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Voluntary or Mandatory Inclusionary Housing? Production, Predictability, and Enforcement

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Inclusionary Housing: Mandatory vs. Voluntary – Which Path to Take?

In response to the nationwide affordable housing crisis, many local governments are turning to inclusionary zoning as an effective local tool for generating much needed affordable housing. In crafting an inclusionary housing program, every community faces a major decision: should the inclusionary housing program be mandatory or voluntary?

This decision raises questions common to any policy debate involving markets and governmental regulation. Is a mandate needed to produce affordable housing or are incentives sufficient to spur developers to create affordable homes and apartments? Can a community provide enough incentives (through density bonuses, flexible zoning standards, fee waivers, etc.) to entice developers to build affordable housing without a mandate? Will mandates for affordability and the production of affordable housing, even when coupled with generous cost offsets, chill market activity and exacerbate affordability problems by restricting supply? Mandatory or voluntary – which approach will produce more housing and more affordable housing for the preferred populations?

Every community will engage in its own political debate and evaluate its own legal authority to determine its position on mandates and incentives. However, experience with inclusionary housing, both recent and long-standing, provides a number of insights on this important policy decision. Overall, mandatory programs have produced more housing, produced more housing for lower-income populations; provided more predictability for developers and the community; and have not stifled or chilled development activity. As a result, more communities are choosing mandatory approaches. This article will explore this issue by examining program experience and studies from across the country.

Mandatory Programs Produce More Housing

On balance, experience and research indicate that mandatory, rather than voluntary inclusionary housing programs are more effective at generating a larger supply of affordable housing. A 1994 study by the California Coalition for Rural Housing (CCRH) found that “mandatory programs produce the most very-low- and low-income affordable units compared with voluntary programs, both in terms of absolute numbers and percentage of total development.”

A 2003 study by the CCRH and the Non-Profit Housing Association of Northern California found similar results. The fifteen most productive inclusionary housing programs in the state of California are mandatory programs. In fact, the report found that only 6% of the 107 communities in California that reported an inclusionary housing program stated that the program was voluntary. Two of those communities, Los Alamitos and Long Beach, “specifically blame the voluntary nature of their programs for stagnant production [of affordable housing] despite a market-rate boom.”

According to research compiled by the National Housing Conference, experience in Massachusetts shows that mandatory approaches are critical to the success of inclusionary zoning programs (Ziegler 2002; Herr 2002; Bobrowski 2002). In Cambridge, after ten years

of voluntary inclusionary zoning districts that failed to produce any affordable housing, a mandatory inclusionary housing ordinance was adopted in 1999 (Herzog and Jameson 2002). As of June 2004, the program has produced 135 affordable homes with 58 more in the development pipeline (Paden 2003). **[Picture from Newton, MA – Low-rise]**

Finally, experience from the Washington D.C. metropolitan area supports the same conclusion (Brown 2001). Four mandatory county-wide programs have worked effectively to create affordable housing in a mixed-income context in some of the nation's most affluent counties. In Montgomery County, Maryland, over 13,000 housing units have been produced over thirty years through a mandatory program requiring a 12.5% to 15% affordability component in large developments. **[Pictures from Montgomery County, MA – Claggett Farms – one market-rate mansion and one picture of two affordable units and one picture from Fairfax County, VA – ADU #9]**

Voluntary inclusionary housing programs can be successful. First, it should be recognized that, theoretically, with enough subsidy any voluntary program could work extremely well. Realistically, though, housing subsidies are scarce and getting scarcer. Nevertheless, voluntary programs can work quite well when they are implemented as if they are mandatory programs or when a community's broader planning policies (like mandated growth limitations) make the "voluntary" inclusionary housing component a highly attractive option.

Calavita and Grimes, for example, have attributed the success of the voluntary inclusionary zoning program in Irvine, California to an "unusually sophisticated" and "particularly gutsy" staff committed to making the program work (Calavita and Grimes 1998).

Similarly, in Chapel Hill, North Carolina, the voluntary 15% affordable housing program for developments that require a rezoning has been quite successful. The program is so rigorously marketed by town staff and the Town Council that no new residential developer, regardless of requiring a rezoning request, has approached the Planning Commission without at least a 15% affordable housing component or plans to pay a fee in lieu of building affordable units (Mason 2003). Planning staff in Chapel Hill explain that developers construe the inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component. Chapel Hill's voluntary program has produced 162 affordable homes since 2000 and has collected approximately \$178,000 in fees (Mason 2004).

Communities like Lexington, Massachusetts, have followed a similar approach to Chapel Hill, North Carolina, by adopting a firm policy related to affordability on all discretionary approvals. The community has succeeded in creating a significant amount of new affordable housing as a result (Jameson and Herzog 2002). For communities that lack the authority to implement a mandatory inclusionary zoning law, places like Irvine, Chapel Hill, and Lexington, provide good models for how to use a "voluntary" program to obtain good results.

In Morgan Hill, California, the community's policy on limiting growth has enabled the voluntary inclusionary housing program to succeed (California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California 2003). Developers gain a much better chance of obtaining one of the limited number of development permits each year if they include affordable housing in their proposed development. Under this kind of framework, a voluntary approach can ensure the production of a number of affordable units. However, even with an especially aggressive staff or broader policies (such as growth limitations) that make the inclusionary housing option more attractive than the alternative, voluntary approaches are not likely to produce as much affordable housing.

Serving Low-and Very-Low Income Households

In general, mandatory programs are better suited to produce housing that is affordable to low- and very-low-income households (households below 80% or 50% of the AMI). The fifteen most productive programs in California target low- and very-low-income populations at a much greater rate and at a deeper level than the 92 other programs in the state (California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California 2003). The mandatory programs in Montgomery County, Maryland and Fairfax County, Virginia have succeeded at producing affordable homes for extremely low-income households by allowing the local housing authority to purchase some of the newly created affordable units. **[Picture of Kensington Place in Montgomery County]**

Without a mandatory requirement, a community will have to provide an extremely high level of subsidy to entice developers to produce homes and apartments affordable to low- and very-low-income households. Voluntary inclusionary zoning programs that do succeed in generating affordable housing units for a range of low-income households must rely heavily on federal, state, and local subsidies in most cases.

For example, the City of Roseville, California, adopted an "Affordable Housing Goal" (AHG) program in 1988, which encourages developers to work with the city to voluntarily build affordable housing within residential developments. Since 1988, the program has produced 2,000 affordable units through significant federal, state, and local subsidies. However, \$233,708,554 in subsidies would be necessary to meet the city's goal of 5,944 affordable units by 2007—that is \$217,608,554 more in funding than the city is expected to capture between 2002 and 2007 (Roseville General Plan 2002). In the absence of expanded funding, it will be impossible for Roseville to meet its regional affordable housing goal through its voluntary program. With a mandatory inclusionary zoning program, *some* of these affordable homes could be produced through a combination of density bonuses, flexible zoning standards or other offsets, and the market adjustments and developer creativity that result from a mandate to produce affordable housing.

Predictability for Communities and Developers

Mandatory programs offer reliability and predictability to communities in their ability to generate results. Mandatory programs provide developers with predictability by setting uniform expectations and requirements and establishing a level playing field for all developers. Developers cannot price and value land appropriately and make informed investment decisions unless they know what the local community will allow them to build and what the local community will require from them. The worst thing a community can do if it wants to hamper housing production and constrict supply is to create an unpredictable development atmosphere.

Under voluntary programs or “ad hoc” inclusionary programs, a developer may not know what he or she will be allowed to build or what will be required of them until they enter into and complete the negotiated development process with the community. Development decisions are usually fraught with community politics and can be applied unfairly to different developers depending upon their political connections.

Under a mandatory inclusionary housing program, developers will always know what they must do. Hopefully, developers will also know, or have a fairly clear idea, of what “cost offsets” they will receive from the community when they build the affordable units. The highly-successful inclusionary zoning programs in Montgomery County, Maryland (over 13,000 affordable units produced) and Fairfax County, Virginia (over 2,300 affordable homes produced) provide two good examples of predictable, mandatory programs where developers know upfront what they are required to do and what offsets they will receive. Like any other kind of zoning regulation, a mandatory inclusionary housing program with clear “cost offsets” provides key players in the housing market with the information needed to make efficient decisions about allocation of resources.

As a case in point, developers in Irvine, California, recently lobbied the city council to change the city’s inclusionary housing ordinance from voluntary to mandatory enforcement due to the confusion and uncertainty developers experienced in the development process under a voluntary program (Curtis 2003).

Of course, mandatory programs can suffer from less predictability if the available “cost offsets” are uncertain and decided on a “case by case” basis. And, voluntary programs, if applied consistently and aggressively, can be made less arbitrary and unclear. On balance, however, mandatory programs are better suited to establish predictable results for both the local community and private market actors.

Arrested Development?

In addressing the need for *more* affordable housing, no one wants to implement a policy that will significantly depress or stifle the creation of more housing. The best available evidence indicates that mandatory inclusionary housing programs have not caused decreases in overall levels of housing production.

One recent study by economists at the Reason Public Policy Institute and entitled,

Housing Supply and Affordability: Do Affordable Housing Mandates Work?, claims that inclusionary zoning programs in the San Francisco Bay Area have led to a decline in housing production in those communities and thus contributed to rising housing prices overall (Powell and Stringham 2004). The study claims that an analysis of building permit data for 45 communities with inclusionary zoning in the San Francisco Bay Area shows that housing production declined in the “average city” the year after passage of the program. The study also claims that an analysis of building permit data for 33 communities with inclusionary zoning in the same region shows that less housing was produced in those cities in the seven years after passage of an inclusionary zoning ordinance than in the seven years prior to passage.

The study’s methodology exhibits a number of failings. I will focus on the two most crucial shortcomings. First, the study fails to include communities without inclusionary zoning in the analysis. Second, the study fails to account for or hold constant any other factors that could have had an effect on levels of housing production, such as the unemployment rate, interest rate levels, the presence of growth boundaries, a lack of available land, vacancy rates, etc. As a result of these two major failings (there are others as well), the study’s conclusion that inclusionary zoning is *the cause* or a *significant cause* of decreased housing production in these communities remains wholly unsupported. One cannot tell whether other factors independent of inclusionary zoning are causing a decline in housing production or whether development has also declined in communities without inclusionary zoning. Other authors have identified additional problems with the study which I will not address here.

A more diligent and reliable study of 28 California cities over 20 years by David Paul Rosen and Associates reaches the opposite conclusion (Rosen 2002). Like the Reason Public Policy Institute study, Rosen analyzes residential building permit data obtained from the Construction Industry Research Board. Unlike the authors from Reason Institute, Rosen takes the following steps:

- 1) Rosen includes communities *with* and *without* inclusionary zoning programs in his sample of 28 California cities;
- 2) Rosen includes communities from a variety of locations in California (Orange, San Diego, San Francisco, Los Angeles, and Sacramento counties) as opposed to just one region;
- 3) Rosen performs a regression analysis to determine the extent to which inclusionary zoning is impacting levels of production, and to what extent other variables independent of inclusionary zoning have an impact on levels of housing production. He measures the effect of indicators like the unemployment rate, changes in the prime rate, median price for new construction homes, the 30-year mortgage rate, and the 1986 Tax Reform Act on levels of housing production.

Rosen’s study concludes that the adoption of inclusionary zoning did not have a negative effect on overall levels of housing production. In fact, in a number of jurisdictions (including San Diego, Carlsbad, Irvine, Chula Vista, and Sacramento), he finds that levels of housing production have increased, in some cases quite significantly, after

passage of inclusionary housing programs. In only one community, Oceanside, did levels of housing production decrease after passage of an inclusionary housing ordinance. This drop in production was most likely caused by increasing unemployment and high rates of housing vacancy due in large part to the economic recession of the early 1990s and the Gulf War (Oceanside is near a military base). Overall, the study found that the level of housing production was most heavily affected by unemployment levels and the median price of new construction homes, as well as the 1986 Tax Reform Act.

Rosen’s findings are more consistent with the balance of available evidence on this issue nationwide. Planning officials and local monitors of the programs in San Diego, Sacramento, Boston, San Francisco, Denver, Chapel Hill, Cambridge, and Boulder all claim that they have not seen a decrease in development activity in their communities since they implemented inclusionary housing programs (Kiely 2003; Ojeda 2003; Mason 2004; Fretz-Brown 2004; LeClair 2004; Paden 2004; Pieropan 2004; Tinsky 2003; and Levin 2004). In addition, studies, analytical reports, and community and developer reaction to inclusionary housing programs nationwide indicate that mandatory inclusionary zoning programs in a wide variety of locations are not stifling development (Business and Professional People for the Public Interest 2003). **[Picture from Longmont, CO and Picture from Fairfax County, VA – ADU #4]**

Trending Mandatory

The current trend in inclusionary housing programs is toward the mandatory end of the implementation spectrum. A survey of available literature and existing programs around the country revealed only one situation where a community has switched from a mandatory to a voluntary program: Orange County, California. According to a report produced by the California Coalition for Rural Housing in 1994 this switch in enforcement led to a dramatic drop in the production of affordable housing. Today, according to staffers for Orange County, the county no longer has a formal inclusionary housing program. The county does attempt to negotiate for affordable housing units on the few remaining vacant parcels in the county that receive development proposals. Meanwhile, as the table below demonstrates, other communities nationwide have recently switched to a mandatory status in order to gain the benefits of additional affordable units and greater predictability.

A. Switching from Voluntary to Mandatory Inclusionary Zoning

Municipality or County	Reason for Change	Result
Cambridge, MA	10 years of voluntary inclusionary zoning districts failed to generate any affordable housing.	In 1999 Cambridge switched to a mandatory program. As of June 2004, this mandatory program has produced 135 housing units with 58 more in the pipeline.

Irvine, CA	Developers initiated a switch to a mandatory ordinance after over two decades of confusion and uncertainty under a voluntary program.	New mandatory ordinance (adopted in the spring of 2003) is a concise program with uniform expectations and rewards for developers. Together, as of June 2004, the mandatory and voluntary programs have created 3,400 affordable homes and apartments with 750 more in the pipeline. The program has also collected \$3.8 million in fees.
Pleasanton, CA	Voluntary ordinance proved ineffective at creating affordable housing in the face of increasing housing costs and decreasing availability of land.	Passed mandatory ordinance in late 2000. As of June 2004, the program had created 408 affordable units with 154 more in the pipeline. The program had also collected \$14 million in fees.
Boulder, CO	Throughout the 1980s and 1990s, the city's voluntary ordinance proved an ineffective tool to generate affordable housing.	Mandatory ordinance went into effect in 2000. As of June 2004, the program has generated approximately 300 units of housing and \$1.5 million in fees.

B. Switching from Mandatory to Voluntary Inclusionary Zoning

Municipality or County	Reason for Change	Result
Orange County, CA	Local political reasons	A decrease in the production of affordable housing units: the mandatory program produced 6,389 units of affordable housing in four years (1979-1983), while the voluntary program has produced just 952 units over eleven years (1983-1994).

Recent trend in large cities adopting mandatory ordinances

The five largest cities to adopt inclusionary zoning, Boston, Denver, Sacramento, San Diego, and San Francisco, all chose mandatory ordinances in the face of severe affordable housing shortages. This decision reflects both the perceived and documented effectiveness of requiring developers to set aside affordable units or pay a fee in lieu of building units on-site. Denver's mandatory ordinance is credited with the production of approximately 3,400 units of affordable housing (constructed or in the development pipeline) since the law was passed in 2002, further reinforcing the argument that mandatory programs are more productive.

Newly Adopted Programs in the Midwest Have Chosen a Mandatory Approach

Mandatory inclusionary zoning programs are no longer only appearing in the high-cost housing markets on the East and West coasts. In August 2003, the first inclusionary housing ordinance in the Midwest became law when the City of Highland Park, Illinois adopted a mandatory inclusionary zoning law requiring a 20% affordability component in any development with five or more units of housing. Madison, Wisconsin soon followed with a mandatory program in January 2004. The ordinance, effective in February 2004, requires developers of projects including ten or more units to price 15% of the units as affordable.

The Bottom Line

When it comes to inclusionary zoning, the path more often taken appears to be the more desirable path. The experience of municipalities and counties nationwide demonstrates that mandatory inclusionary zoning works as a practical and effective tool for generating affordable housing. While the success of voluntary programs is contingent on the availability of subsidies and aggressive staff implementation, mandatory programs have produced more affordable units overall, as well as more units for a wider range of income levels within the affordability spectrum – all without stifling development. Not only are more municipalities establishing mandatory inclusionary zoning programs, many municipalities with experience implementing voluntary ordinances are switching to mandatory ordinances. Their uniform and predictable nature, coupled with their documented success in producing more affordable units, has clearly made mandatory programs the better option for communities looking to address their need for affordable housing.

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