

# ZONING PRACTICE

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## PRACTICE INCLUSIONARY HOUSING PART ONE

A large, white, sans-serif number '9' is centered in the lower half of the page, overlaid on a blue-tinted photograph of a residential street. The photograph shows a row of houses with gabled roofs and porches, with trees and bushes in the foreground.

# The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs

By Nicholas J. Brunick

In response to the nationwide affordable housing crisis, many local governments are turning to inclusionary zoning as an effective tool for creating 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 produce more housing, including housing for lower-income populations. They also provide more predictability for developers and the community, and do not stifle development activity. As a result, more communities are choosing mandatory approaches. This issue of *Zoning Practice*, the

first in a two-part series on affordable housing, will examine inclusionary housing program experiences and studies from across the country.

## MANDATORY PROGRAMS PRODUCE MORE HOUSING

Experience and research indicate mandatory inclusionary housing programs are more effective at generating a larger supply of affordable housing than voluntary programs. A 1994 study by the California Coalition for Rural Housing (CCRH) says, “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 CCRH and the Nonprofit Housing Association of Northern California found similar results. The 15 most productive inclusionary housing programs in California are mandatory programs. In

fact, the report found that only six percent of the 107 communities reporting to have an inclusionary housing program said the pro-



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These two photos are of Claggett Farms in Montgomery County, Maryland, an extremely high-end subdivision development. Above: a large, market-rate single family home. Below: a moderately priced dwelling unit with two affordable townhomes. This is a classic example of how a mandatory inclusionary housing program stimulates innovation and creativity to produce high-quality affordable housing.



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## ASK THE AUTHOR JOIN US ONLINE!

During October 18–29, go online to participate in our “Ask the Author” forum, an interactive feature of *Zoning Practice*. Nicholas J. Brunick will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using an e-mail link. The author will reply, posting the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

### About the Author

Nicholas J. Brunick is an attorney and the Regional Affordable Housing Initiative Director at Business and Professional People for the Public Interest (BPI) in Chicago.

gram 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 the National Housing Conference, a Washington, D.C.–based affordable housing advocacy organization, experience in Massachusetts shows that mandatory approaches were critical to the success of inclusionary zoning programs. 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. As of June, the program had produced 135 affordable homes with 58 more in the development pipeline.

Finally, experience from the Washington, D.C., metropolitan area supports the same conclusion. Four mandatory countywide 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 were produced during the past 30 years through a mandatory program requiring a 12.5–15 percent affordability component in large developments.

Voluntary inclusionary housing programs can be successful. First, it should be recognized that, theoretically, with enough of a subsidy any voluntary program could work extremely well. Realistically, however, housing subsidies are becoming scarcer. Nevertheless, voluntary programs can work well when they are implemented as if mandatory, or when a community’s broader planning policies (like mandated growth limitations) make the “vol-

untary” inclusionary housing component a highly attractive option. For example, in “Inclusionary Housing in California: The Experience of Two Decades,” authors Calavita and Grimes attribute the success of the volun-

without at least a 15 percent affordable housing component or plans to pay a fee in lieu of building affordable units. Planning staff in Chapel Hill explain that developers construe the inclusionary zoning expectation as



Courtesy of David Rusk

ⓘ This is a duplex with two affordably priced dwelling units in Fairfax County, Virginia. The home next door to this duplex looks almost identical, but is a large single-family home selling for \$600,000. The Fairfax County ordinance has produced over 2,300 affordable units since 1991.

tary inclusionary zoning program in Irvine to an “unusually sophisticated” and “particularly gutsy” staff committed to making the program work (*Journal of the American Planning Association*, 1998). Similarly, in Chapel Hill, North Carolina, the voluntary 15 percent affordable housing program for developments that require rezoning is also 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

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.

Lexington, Massachusetts, followed a similar approach with the adoption of a firm policy related to affordability on all discretionary approvals. Consequently, the community succeeded in creating a significant amount of new affordable housing, joining

Chapel Hill as a model for communities that may lack the authority to implement a mandatory inclusionary zoning law.

The Morgan Hill, California, policy on limiting growth has enabled the success of its voluntary inclusionary housing program. Developers have a 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 framework, a voluntary approach can ensure the production of some affordable units. However, even with an especially aggressive staff or broader policies, including growth limitations that make inclusionary housing more attractive, 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 percent and 50 percent of the area's median income respectively). The 15 most productive programs in California target low- and very-low-income populations at a much greater rate than the 92 other programs in the state, according to the California Coalition for Rural Housing and the Non-Profit Housing Association of Northern California in *Inclusionary Housing in California: 30 Years of Innovation*, published in 2003. The mandatory programs in Montgomery County and Fairfax County, Virginia, 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.

Without a mandatory requirement, communities will most likely 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, Roseville, California, adopted its Affordable Housing Goal (AHG) program in 1988. The program encourages developers to



ⓘ This is a beautiful development for seniors in Montgomery County, Maryland, developed under mandatory inclusionary zoning. The development includes housing units for households receiving public housing assistance.

work with the city to voluntarily build affordable housing within residential developments. Since 1988, the AHG program produced 2,000 affordable units through significant federal, state, and local subsidies. However, nearly \$234 million in subsidies would be necessary to meet the city's goal of 5,944 affordable units by 2007—almost \$218 million more in funding than the city is expected to capture between 2002 and 2007. In the absence of expanded funding, it will be impossible for

#### WEB-BASED ENHANCEMENTS FOR ZONING PRACTICE

In order to provide better service to *Zoning Practice* subscribers, with this issue we offer the complete list of references for Nicholas J. Brunick's article and affordable housing web resources on the *Zoning Practice* web pages of APA's website. We invite you to check out this enhancement at [www.planning.org/ZoningPractice/currentissue.htm](http://www.planning.org/ZoningPractice/currentissue.htm). We will do this whenever we determine that we can use the Internet to heighten the informational value we are delivering to our subscribers.

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 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 is required of them. The worst barrier to housing production and constricted supply is an unpredictable development atmosphere.

Under voluntary or ad hoc inclusionary housing 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 up front what is required of them. Hopefully, they also will know up front what cost offsets they will receive from the community with the affordable units. The highly successful inclusionary zoning programs in Montgomery and Fairfax Counties (over 13,000 and 2,300 affordable units produced, respectively) are two such examples. Like other zoning regulations, mandatory inclusionary housing programs with clear cost offsets provide key players in the housing market with the information needed to make efficient decisions about allocation of resources. In fact, developers in Irvine recently lobbied the city council to change the city's inclusionary housing ordinance from voluntary to mandatory enforce-

ment due to the confusion and uncertainty developers experienced in the development process under a voluntary program.

Of course, mandatory programs are less predictable if the cost offsets are uncertain and decided on a case-by-case basis. Similarly, voluntary programs, if applied consistently and aggressively, can be made clearer and less arbitrary. Overall, 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 a policy that will depress or stifle housing production. The best available evidence indicates that mandatory inclusionary housing programs have not done this.

One recent study by economists at the Los Angeles-based Reason Public Policy Institute entitled, *Housing Supply and Affordability: Do Affordable Housing Mandates Work?*, claims inclusionary zoning programs in the San Francisco Bay area led to a decline in housing production in those communities, contributing to rising housing prices overall. The study claims an analysis of building permit data from 45 communities with inclusionary zoning showed a decline in housing production 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 showed 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, including a failure to include communities without inclusionary zoning in the analysis and a failure to account for or hold constant other factors that could have an effect on levels of housing production, such as the unemployment rate, the prime interest rate, growth boundaries, lack of available land, vacancy rates, etc. As a result, 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 hous-

ing production or whether development also has declined in communities without inclusionary zoning.

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

- Includes communities *with* and *without* inclusionary zoning programs in the sample of 28 California cities;
- 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;
- Performs a regression analysis to determine the extent to which inclusionary zoning

impacts levels of production, and to what extent other independent variables impact housing production. The Rosen study 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, which eliminated many incentives in the U.S. Tax Code that had served to stimulate the production of rental housing.

The study concludes that the adoption of inclusionary zoning does not negatively impact overall levels of housing production. In fact, in a number of jurisdictions, including San Diego, Carlsbad, Irvine, Chula Vista, and Sacramento, he found that housing production increased (in some cases significantly) after passage of inclusionary housing programs. Only in Oceanside did housing production decrease. The drop was most likely caused by rising unemployment and

high rates of housing vacancy associated with the economic recession of the early 1990s and the Gulf War (Oceanside is near a military base). Overall, the study found that housing production was most heavily affected by unemployment levels, the median price of new construction homes, and 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 programs in San Diego, Sacramento, Boston, San Francisco, Denver, Chapel Hill, North Carolina, Cambridge, and Boulder claim not to have seen a decrease in development activity following the implementation of inclusionary housing programs.



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ⓘ Above: Fox Meadow development in Longmont, Colorado, includes 17 affordable townhomes. The Longmont ordinance has produced 545 new affordable homes since 1995 with over 400 more anticipated. Below: these two homes in Fairfax County, Virginia, each contain four affordable townhomes. The Carrington subdivision has million-dollar mansions that look like the townhomes. This is also a classic example of how mandatory programs stimulate the creativity and innovation needed to produce attractive affordable homes within highly affluent communities.



Courtesy of David Rusk

**TABLE 1. SWITCHING FROM VOLUNTARY TO MANDATORY INCLUSIONARY ZONING**

Municipality or County	Reason for Change	Result
Boulder, Colorado	Throughout the 1980s and 1990s, the city's voluntary ordinance proved ineffective at generating affordable housing.	Mandatory ordinance went into effect in 2000. As of June 2004, the program had created approximately 300 units of housing and had collected \$1.5 million in fees.
Cambridge, Massachusetts	Ten years of voluntary inclusionary zoning districts failed to generate any affordable housing.	In 1991, Cambridge switched to a mandatory program. As of June 2004, this mandatory program had produced 135 housing units with 58 more in the pipeline.
Irvine, California	Developers initiated a switch to a mandatory ordinance after more than 20 years 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. As of June 2004, the mandatory and voluntary programs together had created 3,400 affordable homes and apartments with 750 more in the pipeline. The program also had collected \$3.8 million in fees.
Pleasanton, California	A 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 also had collected \$14 million in fees.

**THE MANDATORY TREND**

The current trend in inclusionary housing programs is toward the mandatory end of the implementation spectrum. A survey for this article of available literature and existing programs around the country reveals only one situation where a community switched from a mandatory to a voluntary program: Orange County, California. According to a 1994 report produced by the California Coalition for Rural Housing, the switch led to a dramatic drop in

affordable housing. According to Orange County staff, the county no longer has a formal inclusionary housing program. The county does negotiate for affordable housing units on the few remaining vacant parcels that receive development proposals. Conversely, communities nationwide have switched to mandatory programs for additional affordable units and the benefit of greater predictability. Details for some of these communities are summarized in Tables 1 and 2.

**TABLE 2. SWITCHING FROM MANDATORY TO VOLUNTARY INCLUSIONARY ZONING**

Municipality or County	Reason for Change	Result
Orange County, California	Political environment	A decrease in the production of affordable housing units. The voluntary program produced 952 units in 11 years (1983–1994). The mandatory program produced 6,389 units of affordable housing in four years (1979–1983).

**MANDATORY ORDINANCES IN LARGE CITIES**

The five largest cities to adopt inclusionary zoning—Boston, Denver, Sacramento, San Diego, San Francisco—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, reinforcing the argument that mandatory programs are more productive.

The October issue of *Zoning Practice* will feature a review of big-city inclusionary zoning programs.

**THE MIDWEST SIGNS ON**

Mandatory inclusionary zoning programs are no longer exclusive to high-cost housing markets on the Coasts. In August 2003, the first inclusionary housing ordinance in the Midwest became law when Highland Park, Illinois, an affluent North Shore suburb of Chicago, adopted a mandatory inclusionary zoning law requiring a 20 percent affordability component in any development with five or more units of housing (See "Affluent Community Sets Precedent with Inclusionary Zoning Ordinance," October 2003). In January 2004, Madison, Wisconsin, followed with its own mandatory program. The ordinance requires developers of projects with 10 or more units to price 15 percent of them as affordable.

**THE BOTTOM LINE**

With inclusionary zoning, the path most chosen appears to be the more desirable. The experience of municipalities and counties nationwide demonstrates that mandatory inclusionary zoning works as a practical and effective tool for creating 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.

A selection of inclusionary housing ordinances featured in this article is available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at [placeaninquiry@planning.org](mailto:placeaninquiry@planning.org).

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## NEWS BRIEFS

### NEW JERSEY PASSES TRANSFER OF DEVELOPMENT RIGHTS LEGISLATION

By Rebecca Retzlaff, AICP

In March, New Jersey passed a transfer of development rights (TDR) law (SB 1287/AB 2480) enabling municipalities to adopt and implement TDR programs. Under the law, landowners in targeted conservation areas may sell their development rights and place a restrictive covenant on their land to preserve in perpetuity. Developers may purchase the TDR credits to build at higher densities in targeted development areas.

The act follows a 1989 bill that established a pilot TDR program in Burlington County. According to the new TDR act, “The Burlington County pilot program has been a success and should now be expanded to the remainder of the state of New Jersey.”

The law allows jurisdictions to shift development from environmentally sensitive, historic, and agricultural areas to receiving zones more appropriate for development. According to the law, designation of the receiving zones will occur after infrastructure availability; zoning issues, such as density and lot size; and market conditions are considered.

According to E.J. Miranda, spokesperson for the New Jersey Department of Community Affairs, the new TDR law will benefit developers, farmers, municipalities, and smart growth advocates. “TDR presents an opportunity to preserve open space by using private-sector

dollars to acquire development rights and cluster new development in a much smaller land area. The result is that municipalities have more control over where growth occurs, landowners are compensated fairly for their land, developers have a clear picture of where they can build, and less of our limited public funds at the local and state levels have to be spent on land acquisition.”

Before a municipality adopts a TDR ordinance, it must prepare a development transfer plan, which includes the location and cost of infrastructure improvements, infrastructure cost-sharing methods, growth projections, planning objectives, and design standards for the receiving zone. The municipality also must prepare a utility service plan and a real estate market analysis. To assist municipalities with preparing these documents, the law established a planning assistance grant program for the development of utility service elements, development transfer elements, real estate market analyses, and capital improvement programs.

Susan Burrows, assistant executive director for external affairs with New Jersey Future, a smart growth advocacy organization that helped develop the new law, says one of the major hurdles to its passage was concern from farmers that the value of TDR credits would be priced fairly and that there would be a market for the credits. To that end, economic analyses of TDR ordinances are to be completed by outside consultants under the new law.

The bill requires review and approval or recommendation of a jurisdiction’s TDR ordinance by the county agricultural development board, the county planning board, and the New Jersey Office of Smart Growth. Furthermore, jurisdictions passing a TDR ordinance must also receive endorsement from the Office of Smart Growth for compliance with the state plan.

Burrows says there is already high interest in creating TDR ordinances throughout the state, although no municipality has passed a TDR ordinance yet. According to Miranda, “The Office of Smart Growth receives calls everyday from municipal officials, planners, and developers interested in hearing more about how TDR works.” Furthermore, more than 80 people attended a recent training session co-sponsored by the New Jersey Department of

Community Affairs (which houses the Office of Smart Growth) and the New Jersey League of Municipalities.

Burrows says the new law is a step in the right direction. “It is one more tool that can be used to manage growth and development,” she says. The TDR law in New Jersey has important implications for smart growth and development in the state. “Growth management is a serious issue here,” Burrows says. “We see the point where the state will reach build-out.”

The New Jersey transfer of development rights law and program information featured in this article is available to *Zoning Practice* subscribers by contacting the Planning Advisory Service (PAS) at [placeaninquiry@planning.org](mailto:placeaninquiry@planning.org). *Rebecca Retzlaff, AICP, is a researcher with the American Planning Association and a PhD student in urban planning and policy at the University of Illinois–Chicago.*

Cover photo of Beacon development in Newton, Massachusetts. This is an example of a successful inclusionary development. Photo provided by the Innovative Housing Institute.

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