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Testimony of David Rusk
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to the City of Chicago City Council
Housing and Real Estate Committee
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Committee Chairman Suarez, Members of the Committee:

Thank you for the opportunity to submit testimony to the Committee on such important legislation for the City of Chicago, for the greater Chicago region, and for the nation. I regret that a prior commitment in Lansing, Michigan prevents my appearing in person today.

I am a former mayor of Albuquerque and New Mexico state legislator who for the past thirteen years has been a speaker and consultant on urban policy in over 100 metropolitan areas. I have appeared in the Chicago area many times. My local sponsors have been Chicago Metropolis 2020, the Civic Federation, the Commercial Club of Chicago, Evanston Chamber of Commerce, the Field Foundation, Gamaliel Foundation, Leadership Council for Metropolitan Open Communities, League of Women Voters, MacArthur Foundation, Metropolitan Alliance of Congregations, and Urban Land Institute - Chicago chapter.

On every occasion here (and most occasions elsewhere) I have championed inclusionary zoning (IZ) and have contributed to enactment of IZ laws in communities as diverse as Annapolis, Maryland and Madison, Wisconsin. Inclusionary zoning is the single most important policy that can be adopted by state and local governments because

- by engaging private, for-profit homebuilders in producing affordable housing in high-cost housing markets, inclusionary zoning makes a significant contribution to meeting the total need for workforce housing (“Anyone good enough to work here is good enough to live here”);

- by properly targeting the full range of modest- and low-income workers (from young teachers, police recruits, and new firefighters to nursing home aides, store cashiers, and parking lot attendants), inclusionary zoning reverses the growing segregation of urban America by income class (“Jim Crow by income is replacing Jim Crow by race”); and
- by creating mixed-income neighborhoods, inclusionary zoning can foster mixed-income neighborhood schools that raise the academic performance and aspirations of low-income children (“Housing policy *is* school policy”).

Over the past thirty years inclusionary zoning has been steadily growing. By my tabulations, over 135 cities and counties have enacted mandatory inclusionary zoning laws. Over 13 million people – five percent of the country’s population – live in communities where local governments mandate mixed-income housing development.

Local ordinances vary widely in their provisions:

- “trigger point” – inclusionary requirements apply at widely different project scales, ranging from the first unit built (over forty communities) to fifty or more units (Fairfax County & Loudoun County, VA, and Rockville, MD) with the most common practice being ten or more units;
- “set-aside” – the proportion of inclusionary units required in market-rate developments ranges from less than ten percent (nine communities) to 35 percent (Davis, CA); almost 100 IZ laws require set-asides of between 10 percent and 15 percent;
- “income ceilings” – maximum income to qualify for inclusionary units ranges from 30 % AMI (Area Median Income) to 120% AMI, but many communities apportion IZ units among different target groups; almost half of all IZ laws target some of the units to families at less than 50% AMI; and
- “density bonuses” – over 95% of all IZ laws automatically provide density bonuses as a major cost-reduction offset for builders as well as other cost offsets, such as reducing or waiving municipal development fees and expedited plan and building permit processing.

Let me share several lessons from experience.

First, don't buy into the argument that inclusionary zoning "interferes with the workings of the 'free market.'" There is no such "free market." I can hardly think of an industry more dependent on public policy and public investment than the homebuilding industry. I would imagine that the City of Chicago's own zoning and building codes (like zoning and building codes in most U.S. cities) consist of numerous regulations that protect the public health and safety and regulate how development will occur. In fact, in a moment of candor, the National Association of Home Builders states that "public policy dictates where development occurs."¹ The issue is not "rules vs. no-rules." The issue is "fair rules."

Second, regarding "fair rules." Balance both the community's need for more affordable housing and the homebuilding industry's legitimate expectations regarding profitability. Cost offsets are essential, such as the density bonuses I have mentioned. The best policies not only provide density bonuses sufficient to cover the inclusionary units but also to create additional market-rate units. With zero land cost involved in both bonus inclusionary and bonus market-rate units, this helps to make the former affordable and the latter very profitable.

I cannot personally assess the proposed ordinance in the context of the Chicago market; I haven't worked the numbers. However, also testifying before the Committee today will be Patrick Maier, executive director of the Innovative Housing Institute (of which I am a founding board member). Both as IHI leader and as long-time Director of Real Estate Operations for the Montgomery County, MD Housing Opportunities Commission, Mr. Maier has worked the numbers on inclusionary and other mixed-income developments involving thousands of inclusionary and market-rate units.

Third, stick by your commitment to be fair to the builders. Having promised density bonuses, the Planning Commission and the City Council must deliver. The best IZ policies are implemented automatically at the plan check or building permit desk (as Montgomery County, which has the USA's oldest and biggest IZ program, does).

Fourth, don't give away the store in advance without getting a community benefits agreement. Redevelopment in built-up communities like Chicago often involves major increases in density from what existed before. If a city upzones in advance of any inclusionary requirement, developers often treat the new zoning level as an "entitlement" and

¹ NAHB, *Smart Growth: Building Better Places to Live, Work, and Play* (1999), page 8.

subsequent IZ policies as an “exaction.” Make sure that your housing policies and your planning and zoning policies are working in tandem.

Fifth, don’t make just paying money rather than building the inclusionary housing either cheap or easy. The goal is not just building more affordable shelter. The goal is creating mixed-income neighborhoods and mixed-income neighborhood schools. There will be rare situations where a project cannot accommodate the inclusionary requirement and a payment-in-lieu-of is justified. Set up a mechanism where the builder has to make that case rigorously. Little is accomplished by just having money paid into a city affordable housing fund to build more affordable shelter on the “affordable housing side of town.”

Sixth, serve very-low income working families by having some units acquired by housing providers. Despite density bonuses and other cost offsets, builders face great difficulty building new housing that is affordable to the working poor. I applaud the proposed ordinance’s provision that housing providers can purchase up to one half of the units. That will assure that inclusionary zoning doesn’t just cream off the top of the affordable housing need.

Seventh, set the standard yourselves, then work with your suburbs for their own IZ laws. The new Illinois state law, the Affordable Housing Planning and Appeal Act, will be valuable encouragement. Nothing serves the long-term interests of the City of Chicago – and of the region – more than achieving economic diversity and balance everywhere in your region.

Eighth, don’t be suckered into passing a “voluntary” ordinance. “Voluntary” doesn’t produce units, only aggravation. The City Council will be back again in a few years with nothing accomplished and valuable opportunities lost.

Finally, don’t be buffalo-ed by threats from developers that “pass IZ and we’ll pull out and take our business elsewhere.” Neither I nor groups like the Non-Profit Housing Association of Northern California find any evidence that such a pullout has ever happened anywhere.

Chicago has become a great housing market. At the height of the 1990s boom, Chicago ranked right behind Las Vegas and Phoenix for number of residential building permits issued. You’ll be an even better market with a mandatory inclusionary zoning ordinance.

Thank you for the opportunity to share my experiences and perspectives with you.