



Development Action Group

Inclusionary Housing:

Research report on the Legal Aspects of inclusionary housing in South Africa

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The Development Action Group (DAG) is excited to announce its latest research publication on the legal aspects of inclusionary housing in South Africa. The research addresses some of the key legal questions or concerns that emerged from extensive consideration and debate on inclusionary housing as a land use planning mechanism aimed at restructuring the innate spatial inequality across the country's cities. Among the many challenges emerging from well over 15 years of explorative discussions was the lack of clarity on the legality of inclusionary housing under South African law.

The research report addresses two specific aspects of legality that have been identified, namely: (1) whether South African municipalities can require mandatory inclusionary housing conditions as part of proposed developments in existing development corridors and other areas where there are active urban land markets, and (2) whether South African municipalities can permit payments made by a developer as an alternative to providing inclusionary housing for a proposed development, also known as an "in-lieu fee" option.

The fundamental argument advanced in the publication is that "there is sufficient legal basis under South Africa's Constitution and legal land use regulatory framework to authorise municipally-imposed mandatory inclusionary housing requirements and, more tentatively, to provide for an in-lieu fee option". This position is based on the review of domestic and international laws and literature, as well as interviews with legal experts. The report also provides recommendations on several legislative and policymaking steps that could be taken at national and provincial levels to further reduce the legal uncertainty, as well as to facilitate the imposition of inclusionary housing provisions and in-lieu fees.

"The timing of the publication could not have been better, because, as you know, there is renewed interest and or pressure to develop inclusionary housing policy" said Adi Kumar the Executive Director at Development Action Group. The ongoing concerted efforts to develop inclusionary housing policy framework/ program by both local and provincial governments has been necessitated by the various provisions enshrined in the Spatial Planning and Land Use Management Act (SPLUMA). Prior to SPLUMA legislation, there was a general lack of direct land use planning legislative framework that would set the

basis for the municipalities to impose inclusionary housing as a condition of land use planning approval especially on private redevelopment projects.

As the inclusionary housing policy development process takes place within City of Cape Town and Western Cape Provincial Government (see [DRAFT WESTERN CAPE INCLUSIONARY HOUSING POLICY FRAMEWORK MAY 2021](#)), we hope this legal research publication will be a useful resource to all the stakeholders engaged in the policy development process. We also hope that the research findings are an important contribution towards improved understanding on the key conceptual issues and legal arguments underpinning the Inclusionary Housing Policy development process in South Africa.

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DAG is a leading non-profit, non-governmental organisation working throughout South Africa to fight poverty and inequality. DAG's mission is to support communities in achieving social, spatial, and economic justice. Its most significant objective is to strengthen the leadership capacity of civic organisations to interface and dialogue with a diverse range of government, private sector, and civil society actors to meet their basic needs.

DAG also influences state policy and practice through the following functional areas: research, capacity building, and the demonstration of best practices. DAG believes in a partnership-based approach to implement these core functional areas. The organisation is currently engaged with various partnerships focused on specific concrete interventions, namely housing, settlement upgrading, neighbourhood development and innovative finance to realise spatially just cities.