for building affordable housing is often not as comprehensive as other laws. However, like previously passed inclusionary housing laws, the developer is essentially granted two options: pay a fee to an affordable housing fund or construct affordable housing units. So to capture this nuance in the policy, we have expanded the scope of this dataset. Three Researchers searched each city for these laws. For an example of a "Housing Impact Fee," see Sacramento's inclusionary zoning page.
- b. The Researchers were notified by cityhealth of a law passed in 2016 with a future effective date impacting the landscape of inclusionary zoning law in Portland, Oregon. The team decided to include this law and code accordingly. Another Researcher redundantly coded the Portland record. The divergence rate was 0%. The Supervisor reviewed the all the original coding records prior to publication.

VII. December 2017 Update

- a. **Data collection methods:** The Researchers conducted a review of each city that included searching for amendments to laws that were previously collected, any additional laws that may be necessary, and for any new inclusionary zoning laws that had been enacted since the February 2017 update. The Researchers searched for inclusionary zoning laws in WestlawNext, Google, city ordinance databases, and city websites.
- b. **Coding updated findings:** In addition to researching each city for newly amended laws, additional laws, and newly enacted laws, coders also made note of any potential coding inconsistencies. Chicago, Denver, Indianapolis, Los Angeles, Portland, San Francisco, Seattle, Washington, D.C. had updates. None of these updates were substantive changes that impacting scoring results.
 - i. In San Francisco researchers found developments with more than 10 units but less than 25 units and developments with more than 25 units have different inclusionary zoning standards. When coding researchers coded based on the requirements for developments that are 10 or more units but less than 25 because 10 units is what triggers inclusionary zoning requirements.

- c. **Quality control:** Chicago, Denver, Indianapolis, Los Angeles, Portland, San Francisco, Seattle, Washington, D.C. were redundantly coded because they had updates. Columbus and Detroit were redundantly coded to ensure consistency in coding. The Researchers compared the records and the divergence rate is 3.33%. All divergences were discussed and resolved.

The Supervisor checked the original coding to check for any other coding or building issues and any issues were resolved. This dataset is now valid through December 1, 2017.

VIII. June 2019 Update

- a. **Data collection methods:** The Researchers conducted a review of each city that included searching for amendments to laws that were previously collected, any additional laws that may be necessary, and for any new inclusionary zoning laws that had been enacted since the December 2017 update. The Researchers searched for inclusionary zoning laws in WestlawNext, Google, city ordinance databases, and city websites.
- b. **Coding updated findings:** In addition to researching each city for newly amended laws, additional laws, and newly enacted laws, coders also made note of any potential coding inconsistencies. Chicago, Detroit, Washington DC, Jacksonville, Los Angeles, Memphis, Nashville, Portland, and San Francisco had updates. None of these updates were substantive changes that impacting scoring results.
- c. **Quality control:** Seattle, Portland, Nashville, Milwaukee, Memphis, San Francisco, Los Angeles, Washington DC, Jacksonville, Detroit, and Chicago were redundantly coded. The Researchers compared the records and the divergence rate was 2.27%. All divergences were discussed and resolved.

The Supervisor checked the original coding to check for any other coding or building issues and any issues were resolved. Cities were given an opportunity to review their scores prior to the publication of results. In an effort to make the scoring criteria clearer on the website, the team agreed to change the wording of the first question to "City has a *mandatory* inclusionary zoning law" in line with the coding rule mentioned previously.

This dataset is now valid through June 1, 2019.

IX. June 2020 Update

- a. **Valid through date note for all datasets:** All of the CityHealth datasets that are currently published were published in December 2020. Please see the individual policy pages or protocols for the exact valid through date as not all of the datasets had the same valid through date for this update.
- b. **Data collection methods:** The Researchers conducted a review of each city that included searching for amendments to laws that were previously collected, any additional laws that may be necessary, and for any new inclusionary zoning laws that had been enacted since the December 2017 update. The Researchers searched for inclusionary zoning laws in WestlawNext, Google, city ordinance databases, and city websites.
- c. **Coding updated findings:** In addition to researching each city for newly amended laws, additional laws, and newly enacted laws, coders also made note of any potential coding inconsistencies. Chicago, Denver, Los Angeles, New York, Portland, San Francisco, Seattle, and Washington DC had updates.

- d. **Quality control:** Chicago, Denver, Los Angeles, New York, Portland, San Francisco, Seattle, Washington DC, and Oklahoma City were redundantly coded. The Researchers compared the records and the divergence rate was 6%. All divergences were discussed and resolved. An addition 5 states were redundantly coded to ensure consistency. That divergence rate was 0%.

The Supervisor checked the original coding to check for any other coding or building issues and any issues were resolved. This dataset is now valid through June 1, 2020.