

WAC 365-196-870 Affordable housing incentives. (1) Background.

(a) The act calls on counties and cities to encourage the availability of affordable housing. Addressing the need for affordable housing will require a broad variety of tools to address local needs. This section describes certain affordable housing incentive programs (incentive programs) that counties and cities may implement.

(b) The powers granted in RCW 36.70A.540 are supplemental and additional to the powers otherwise held by local governments, and nothing in RCW 36.70A.540 shall be construed as a limit on such powers.

(c) Counties and cities may use incentive programs to implement other policies in their comprehensive plan in addition to affordable housing; for instance, encouraging higher densities that reduce the need for land and increase the efficiency of providing public services.

(d) Incentive programs may apply to residential, commercial, industrial and/or mixed-use developments.

(e) Incentive programs may be implemented through development regulations, conditions on rezoning or permit decisions, or any combination of these.

(f) Incentive programs may apply to part or all of a city or county. A county or city may apply different standards to different areas within their jurisdiction, or to different development types.

(g) Incentive programs may be modified to meet local needs.

(h) Incentive programs may include provisions not expressly provided in RCW 36.70A.540 or 82.02.020.

(2) Counties and cities may establish an incentive program that is either required or optional.

(a) Counties and cities may establish an optional incentive program. If a developer chooses not to participate in an optional incentive program, a county or city may not condition, deny or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent the optional incentive provisions of this program.

(b) Counties and cities may establish an incentive program that requires a minimum amount of affordable housing that must be provided by all residential developments built under the revised regulations. The minimum amount of affordable housing may be a percentage of the units or floor area in a development or of the development capacity of the site under the revised regulations. These programs may be established as follows:

(i) The county or city identifies certain land use designations within a geographic area where increased residential development will help achieve local growth management and housing policies.

(ii) The city or county adopts revised regulations to increase development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives.

(iii) The county or city determines that the increased residential development capacity resulting from the revised regulations can be achieved in the designated area, taking into consideration other applicable development regulations.

(3) Steps in establishing an incentive program.

(a) When developing incentive programs, counties and cities should start with the gaps identified in the housing element and develop incentive programs as a strategy to implement the housing element and close some of the identified gaps.

(b) Counties and cities should identify incentives that can be provided to residential, commercial, industrial or mixed-use developments providing affordable housing. Incentives could include density bonuses within the urban growth area, height and bulk bonuses, fee waivers or exemptions, parking reductions, expedited permitting, or other benefits to a development. Counties and cities may provide a variety of incentives and may tailor the type of incentive to the circumstances of a particular development project.

(c) Counties and cities may choose to offer incentives through development regulations, or through conditions on rezones or permit decisions.

(4) Criteria for determining income eligibility of prospective tenants or buyers. When developing an affordable housing incentive program, counties and cities must establish standards for low-income renter or owner occupancy housing consistent with RCW 36.70A.540 (2)(b). The housing must be affordable to and occupied by low-income households.

(a) Low-income renter households are defined as households with incomes of fifty percent or less of the county median family income, adjusted for family size.

(b) Low-income owner households are defined as households with incomes of eighty percent or less of the county median family income, adjusted for family size.

(c) Adjustments to income levels: Counties and cities may, after holding a public hearing, establish lower or higher income levels based on findings that such higher income and corresponding affordability limits are needed to address local housing market. The higher income level may not exceed eighty percent of county median family income for rental housing or one hundred percent of median county family income for owner-occupied housing.

(5) Maximum rent or sales prices: Counties and cities must establish the maximum rent level or sales prices for each low-income housing unit developed under the terms of their affordable housing programs. Counties and cities may adjust these levels based on the average size of the household expected to occupy the unit. These levels may be adjusted over time with changes in median income and factors affecting the affordability of sales prices to low-income households.

(a) For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit.

(b) For owner-occupied housing units, affordable home prices should be based on conventional or FHA lending standards applicable to low-income first-time homebuyers.

(6) Types of units provided when a developer is using incentives to develop both market rate housing and affordable housing.

(a) Market-rate housing projects participating in the affordable housing incentive program should provide low-income units in a range of sizes comparable to those units that are available for other residents. To the extent practicable, the number of bedrooms in low-income units should be in the same proportion as the number of bedrooms in units within the entire development.

(b) The provision of units within the developments for which a bonus or incentive is provided is encouraged. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided.

(c) The low-income units should have substantially the same functionality as the other units in the development.

(7) Enforcement of conditions: Conditions may be enforced using covenants, options or other agreements executed and recorded by owners and developers of the affordable housing units. Affordable units developed under an incentive program should be committed to affordability for fifty years; however, a local government may accept payments in lieu of continuing affordability.

(8) Payment in lieu of providing units allowed. Counties and cities may also allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site. The payment must not exceed the approximate costs of developing the same number and quality of housing units that would otherwise be developed. The funds or property must be used to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

[Statutory Authority: RCW 36.70A.050, 36.70A.190. WSR 10-22-103, § 365-196-870, filed 11/2/10, effective 12/3/10.]