BUSINESS AND PROFESSIONAL PEOPLE FOR THE PUBLIC INTEREST

The Impact of Inclusionary Zoning on Development

By Nicholas Brunick

Summary

Inclusionary housing has become a popular tool nationwide for addressing the shortage of affordable housing.[1] Inclusionary zoning requires developers to reserve a certain percentage of new residential development as affordable to low-and moderate-income households. Most inclusionary zoning ordinances contain a threshold level for coverage (e.g. developments of 5 units or more or 10 units or more); categories for types of development covered (e.g. new construction, condo conversion, substantial rehabilitation); income targets for the population to be served (e.g. 80% of the Area Median Income); cost offsets and developer incentives (such as density bonuses, expedited permitting, flexible zoning, etc.); and in-lieu-of alternatives that allow a developer to pay a fee, build off-site, or rehab units in lieu of building affordable units within the covered development.

Hundreds of communities across the country now use some form of inclusionary zoning at the local level in order to address affordable housing needs. According to a recently completed survey and study, at least 107 inclusionary zoning programs exist in California as of March 2003.[2] In Massachusetts, there are 118 programs in which the local jurisdiction uses traditional inclusionary zoning or some sort of incentive zoning to create affordable housing.[3] 266 de facto inclusionary housing programs exist in New Jersey as a result of the *Mt. Laurel* litigation and the state's Fair Housing Act.[4] Two or three dozen more programs exist in cities and counties scattered around the country (with four alone in the Washington D.C. metro area and programs in local jurisdictions in a diverse mix of states such as North Carolina, New Mexico, Florida, Illinois, Vermont, and Colorado).[5]

The benefits[6] that inclusionary housing offers a community are multi-dimensional and include:

- **Strengthens Communities:** Inclusionary housing produces affordable homes and apartments for low- and moderate-wage workers and households: police officers, firefighters, and other public sector employees; seniors; young families; and social

[1] The terms "inclusionary housing" and "inclusionary zoning" will be used interchangeably throughout this policy brief referring to local programs that require or encourage developers to reserve some portion of the housing units in covered developments as affordable to low-and moderate-income households.

[2] California Coalition for Rural Housing and Non-Profit Housing Association of Northern California. 2003. *Inclusionary Housing in California: 30 Years of Innovation*. San Francisco, CA: California Coalition for Rural Housing and Non-Profit Housing Association of Northern California, p.7.

[3] Clark Ziegler. 2002. "Introduction," in *Inclusionary Housing: Lessons Learned in Massachusetts*. National Housing Conference (NHC) Affordable Housing Policy Review. Vol. 2, Issue 1. Washington, D.C.: National Housing Conference, p.1.

[4] The *Mt. Laurel* litigation ruled "exclusionary zoning" practices to be unconstitutional under the New Jersey State Constitution and provided a "builder's remedy" to developers wishing to build affordable housing. The legislatively-enacted Fair Housing Act creates an obligation on local governments to produce their "fair share" of affordable housing. Richard Tustian. 2000. "Inclusionary Zoning and Affordable Housing," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: The Center for Housing Policy, p. 23.

[5] Compiled from resources produced by the Innovative Housing Institute, PolicyLink, and Business and Professional People for the Public Interest. 2003.

[6] This is not meant to be an exhaustive list of benefits, but rather a list of the good results that many different communities and practitioners have identified about inclusionary housing.

service professionals and service sector workers such as day care instructors, home health care aides, and security guards.

- **Prompts Market-Driven, Fiscally Responsible Solutions:** Inclusionary housing harnesses the power of the marketplace to produce affordable homes and apartments without significant outlays of public subsidy. This preserves existing public revenues for other community needs, including housing programs to serve extremely low-income families who are unlikely to be the main beneficiaries of an inclusionary housing program.
- **Stimulates Economic Development:** Inclusionary housing aids economic development efforts by providing housing for the workforce (which helps to retain and attract new business investment) and by providing more disposable income for low- and moderate-income households by ensuring that they only have to spend 30% of their income for housing instead of 35-50% or more. This additional disposable income can provide economic stimulus as low- and moderate-income households spend that money on goods and services in the local economy.
- **Supports Smart Growth Principles and Protects Against Disinvestment:** Inclusionary housing contributes to smart growth and reinvestment in already-developed areas by making it possible to produce affordable housing in the urban core and not just on the suburban fringe.
- **Enhances Economic and Racial Integration:** Inclusionary housing promotes economic and racial integration which can lead to a host of positive social and economic outcomes such as improved schools, decreased crime, and reduced poverty, all of which have not only significant social benefits, but also significant fiscal benefits to city government.
- **Overcomes NIMBYism:** Inclusionary housing helps to demonstrate that affordable housing can be successfully mixed with market-rate housing, thereby helping to overcome longstanding stereotypes.
- **Offers Predictability and a Level Playing Field to Developers:** Inclusionary housing levels the playing field in the development community and provides some predictability in the development process. Every developer is subject to the same policy and procedures. The developer also often receives cost offsets and incentives for producing the affordable units. The developer knows "up front" what is required and what he or she will receive in return.

However, no policy tool is perfect or a panacea. One major criticism and concern about inclusionary zoning is that it will slow the pace of development. Slowing the pace of development can be a negative outcome for two major reasons:

1) It could further exacerbate the shortage of affordable housing. If less housing is being built or rehabbed and more people are chasing fewer homes, the price of housing will increase.

2) It could also harm a community's tax base and economic development as developers take their private investment elsewhere. The community would thus lose not only the developers' capital, but also the property tax revenue that comes from new homebuyers who move into the units built by developers.

This concern must be addressed by those considering inclusionary zoning programs. Does inclusionary zoning slow development?

In answering this question, it should be acknowledged that to date, not a great deal of empirical research exists on the subject. However, it is possible to draw reasonable inferences about the impact of inclusionary zoning from four sources:

1) Economic literature about the "theoretical" incidence of inclusionary zoning.
2) The results of inclusionary zoning ordinances in different communities around the country and the subsequent response by those local communities.
3) Studies examining the "pros and cons" of inclusionary zoning, based on real-world experiences.
4) The reaction of developers and other concerned constituencies to inclusionary zoning over time. That is to say, do developers in particular remain negative to inclusionary zoning after they have lived with it?

Based on information from these four sources, one can conclude that inclusionary zoning is unlikely to slow private, residential development, and in some cases, it may actually help to accelerate development. Of course, whether or not development will slow or rapidly increase in a specific community depends to a much larger degree on the strength of the local housing market, broader economic trends, and the specific provisions of the inclusionary program itself. As a general rule, larger market forces (interest rates, the unemployment rate, levels of aggregate demand, consumer confidence, overall economic growth rates, etc.) will determine whether development in any particular community will rise or fall; the presence or absence of inclusionary zoning is not the primary determinant.

The Theoretical Incidence

Basic economic theory suggests that an inclusionary set-aside, without providing cost offsets or incentives to cover the incremental cost of producing the affordable units, would cause developers to take one or some combination of the following four actions:

1) Raise prices on market-rate housing,
2) Develop less housing,
3) Reduce profits,
4) Negotiate to pay less for certain "inputs" into the development process (such as land).

Though universal agreement among scholars does not exist, most of the economic literature indicates that #4 above is most likely.[7] Developers will most likely incorporate the cost of the affordable homes or apartments into their projects ahead of time and bargain for a lower land

[7] See: Alan Mallach. 1984. *Inclusionary Housing Programs: Policies and Practices.* New Brunswick, NJ: Center for Urban Policy Research -- Rutgers University.; Dr. Robert W. Burchell and Catherine C. Galley. 2000. "Inclusionary Zoning: Pros and Cons," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: The Center for Housing Policy, p.7.; Nico Calavita and Kenneth Grimes. 1998. "Inclusionary Housing in California: The Experience of Two Decades." *Journal of the American Planning Association.* Vol. 64, No. 2, Spring. Chicago, IL: American Planning Association (APA), pp. 150-170.; Arthur O'Sullivan. 1996. *Urban Economics*. 3rd. Ed. Chicago IL: Irwin Publishers, p. 294.

price in order to profitably develop the housing. Thus, the theoretical incidence of an inclusionary zoning program (without sufficient cost offsets or incentives) over time, would be born by owners of land available for development purposes that fall within the threshold of the inclusionary housing requirement (e.g. 10 units or more). Of course, the level of “cost offsets” or incentives that a community chooses to include in its inclusionary housing program can ameliorate the level of moderation in land prices. With generous “cost offsets,” a developer may require no reduction in land prices.

This outcome is not surprising, given the fact that zoning does in large part determine the price of land.[8] Nor is this outcome necessarily inequitable. Because most inclusionary housing programs contain a unit “threshold” of 5, 10, or even 50 units, the incidence of the program would be born by landowners of vacant land of significant size, not single-family homeowners largely dependent upon the amount of equity in their homes for livelihood and retirement. Landowners of vacant land parcels large enough to require an affordable component (e.g. 10 units) might see a reduced rate of appreciation in the values of their land over time. However, this moderate reduction in a rising real estate market is not likely to deprive these owners of earning a still, very healthy return on their investment.[9] Furthermore, a moderate reduction in land costs is precisely what is needed to help improve affordability and enable developers to produce affordable homes in a rapidly escalating real estate environment.

While this analysis is based on economic theory, it should also be emphasized that most inclusionary housing programs around the country contain cost offsets and developer incentives.[10]

The Performance of Inclusionary Zoning Programs and Local Governmental Response

One way to determine whether an inclusionary housing program is in fact slowing development is to examine whether or not the program continues to produce affordable units. After all, under inclusionary zoning, if private residential activity slows, so does affordable housing production.[11]

A review of sample inclusionary communities indicates that a significant number of new affordable units continue to be produced. No evidence exists to indicate that development has slowed in these communities. Appendix A lists a number of programs across the country. It reveals how inclusionary zoning has worked in many different localities: from wealthy counties with large suburban populations to small, mid-sized, and more recently, large cities. In addition to new affordable housing, many of these programs have also generated significant levels of fee-in-lieu dollars that are designated to support additional affordable housing efforts in the community.

The record of affordable production in inclusionary communities is impressive (See Table 1 below). During a 30 year period in California, one-third of the more than 107 programs (some

[8] Calavita and Grimes, “Inclusionary Housing in California,” p. 152.
[9] Ibid.
[10] Ibid.
[11] This of course will not absolutely determine whether development has slowed or not, but it does provide some indication of whether development has slowed or stopped.

passed many years ago and others passed more recently) have produced over 34,000 affordable units.[12] In the Washington D.C. metro area, four county-level programs (passed in 1973, 1990, 1993, and 1991) have produced over 15,000 units over the past 30 years.[13] In New Jersey, "de facto" inclusionary housing programs exist in 250 of the state's 566 communities as a result of the *Mt. Laurel* litigation and the state's Fair Housing Act. Over 15,000 affordable units were directly produced under these programs from 1985 to 2000 at one-third of the cost of market-rate units ($75,000 per unit).[14]

Table 1: Affordable Housing Production Under Inclusionary Programs

Region/State	# of Programs	# of Affordable Units	Time Period
California	At least 107	Over 34,000 (from 1/3 of the 107 programs)	30 years
Washington, D.C. Metro Area	4 County-based programs	Over 15,000	30 years
New Jersey	250 "de facto" programs	15,000	15 years

A number of individual inclusionary programs are particularly noteworthy when it comes to affordable housing production. Montgomery County, Maryland, alone has produced over 11,500 affordable units since 1973 and has generated $477.4 million of private sector investment in affordable housing.[15] Fairfax County, Virginia, has produced 1,746 units since passage of its program in 1991 with another 254 units in the development pipeline. Irvine, California, has produced 3,415 units and Longmont, Colorado, despite a population of only 70,000 people, has produced 545 units since 1995 with 444 more units in the production or planning pipeline.

Larger cities have also produced impressive results with relatively new programs. Denver, Colorado, has 804 units in the development pipeline since passage of its program in 2002. San Francisco, California, has produced 90 affordable units since 2002 with approximately 800 more in the development pipeline. Successful new programs also exist in larger urban centers such as San Diego, Boston, and Sacramento, California.[16]

In fact, in many communities, development under inclusionary zoning has continued so robustly that it has led local officials to consider slowing development in the interest of protecting rural and open space. In Loudon County, Virginia, the nation's fourth fastest growing

[12] California Coalition for Rural Housing. *Inclusionary Housing in California: 30 Years of Innovation*., p. 7.
[13] The record of production comes from four programs: Montgomery County, MD; Fairfax County, VA; Loudon County, VA; and Prince George County's, MD. Prince George's County repealed its program in 1996, but the community of Rockdale, MD recently passed a new program bringing the total number of programs in the D.C. metro area back to four. Radhika K. Fox and Kalima Rose.. 2003. *Expanding Housing Opportunity in Washington, D.C.: The Case for Inclusionary Zoning.* A PolicyLink Report. Oakland, CA: Policy Link, p. 15.
[14] Tustian, "Inclusionary Zoning and Affordable Housing," p. 23.
[15] Phone Interview with Eric Larsen, August 2003.; Karen Destorel Brown. 2001. *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area.* Washington, D.C.: Brooking Institution, Center on Urban and Metropolitan Policy, p.14.
[16] Sacramento, CA (population 407,075) and Denver, CO (population 554,636) also qualify as "large cities" with inclusionary housing programs. Sacramento passed its program in 2000 and as of the summer of 2003, the program had produced 254 units, with hundreds more in the development pipeline. Denver passed its program in 2002 and as of the summer of 2003, 804 affordable units were already in the development pipeline. There is no evidence that development has slowed in either city as a result of the programs.

county, the decade-old inclusionary zoning program was recently amended because it was producing so much new construction that local officials were concerned about its effects on Loudon's shrinking amounts of rural countryside.[17]

Mini Case Study: Four Locations with Inclusionary Housing Programs, but Few Cost Offsets or Incentives for Developers.

The four inclusionary housing programs profiled below provide a closer look at this issue (See Table 2 below). Recent experience from three large cities --- San Diego, Boston, San Francisco --- and one smaller college town --- Chapel Hill, North Carolina, (population 48,000) --- suggests that inclusionary housing does not stifle development. In fact, they show that development under an inclusionary housing program can thrive without large cost offsets or developer incentives. These municipalities treat the affordability component as an integral part of the zoning code, no different from other zoning requirements such as minimum lot size, limited building height allowance, required setbacks, etc. This decision stems from a belief that a strong housing market and the ability to negotiate land prices negate the need for a municipality to provide significant cost offsets or incentives in order to subsidize affordable housing production.[18]

In Boston, Mayor Thomas Menino signed an Executive Order in 2000 that requires a 10% affordability component in any residential project of ten or more units, financed by or developed on property owned by the city of Boston or the Boston Redevelopment Authority (BRA) or where zoning relief is requested. The city may provide projects located in the financial district with a height bonus; otherwise, no cost offsets are provided to covered developments.

The city of San Francisco recently established a mandatory citywide inclusionary housing program which requires a 10% set-aside in projects of ten or more units. Unlike most inclusionary zoning programs in the nation, San Francisco does not supply significant incentives such as a density bonus or flexible zoning. San Francisco does provide refunds on environmental review and building permit fees for the portion of the development that is affordable.

In 2003, after a decade of success with a localized mandatory inclusionary zoning program requiring a 20% set-aside, the city of San Diego enacted a citywide ordinance requiring a 10% affordable housing component in all projects of ten or more units. The program contains no "cost offsets" or incentives for developers.

The town of Chapel Hill recently ceased waiving its development application fees, previously offered as a cost offset under the town's voluntary inclusionary zoning policy. Its policy calls for a 15% set-aside in all developments of five or more units.[19]

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[17] Brown. *Expanding Affordable Housing.*, p. 9.
[18] Calavita and Grimes. "Inclusionary Housing in California," pp. 152.
[19] The city's program, though officially voluntary, is implemented by city staff very aggressively, as if it were mandatory. Phone Interview of Phil Mason, Town of Chapel Hill Senior Planner, June 2003.

Table 2: Production Under Programs with Few or No Cost Offsets

City and Year Passed	% Set Aside	Cost Offsets	# of Units	Effect on Level of Market-Rate Development
Boston, MA (2000)	10%	Height bonus in financial district only	200 units with more in the development pipeline	No effect – can now meet market *and* affordable production goals
San Francisco, CA (1992, expanded in 2002)	10%	Refunds on environmental review and building permit fees for affordable units only	128 units from 1992-2002; 90 since 2002 with 745 more in the pipeline	Market-rate development *has increased*
San Diego, CA (1992, expanded in 2003)	20% in FUA; 10% elsewhere	No offsets in either program	1,200 units from1992-2003 from the FUA. 1,200 more anticipated from new citywide ordinance	No effect
Chapel Hill, NC	15%	No offsets	154 units between 2000 and 2002	No effect

City planners in all four locations recently analyzed development trends before and after the adoption of inclusionary housing programs and found no decrease in overall development. According to Meg Kiely, Deputy Director of Community Development and Housing at the Boston Redevelopment Authority, inclusionary zoning has not negatively affected the pace of housing construction in the city. Thanks to its new policy, Boston can now meet both its market-rate *and* affordable housing production goals.[20]

According to Theresa Ojeda, a city planner for the city of San Francisco, there was no slowdown in permit and planning approval after the inclusionary zoning program was expanded in 2002 to cover all developments over ten units. In fact, there was an increase in development due to prime market conditions in the city[21] According to San Diego senior city planner Bill Levin, development did not slow after passage of inclusionary zoning in 1992 for the North City Future Urbanizing Area (FUA).22 In fact, the success of the FUA ordinance led to the adoption of a citywide mandatory inclusionary zoning law in San Diego in 2003. In Chapel Hill, the city no longer views inclusionary zoning as a policy necessitating a town subsidy in the form of a fee waiver.[23] Thus far, the lack of incentives has not discouraged development in Chapel Hill.[24]

While they may not be required, strong policy, political, and legal reasons exist for including real and substantial "cost offsets" or "incentives" for developers in any inclusionary housing program. As a matter of policy, such incentives can ensure that the burden of producing affordable housing is

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[20]Meg Kiely. "Boston's Policy Gives Developers Choice," In: Inclusionary Zoning: Lessons Learned from Massachusetts, NHC Affordable Housing Policy Review, January, 2002; Interview of Meg Kiely, Deputy Director of Community Development and Housing at the Boston Redevelopment Authority, August 2003.

[21] Phone Interview of Theresa Ojeda, San Francisco City Planner, July, 2003.

[22] Phone Interview of Bill Levin, San Diego Senior Planner, August, 2003.

[23] Phone Interview of Phil Mason, Town of Chapel Hill Senior Planner, June 2003.

[24] Ibid.

shared equally by the entire community. Politically, the presence of cost offsets can help to win broader support for an inclusionary housing program. Legally, the inclusion of cost offsets can help to ensure that an inclusionary zoning program will not be judged unconstitutional.[25]

Reaction by Governmental Jurisdictions to Inclusionary Housing Programs

Hundreds of inclusionary housing programs now exist around the country. More and more communities are newly adopting this policy tool; many communities are strengthening programs they already have; and virtually no communities have repealed programs after adoption.

Despite hundreds of programs over the past thirty years, BPI research uncovered only two communities where inclusionary housing programs have been repealed. In one of those communities, Fairfax County, Virginia, the program was invalidated by the courts in the early 1970s, in part because the program lacked any cost offsets for developers.[26] However, in 1991, Fairfax County, Virginia, passed a mandatory ordinance with cost offsets that has seen strong and successful production. The other community, Prince George's County, Maryland, had a successful inclusionary zoning ordinance from 1991 to 1996 that produced 1,600 units in just five years without stunting development.[27] However, county officials repealed the program in 1996 because they felt that the county already had its "fair share" of affordable housing for the D.C. metro area.[28]

Many more communities are now adopting inclusionary housing, seeing it as a viable way to address the affordable housing crisis in a world of shrinking federal and state housing subsidies. Between 1994 and 2003, at least 43 communities in the state of California adopted inclusionary housing programs.[29] Since 1990, three communities in Colorado, one in New Mexico, two in Florida, one in Vermont, and one community in Illinois (the first ever in the state) have adopted mandatory inclusionary zoning laws.

A number of jurisdictions are expanding the existing programs and strengthening them from voluntary to mandatory programs. Cambridge, Massachusetts; Irvine, California; Pleasanton, California; and Boulder, Colorado, all recently made the switch and have experienced a significant increase in the production of affordable housing as a result.[30]

Broad Studies of Inclusionary Zoning and Feasibility Studies from Specific Cities

In considering the impact of inclusionary housing on development, a number of surveys and studies also exist that all lead to a similar conclusion: inclusionary zoning does not dampen or

[25] This is not to say that inclusionary housing programs without cost offsets do not meet constitutional muster, just that one's legal defense of a program is enhanced with prudent cost offsets.

[26] See: *Board of Supervisors of Fairfax County v. Degroff Enterprises, Inc.* 198 S.E.2d 600 (VA 1973). Business and Professional People for the Public Interest (BPI). 2003. *Opening the Door to Inclusionary Housing*. Chicago, IL: Business and Professional People for the Public Interest, p. 56.

[27] Brown, *Expanding Affordable Housing*, p.11; Fox and Rose, *Expanding Housing Opportunity in Washington D.C.*, p.15.

[28] Ibid.

[29] California Coalition for Rural Housing et. Al., *Inclusionary Housing in California*, p.2.

[30] See: Business and Professional People for the Public Interest. November, 2003. *Voluntary or Mandatory Inclusionary Housing? Production, Predictability, and Enforcement*. Chicago, IL: Business and Professional People for the Public Interest.

stifle development.[31]

No Negative Impact in California

A study by David Paul Rosen and Associates examining the effect of inclusionary housing programs on the pace of development in 28 California cities over a 20-year period provides the best available example of a comprehensive study addressing the question of whether inclusionary housing dampens or slows development.[32] The study examined new construction residential building permit data for 28 cities in Orange, San Diego, San Francisco, Los Angeles, and Sacramento counties – including jurisdictions with and without inclusionary zoning. The study also examined the effect of variables independent of inclusionary housing for their impact on housing production (including changes in the prime rate, median price for new construction homes, 30-year mortgage rate, unemployment levels, and the 1986 Tax Reform Act).

Results showed that inclusionary housing programs 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), housing production increased, in some cases quite dramatically.[33] In only one community, Oceanside, did housing production fall after passage of inclusionary zoning, but this drop in production was most likely due to increasing unemployment and increasing rates of housing vacancy.[34] The study also concluded that housing production was heavily affected by unemployment levels (in general, as the unemployment rate rises, housing production falls and vice versa) and the median price of new construction homes (as median home prices rise, housing production rises and as median home prices fall, housing production falls).

A 2003 study by the California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California comes to the same conclusion.[35] It examines 107 inclusionary zoning programs across the state of California and fails to uncover any evidence that inclusionary zoning has or is slowing or dampening development. It states:

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[31] California Coalition for Rural Housing. 1994. *Creating Affordable Communities: Inclusionary Housing Programs in California*. Sacramento, CA: California Coalition for Rural Housing.; Center for Housing Policy. 2000. *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: Center for Housing Policy.; National Housing Conference (NHC). 2002. *Inclusionary Zoning: Lessons Learned from Massachusetts*, NHC Affordable Housing Policy Review, Vol. 2, Issue 1. Washington, D.C.: National Housing Conference.; David Paul Rosen and Associates. 2002. City of *Los Angeles Inclusionary Housing Study: Final Report*. Los Angeles, CA: Prepared by David Paul Rosen and Associates for the Los Angeles Housing Department.; Nico Calavita, Kenneth Grimes, and Alan Mallach. 1997. "Inclusionary Housing in California and New Jersey: A Comparative Analysis." *Housing Policy Debate*. Vol. 8, Issue 1. Washington, D.C.: Fannie Mae Foundation. P. 122.; Marc Brown and Ann Harrington. 1991. "The Case for Inclusionary Zoning," *Land Use Forum* 1(1): 23-24.; San Diego Housing Commission. 1992. *Inclusionary Housing Analysis: Balancing Affordability and Regulatory Reform.* Report to the Deputy City Manager. San Diego, California.; Brown, *Expanding Affordable Housing Through Inclusionary Zoning*.; Calavita and Grimes. "Inclusionary Housing in California" 150-170.; California Coalition for Rural Housing et. al. *Inclusionary Housing in California: 30 Years of Innovation*.; Fox and Rose. *Expanding Housing Opportunity in Washington, D.C*. pp. 15-16.

[32] See: David Paul Rosen and Associates. 2002. *Los Angeles Inclusionary Housing Study*, pp. 49-57.

[33] Ibid., pp. 49-53.

[34] Ibid.

[35] California Coalition for Rural Housing et al. *Inclusionary Housing in California.*

"….the market arguments that inclusionary policies will stifle construction or dramatically increase market-rate real estate prices have yet gone unproved. During the 1990s, construction rates and permit valuations remained steady or rose in inclusionary jurisdictions, as they did statewide. Anecdotal reports confirm that developers continue to build and that more newly constructed units are affordable as a result of local inclusionary programs."[36]

In fact, the survey also demonstrates that programs that target the affordable units to a lower income target (e.g. 80% of the AMI instead of 100% of the AMI) do not discourage development.[37] Two other studies examining the performance of inclusionary zoning in the state of California, one from 1994 and the other from 1998, also suggest that inclusionary zoning has produced significant numbers of affordable units without evidence of a decline in overall production.[38]

National Reports Indicate No Negative Effect on Development

Three national reports arrive at similar conclusions. Two reports examining inclusionary housing in the D.C. metro area indicate that levels of housing production have remained strong under inclusionary zoning programs.[39] A recent 2003 report by PolicyLink, entitled *Expanding Housing Opportunity in Washington D.C.*, examines the pros and cons of inclusionary zoning in general and its record of performance specifically in the Washington D.C. metro area. On the issue of whether inclusionary zoning slows development, the PolicyLink report offers the following:

"While research on this question shows that housing production has not declined in jurisdictions with inclusionary zoning, no studies have undertaken a comprehensive analysis of changes in developer profit once IZ [inclusionary zoning] is adopted."[40]

Another study on inclusionary zoning in the Washington D.C. metro area, entitled *Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area*, examines the performance of four inclusionary zoning programs in the D.C. metro area.[41] It finds that these programs have successfully produced significant numbers of new affordable housing.[42]

While the report indicates that in Montgomery County, Maryland, the development of high-rise rental buildings may have been limited by a lack of sufficient and appropriate cost offsets (no density bonuses were offered in central business districts), it is important to note that despite this specific difficulty, no evidence exists that overall housing production has suffered as a result of inclusionary zoning.

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[36] Ibid., p.20.
[37] Ibid., p.22.
[38] California Coalition for Rural Housing, *Creating Affordable Communities*.; Calavita and Grimes. "Inclusionary Housing in California", pp. 150-170.
[39] Fox and Rose. *Expanding Housing Opportunity in Washington, D.C*. pp. 15-16.; Brown, *Expanding Affordable Housing*, p. 13.
[40] Ibid.
[41] Montgomery County, MD; Fairfax County, VA; Loudon County, VA; Prince George's County, MD.
[42] Brown, *Expanding Affordable Housing*, p. 13.

Additionally, a Center for Housing Policy report examining the advantages and disadvantages of inclusionary zoning does not identify any municipalities where inclusionary zoning has led to a decrease in development or in the tax base.[43]

Feasibility Studies

Finally, a handful of feasibility studies from individual cities exist (e.g. San Diego and Salinas, California) that indicate that local offsets and/or hot housing markets can sufficiently address the "profitability gap" faced by developers under an inclusionary zoning program.[44]

Two such San Diego feasibility studies exist. Analysis by a citywide task force in the 1990s concluded that inclusionary housing could operate successfully in San Diego if the appropriate incentives were included.[45] In 2000, the San Diego Plan Commission created a working group to consider a citywide inclusionary zoning law. Developers were initially opposed to the idea, but a detailed economic analysis produced by the city helped convince developers that such a program was in fact feasible.[46]

Bay Area Economics (BAE) completed a study for Salinas, California.[47] After establishing the need for affordable housing, it analyzed a series of "baseline pro formas" for five housing types: standard single-family, small lot single-family, townhomes, condominiums, and multifamily rental.

The authors then analyzed the feasibility of these five project types without cost offsets and under a variety of affordable housing set-aside requirements (from 15-40%). A project was deemed "feasible" if it could sustain a 10% profit for the private developer.[48] The study determined that a 20% affordable housing set-aside program serving households at or below 80% of the AMI (low-income households) was feasible on all four of the "for-sale" project types. At the 25% set-aside level, the standard lot single-family program was no longer viable, but the other three "for-sale" project types were. On the rental side, a multifamily rental project was feasible at the 15% set-aside requirement when serving households at or below 80% of the AMI (low-income households). In order to be feasible at a 10% profit margin while producing units affordable to households at or below 50% of the AMI (very-low-income households), the percentage set-aside had to be lowered to 12%.

With developer incentives included in the program, the authors surmised that the city could make the inclusionary requirement even more feasible. The study found that up to a 40% inclusionary

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[43] Center for Housing Policy. *Inclusionary Zoning*.

[44] Calavita et. al. "Inclusionary Housing in California and New Jersey." p. 122.; Brown and Harrington. 1991. "The Case for Inclusionary Zoning," pp. 23-24.; San Diego Housing Commission. *Inclusionary Housing Analysis*.; Fox and Rose. *Expanding Housing Opportunity in Washington, D.C*. pp. 15-16.

[45] Calavita et. al. "Inclusionary Housing in California and New Jersey." P. 122, see FN 4.

[46] Phone Interview of Susan Tinsky, Chief Policy Officer Advisor for the City of San Diego Housing Commission, August 2003.

[47] See: Bay Area Economics. 2003. *City of Salinas Inclusionary Housing Program Feasibility Study*. Berkeley, CA: Bay Area Economics.

[48] The authors identified this 10% profit baseline as a "conservative threshold," stating that many developers often use an 8% profit margin to determine feasibility. Ibid, p. vii.

requirement could be cost-feasible for owner-occupied and rental units when supported by a density bonus.[49] The authors recommended other cost-saving incentives, including a reduction in the affordable set-aside requirement for a developer who provides some portion of affordable units with more bedrooms, and reduced parking and street width requirements.[50]

Reaction of Developers and Realtors to Inclusionary Housing Over Time

In general, opposition to inclusionary zoning initially surfaces from developers and realtors, who perceive it as a danger to their economic well-being and an unjustified intrusion on free enterprise. However, over time, in many locations, these "opponents" have eventually become supporters, and in a number of cases, outright advocates of inclusionary zoning.

In the Washington D.C. metro area, where four[51] separate inclusionary housing programs operate, a number of developers and realtors have expressed support and affirmed their ability to profitably build affordable housing.[52] Tony Natelli, Chairman of Natelli Communities, has served as an advisor to community and civic groups working to create inclusionary housing programs in Maryland and Virginia. He convincingly attests to the fact that it is possible to produce housing (both affordable and market) under inclusionary zoning and still make a profit.[53]

In Massachusetts, where a number of inclusionary housing programs exist in the Boston suburbs, individual developers, homebuilders and realtors have all expressed support for inclusionary housing programs.[54] In fact, the Massachusetts Homebuilders have publicly supported the adoption of inclusionary housing programs by local jurisdictions, provided that such programs include sufficient "cost offsets" such as density bonuses.[55] Robert Engler, a developer and consultant to developers in Massachusetts, has been an active proponent of inclusionary housing, writing articles and speaking publicly about how inclusionary housing can work to serve both the needs of developers and the local community.[56]

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[49] See: Bay Area Economics. 2003. *City of Salinas Inclusionary Housing Program Feasibility Study*. Berkeley, CA: Bay Area Economic, p.40.

[50] Ibid.

[51] Rockville, MD recently passed an inclusionary zoning law. They join Montgomery County, MD, Loudon County, VA, and Fairfax County, VA. Prince George's County repealed its ordinance in 1996.

[52] See: Center for Housing Policy. 2000. "Inclusionary Zoning: The Developers' Perspective," in *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: Center for Housing Policy, pp. 30-32. -- Richard Dubin, President of The Dubin Company and David Flanagan, Principal and President of Elm Street Development, Inc. speak about how they have developed successfully under inclusionary housing programs.; Phone Interview with Bernard Tetreault, former Executive Director of the Housing Authority of Montgomery County (MD) and the Housing Opportunities Commission and President and Founder of the Innovative Housing Institute. March 2003.

[53] Phone Interview with Bernard Tetreault, March 2003; Comments by Tom Doerr, Senior Associate of the Innovative Housing Institute, during a panel discussion on problem-solving for inclusionary zoning at "Creating Mixed Income Communities through Inclusionary Zoning" Innovative Housing Institute Conference. Bethesda, Maryland: October 10, 2003.

[54] Interview with Ben Fierro, Counsel for the Homebuilders Association of Massachusetts. Boston, MA: October 3, 2003.; Presentation by Robert Engler, BPI Common Interest Luncheon, Palmer House Hilton, Chicago, IL: September 17, 2002.

[55] Interview with Ben Fierro, Counsel for the Homebuilders Association of Massachusetts. Boston, MA: October 3, 2003

[56] Robert Engler. 2002. "An Inclusionary Housing Case Study: Newton, Massachusetts," *Inclusionary Zoning:*

In California, developers have supported various inclusionary housing programs. In Irvine, developers recently lobbied the city council to convert its inclusionary zoning program from voluntary to mandatory. According to Irvine senior planner, Barry Curtis, developers initiated the change in response to the confusion and uncertainty of the voluntary program.[57] What is instructive here is that the developers did not lobby for repeal of the program; they lobbied to strengthen it.

The case should not be overstated. Many developers and homebuilders remain skeptical.[58] Some developers, realtors, and homebuilders remain steadfastly opposed to inclusionary housing as an unwanted mandate and undesirable solution to the affordable housing crisis.[59] However, even in their criticism, developers and realtors tend to focus on the burden of inclusionary zoning and its inability to solve the affordability crisis. On the whole, they do not argue that inclusionary zoning has slowed development.[60] The fact remains that many developers, homebuilders, and realtors in locations with inclusionary zoning have become supportive after doing business under an inclusionary housing program. Their support for inclusionary zoning suggests that the pace of development does not have to suffer under such a program.

Why Doesn't Inclusionary Housing Stop Development?

The available evidence, both theoretical and empirical, indicates that inclusionary zoning does not impair development. Why is this the case? How can an inclusionary housing program impose the additional cost of producing affordable units without creating negative impacts? Who pays the bill for inclusionary housing?

Cost Offsets

In some cases, cost offsets help pay the bill. Many inclusionary zoning ordinances do not have a negative effect on development because they provide incentives to developers that help defray the cost of building affordable units.

Lessons Learned in Massachusetts. NHC Affordable Housing Policy Review. Vol. 2, Issue 1. Washington, D.C.: National Housing Conference, pp. 18-22.; Presentation by Robert Engler, BPI Common Interest Luncheon, September 17, 2002.

[57] Interview of Barry Curtis, Irvine Senior Planner, June 2003. The City of Irvine offers developers both financial and processing incentives, which include modifications for setbacks or building heights, fee waivers, density bonuses, and expedited permit processing. Chapter 2-3, Section 6, "Role of Financial and Processing Incentives," Affordable Housing Implementation Procedure for the City of Irvine.

[58] Kent Conine. 2000. "Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? A Home Builder's Policy View on Inclusionary Zoning." In *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?* New Century Housing, Vol. 1, Issue 2. Washington, D.C.: Center for Housing Policy, pp. 30-33. Also found in: Institute for Local Self Government. 2003. *The California Inclusionary Housing Reader* Sacramento, CA: Institute for Local Self Government, pp. 33-36.

[59] See: Michael D. Pattinson. 2001. "Inclusionary Zoning in California: If Everything is So Good, Why Does It Feel So Bad?" California Building Industry Association (CBIA). Available Online: http://www.cbia.org/featur4e.asp?siid=113. Accessed: 12-1-03.; Brian W. Blaesser and Janet R. Stearns. 2002. "The Inclusionary Housing Debate: Who Really Pays for Affordable Housing?" *On Common Ground* Winter, pp. 34-39.

[60] Ibid.

Cost offsets found in inclusionary zoning ordinances across the country include, but are not limited to: increased zoning allowances (density bonuses, increased FARs, etc.), relaxed development standards (reduced parking requirements), fee waivers, subsidies, and expedited permit and/or approval processes.

Hot Markets and Desirable Development Locales Offset the Cost of Development

In some cities, only minimal cost offsets are provided, and sometimes, none at all. Nevertheless, the best available evidence indicates that development has not slowed in these communities such as Boston, Chapel Hill, North Carolina, San Diego, and San Francisco.[61] In these locations, it is most likely that some combination of modest market-rate increases, reduced developer profit margins, or reduced land prices are offsetting the cost of the affordable units. As indicated, the economic literature suggests that the most likely scenario is a moderation in land prices over time. With a hot housing market, developers view the inclusionary housing requirement as a cost of doing business in a desirable location (not unlike requirements such as "all brick" construction, green roofs, open space dedications, limitations on FAR, height, bulk, etc.).

Certainty, Predictability, and a Level Playing Field

An inclusionary zoning ordinance provides the added benefits of certainty, predictability, and a level playing field for developers. These advantages can improve the climate for developers even as a new requirement is imposed upon them.

In many communities, developers face high levels of uncertainty and unpredictability when proposing residential development. In many cases, the shape and form of an allowed development will change based on community pressure or political expediency. Under a mandatory inclusionary housing program, the developer will be required to reserve a certain portion of the units as affordable. At the same time, a developer often receives a guarantee of certain "cost offsets" that can be quite lucrative. In Montgomery County, Maryland, for example, a developer receives a 17-22% density bonus based on the percentage of affordable housing included in the development (12.5-15%).[62] So, under an inclusionary housing program, the developer knows what is expected, what will be offered, and that the rules apply equally to all competitors. In this environment, it is much easier to take risks and conduct business.

In addition, the developer gains a level playing field. In some communities, the local government may require affordable housing units from some developers while not requiring those units from others. This puts some developers at a competitive disadvantage and creates the opportunity for abuse as politically connected developers avoid the mandate to provide affordable housing while others do not. Under a mandatory inclusionary zoning program with universal application to all developments of a certain size, all developers confront the same standards and requirements. They always know where they stand and can deal with the situation more effectively as a result.

[61] Planning officials in these communities feel fairly confident that the strong local housing market allows developers to absorb the cost of producing the affordable units while still making a healthy return on investment. Phone interview of Therea Ojeda, San Francisco City Planner, July 2003.; Phone interview of Bill Levin, San Diego Senior Planner, August 2003.; Phone interview of Phil Mason, Town of Chapel Hill Senior Planner, June 2003.

[62] See Section 25A-5 of the Montgomery County, MD inclusionary zoning ordinance.

Additional Benefits

Developers often realize other benefits as well. Developers sometimes find that inclusionary programs allow them to develop more housing for a broader market than without it. The density bonuses, cost offsets, and the moderation in land prices that may come with inclusionary zoning can provide developers with the ability to produce housing that they otherwise could not build.[63]

Second, developers sometimes find that the affordable homes and apartments that they are required to build are a benefit to them because of the consistently high demand for such units. Inclusionary zoning thus helps to sustain developers through hard times. In Montgomery County, Maryland, over the thirty-year existence of the program, developers have found the Moderately-Priced Dwelling Units (MPDUs) (the affordable units) to be quite an asset because they always sell-out or rent-up quickly and help to sustain developers during slower economic times.[64]

Inclusionary Housing Does Not Stop Development

Without a long line of studies specifically examining this issue, one must look to the best available evidence. Market theory indicates that developers are unlikely to stop developing residential housing under an inclusionary zoning law because they will either take advantage of "cost offsets" offered by the local community and/or bargain for a lower land price before developing housing with the required affordable component. This theory is supported by: the experience of a wide diversity of communities with inclusionary housing programs over time, broad studies examining the issue, and the reaction of developers and realtors in locations where inclusionary housing has been implemented.

Programs in diverse locations around the country, with and without generous cost offsets and incentives for developers, have produced significant amounts of affordable housing without any evidence of a negative impact on housing production. Studies examining inclusionary zoning programs in California, the D.C. metro area, and the nation at large indicate no negative impact on development. In fact, there is some evidence from California and the D.C. metro area that inclusionary housing has helped to accelerate levels of housing production. Finally, the positive reaction of many developers, homebuilders, and realtors to inclusionary housing programs suggests that far from killing development, inclusionary housing programs may enhance development opportunities.

The best available evidence indicates that inclusionary housing does not slow development. Larger market forces will determine whether the residential real estate market will be robust or not. Inclusionary zoning will ensure that as development occurs, more households of moderate and low incomes will be able to find housing and live in the communities where they work.

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[63] Interview with Ben Fierro, Counsel for the Homebuilders Association of Massachusetts. Boston, MA: October 3, 2003.

[64] Comments by Eric Larsen, Administrator of the Montgomery County, Maryland MPDU program and John Clarke, Vice President for Elm St. Development, Inc. which develops regularly under the MPDU program in Montgomery County, "Creating Mixed Income Communities through Inclusionary Zoning" Innovative Housing Institute conference. Bethesda, Maryland: October 10, 2003.

Appendix I: Communities with Inclusionary Housing Programs

	Affordable Units Produced	Set-aside Requirement	Density Bonus	Other Developer Incentives
Boston, Massachusetts (2000)	200	10% of on-site units	None	Increased height and FAR allowances (in the financial district only)
Burlington, Vermont (1990)	150 units completed since 1990	0-25% sliding set-aside	15%-25% density bonus available	None
Boulder, Colorado (1999)	150	20% low-income in for-sale and rental developments	None	Waiver of development excise taxes
Cambridge, Massachusetts (1999)	131	15%	30%	Increased FAR, decreased min. lot area requirement, no variances needed for affordable units
Chapel Hill, North Carolina (2000)	154 units completed between 2000 and 2002	15% set-aside	None	Expedited permit and approval processing
Davidson, North Carolina (2002)	230 units approved since 2002	12.5% for all new developments (with a few exceptions)	None	None
Davis, California (1990)	1502	25% in for-sale developments 25-35% in rental developments	One-for-one in for-sale developments 15% in rental developments	Relaxed development standards
Denver, Colorado (2002)	804 anticipated	10% for-sale at 80% AMI or below. 10% rental at 65% AMI or below	10%	Cash subsidy, reduced parking requirements, expedited review process
Fairfax County, Virginia (1991)	1746 produced 2000 total anticipated	Sliding scale requirement-- cannot exceed 12.5% for single family developments; 6.25% for multi-family	20% for single family units 10% for multi-family units	None
Highland Park, Illinois (2003)	Ordinance Adopted August 26, 2003	20% set-aside	1-for-1(PUDs can receive up to 1.5-for-1)	Fee waivers (ex. impact, demolition, utility connection fees)

	Affordable Units Produced	Set-aside Requirement	Density Bonus	Other Developer Incentives
Irvine, California (1978)	3415	Mandatory; 15% of all units	25%	None currently offered
Longmont, Colorado (1995)	545 of 989 anticipated	10% of all units in annexation areas	Yes	Relaxed regulatory requirements
Montgomery County, Maryland (1974)	Over 11,500	12.5-15% of all units Of these, PHA may purchase 33%, and qualified not-for-profits may purchase 7%	Up to 22%	Waiver of water, sewer charge and impact fees. Offer 10% compatibility allowance and other incentives
Pleasanton, California (adopted mandatory ordinance in 2002 but has had voluntary inclusionary policies since the late 1970s)	300 units between 1997 and 2001 under city's voluntary policy; 154 units in the pipeline	15-20% sliding scale	None	Fee waiver or deferral, design, priority processing
Newton, Massachusetts (1977)	225	25%	20%	None
Sacramento, California (2000)	465	15% of all units. 1/3 priced affordable to households between 50-80% of AMI.	25%	Expedited permit process, fee waivers, relaxed design standards.
San Diego, California (1992, expanded in 2003)	1,200 units completed between 1992 and 2003 (1200 more anticipated)	10% set-aside	None	None
San Francisco, California (1992, expanded in 2002)	128 units completed between 1992 and 2000; 90 units since 2002; 745 units in the pipeline	10% set-aside	None	Refunds available on the environmental review and building permit fees that apply to the affordable units