The Structure and Potential Economic Effects of Inclusionary Zoning Ordinances

BY DUSTIN C. READ, PH.D.

INTRODUCTION

Inclusionary zoning ordinances encourage or require real estate developers to set aside a percentage of the units included in market-rate residential development projects for low- and moderate-income households. By leveraging the resources of the private sector, this type of land use regulation potentially offers an effective way to expand the housing options available throughout a jurisdiction without the need for costly public subsidies. Surveys indicate inclusionary zoning has produced more than 34,000 affordable units in the state of California alone over the past three decades.[1] Success stories have also been reported in several other states where inclusionary zoning has become much more common in recent years.[2] Nonetheless, concerns have been raised that inclusionary zoning can constrain residential development and increase housing prices in some instances. Understanding its strengths and weaknesses is therefore essential to help policymakers craft regulations that expand housing opportunities, while being mindful of unintended economic consequences.[3] The literature review presented in this article is designed to provide such an understanding.

The analysis begins by describing the structure of inclusionary zoning ordinances and the characteristics that differentiate them from related affordable housing initiatives. Existing research is then reviewed to present a framework suitable to evaluate whether this policy tool encourages the production of affordable housing by offering developers appropriate incentives or by shifting the cost to other market participants. Results of recently completed empirical studies are additionally summarized to examine the impact of these regulations in select areas. The analysis concludes by discussing inclusionary zoning's potential effectiveness in distressed housing markets to illustrate the challenges faced by many municipalities in the current economic environment.

REGULATORY BARRIERS TO AFFORDABLE HOUSING DEVELOPMENT

Inclusionary zoning is sometimes described as the antithesis of "exclusionary" land use regulations, such as minimum lot size requirements and restrictions on multifamily development that have contributed to the shortage of affordable housing in the United States.[4] The description is elegant, but somewhat inaccurate. Inclusionary zoning ordinances do not directly reduce the number of regulations imposed on residential development. Many actually put additional administrative procedures in place to ensure real estate developers produce housing for a specific segment of the market. For this reason, inclu-

About the Author

Dustin C. Read, Ph.D., J.D, *is the Associate Director of the Center for Real Estate at the University of North Carolina at Charlotte, and a Clinical Assistant Professor in the Department of Finance. He received his doctorate degree in public policy from UNC Charlotte and his juris doctor from the University of Missouri School of Law. Read's primary teaching responsibilities include real estate finance, development and law. His research interests include land use regulations, housing policy and public-private partnerships. Read also is a licensed attorney in the state of North Carolina.*

sionary zoning must be differentiated from more direct efforts to remove regulatory barriers limiting the availability of affordable housing.

Municipalities with cumbersome zoning ordinances have the ability to increase their stock of affordable housing by relaxing the regulations governing residential development. Some have done this by expanding the amount of land zoned for multi-family housing and by authorizing higher-density development.[5] These approaches do not guarantee the development of housing accessible to low- and moderate-income families, but can relieve upward pressure on prices by removing supply constraints.

Other municipalities have chosen to leave restrictive land use regulations in place to address a variety of fiscal and social issues. Low- and moderate-income housing may fail to "pay for itself" if it generates a limited amount of tax revenue and attracts residents with relatively high public service demands.[6] All types of residential development also can generate negative externalities such as traffic congestion, loss of green space and overcrowded public schools, when growth is not managed. These factors create economic and political incentives for local officials to restrict the amount of land available for residential development.

While regulations limiting housing supply can increase prices, they are not necessarily inefficient from an economic perspective if they slow development to a socially optimal level reflecting fiscal and social externalities. Unfortunately, imperfect market information may prevent public officials from accurately balancing a community's need for affordable housing against other benefits obtained from controlling growth.[7] Concerns have additionally been raised that local officials enact land use regulations primarily for political reasons with little regard for economic efficiency.[8]

A few states have intervened in these situations by enacting statutes that provide real estate developers with a mechanism to compel municipal governments to accommodate affordable housing. One such example is Massachusetts' so-called "anti-snob" statute, which created a consolidated permitting process at the local level for affordable housing development and an appeals process at the state level for projects denied regulatory entitlements.[9] The legislation requires municipalities denying permits for qualifying projects to demonstrate that the reasons for doing so are more compelling than the need for affordable housing.

Despite the innovative nature of Massachusetts' anti-snob statute and the construction of 23,000 plus affordable units under the program, housing affordability remains one of the state's most challenging issues 40 years after the legislation's enactment.[10] Two underlying assumptions upon which the legislation is based explain the limitations of this policy tool. First, regulatory barriers are presumed to be the main reason municipalities have an inadequate supply of affordable housing. Second, real estate developers are presumed to be willing and financially able to produce affordable housing in the absence of exclusionary land use regulations. Both of these assumptions may be inappropriate in areas where housing prices have increased primarily as a result of strong market demand. Anti-snob statutes are less effective in this type of environment because they do not provide the private sector with financial incentives to produce housing priced below the prevailing market rate.[11] Inclusionary zoning ordinances enacted at the local level potentially have a greater probability of stimulating affordable housing development in these instances.

THE STRUCTURE OF LOCAL INCLUSIONARY ZONING ORDINANCES

Inclusionary zoning ordinances are structured in a number of different ways, but can generally be described as regulations enacted by local governments to encourage the production of mixed-income housing.[12] The approach focuses on integrating affordable housing into neighborhoods throughout a community to provide low- and moderate-income families with better access to public services, area amenities and employment opportunities.[13] Ordinances may be mandatory or voluntary, with some municipalities adopting a hybrid approach that strongly encourages mixed-income housing development without technically requiring it as a matter of law.[14]

The type of ordinance enacted by a local government often is influenced by state statute. A recently completed national survey identified 13 states with enabling legislation expressly authorizing the use of inclusionary zoning at the local level.[15] Some of these statutes permit mandatory inclusionary zoning programs, while others merely authorize the use of incentives to encourage the private sector to include affordable units in market-rate residential development projects. Enabling legislation was also found in two states, Oregon and Texas, expressly prohibiting inclusionary zoning. The results of the survey suggest policymakers in most jurisdictions must look to "home rule" statutes for authority to enact this type of land use regulation.

Home rule statutes provide local governments in some states with significant autonomy in specified policy areas.[16] Large municipalities located in at least seven such states, including California and New York, have relied upon the autonomy to implement inclusionary zoning programs. Even in these situations, the scope of local authority to regulate development may be curtailed by judicial precedent. Policymakers must therefore thoroughly understand their legal environment when evaluating the merits of inclusionary zoning. Ordinances that have been successfully enacted generally share several common characteristics including set-aside requirements, income targets, economic incentives, exemptions, and mechanisms to ensure housing remains affordable over time.[17]

Set-aside requirements are an important component of inclusionary zoning ordinances because they dictate the number of residential units a developer must reserve for low- and moderate-income individuals. They are expressed as a percentage of the total number of housing units included in a project, typically ranging from 5–30 percent according to survey data.[18] Tiered ordinances often have different set-aside requirements for each income group targeted by the ordinance, as well as different set-aside requirements for rental and owner-occupied housing. Hybrid inclusionary zoning ordinances may allow developers and local officials to negotiate set-aside requirements in development agreements on a case-by-case basis depending on the characteristics of a project.

Affordable housing that is set aside for economically disadvantaged residents must be accessible to individuals within a targeted income range, usually defined in terms of area median income (AMI). Ordinances designed to serve low-income households often focus on those earning 60 percent of AMI or less, while those serving middle-income households may include households earning up to 200 percent of AMI. Residential units are deemed affordable if households in the targeted income group spend no more than a specified percentage of their income on rent or mortgage payments.

Set-aside requirements and income targets clearly influence the financial viability of residential development, so most inclusionary zoning ordinances offer economic incentives to mitigate some or all of the private sector's cost of constructing affordable housing. Incentives are essential to encourage participation in voluntary programs, although they also are offered by most mandatory and hybrid ordinances to prevent real estate developers from relocating to other markets in search of more favorable regulatory environments. Economic incentives include density bonuses, expedited project review, fee waivers, alternative design standards, direct cash subsidies and property tax abatements.

Density bonuses allow property owners to construct more residential units on a given parcel of land than would otherwise be allowed by a jurisdiction's zoning ordinance. They are valuable because they reduce a developer's per-unit land cost for both affordable and market-rate housing. Land cost savings enable developers to maintain a competitive rate of return as long as they are sufficient to offset any financial burden created by including affordable housing in a project. Inclusionary zoning ordinances may allow developers to increase the number of units developed on a parcel of land by 25 percent or more in exchange for satisfying set-aside requirements.

Municipal governments find density bonuses attractive because the direct costs are low, and additional housing supply may serve to moderate market-rate housing prices. The value of this type of incentive to the private sector is, however, driven by market demand. Density bonuses stimulate development only in instances where additional housing can be sold or leased at a favorable rate. A developer derives little value from constructing more units on a given site if there is a strong preference for low-density development in the market or if affluent home buyers resist areas with high concentrations of economically disadvantaged residents. These factors must be considered when evaluating the value of density bonuses.

Some inclusionary zoning ordinances also streamline the permitting and regulatory approval process for projects that include a specified number of affordable housing units. Expedited project review benefits the developer by reducing the soft costs required to complete a project. Enabling development to move forward more quickly also limits the private sector's exposure to shifts in housing demand, interest rate fluctuation, and changing market conditions that can influence the financial viability of a project. Expedited project review is a low-cost way to encourage mixed-income development in markets where regulatory approvals take multiple years to obtain. As would be expected, the value is less significant in jurisdictions where regulatory entitlements can be obtained relatively quickly.

Fee waivers create another way to reduce the private sector's cost of obtaining regulatory entitlements for mixed-income housing. This type of incentive is extremely valuable in markets where impact fees and other forms of development exactions are relied on to pay for public infrastructure improvements. Strong political opposition to exactions in some markets may make fee waivers attractive, although they can also result in a need for higher property taxes in the future to offset the public sector's lost revenue.

Alternative design standards, such as relaxed setback requirements and parking ratios, are also authorized by inclusionary zoning ordinances to provide real estate developers with cost savings. Allowing affordable units to be smaller in size than market-rate units is another common approach. The profit motive, rather than strict government regulation, prevents the construction of substandard housing in these jurisdictions because the developer must still attract market-rate home buyers to a project. Municipalities using this approach must nonetheless be cognizant of situations where market competition can be problematic. Developers may be unable to derive value from alternative design standards if mixed-income housing has a negative stigma in the marketplace, and more amenities must be included to attract affluent home buyers.

Two final types of economic incentives are cash subsidies and property tax abatements. While arguably preferred by developers because their value can be easily quantified, these incentives are offered less frequently than others because of direct costs. Local governments often lack dedicated funding sources to support inclusionary zoning ordinances and prefer density bonuses, fee waivers and expedited project review over cash subsidies. Property tax abatements also can be problematic in situations where municipalities already are struggling to satisfy demand for infrastructure and public services.

After identifying the appropriate combination of economic incentives to encourage mixed-income housing development, successful inclusionary zoning ordinances put restrictions in place to ensure units remain affordable over time. Deed restrictions are frequently recorded against rental properties to achieve this objective.[19] Property owners are required to maintain a specified number of affordable units each year and lease them only to tenants satisfying the ordinance's income targets. Several large cities have imposed deed restrictions lasting 15–55 years, while others have opted for indefinite affordability periods.[20]

Deed restrictions also are used to maintain the affordability of owner-occupied housing. The purchaser of an affordable unit may be required to resell it only to a party that meets the income targets of the inclusionary zoning ordinance for a specified number of years. Capital gains realized from the sale are often limited to the amount necessary to cover inflation, real estate brokerage fees and other closing costs. Rolling-resale provisions are included in some deed restrictions, which reset the number of years a home must be held by a qualifying party each time the property is sold.

The downside of deed restrictions is their ability to restrict household mobility by limiting the number of parties eligible to purchase a property. Some inclusionary zoning ordinances address the undesirable result by including equity recapture provisions in deed restrictions or by recording a wrap-around second mortgage against the property. Both approaches enable an affordable unit to be sold at the prevailing market rate to any buyer, but require a portion of the capital gain realized from the sale to be contributed to the local housing trust fund or to a non-profit organization providing affordable housing. Inclusionary zoning ordinances may alternatively provide a governmental agency or non-profit entity with the first right of refusal to purchase the property at a favorable price in the event it is put on the market.

A local government may choose to regulate the conveyance of affordable units only for a limited period of time and then allow profits from sale to be split between the homeowner and a non-profit entity. For example, Montgomery County, Maryland's ordinance prohibits the sale of affordable units for a profit for 15 years.[21] Capital gains are then split equally between the homeowner and the county's housing trust fund after the 15-year affordability period elapses. A homeowner can retain all of the profits from the sale of an affordable unit after 50 years. The approach preserves housing affordability over time, while still enabling low- and moderate-income families to build wealth as their home appreciates.

Exemptions are a final component of inclusionary zoning ordinances worthy of considerable attention. Municipalities may choose to exempt projects below a specified size to limit the administrative burden imposed on small developers. Others exclude redevelopment projects and condominium conversions to promote infill development and adaptive reuse. More expansive exemptions allow developers to avoid set-aside requirements by paying in-lieu fees, dedicating land or building affordable housing off-site. These practices are controversial for several reasons.[22] First, in-lieu fee provisions often require the private sector to pay a municipality or non-profit less than the full cost of developing equivalent affordable housing elsewhere. Second, inclusionary zoning ordinances rarely have a mechanism in place to ensure fees and land dedications are converted into affordable units. Third, fees and land dedications remove the private sector's incentive to construct affordable housing in a cost-effective manner. Fourth, all of the exemptions discussed may undermine the importance of including affordable housing in geographically dispersed areas.

Some inclusionary zoning ordinances attempt to mitigate the problems discussed above by limiting the use of in-lieu fees, land dedications and off-site development to special situations.[23] For example, these options may be available only when the total number of units included in a project falls below a specified size threshold.[24] More sophisticated ordinances may require developers to demonstrate that mixed-income housing is not financially viable at a particular location or that a greater number of affordable units can be produced elsewhere through alternative mechanisms. Local governments can still promote geographically dispersed affordable housing in these situations by requiring the developer to dedicate land in the same planning area or construct affordable housing on an adjacent site.

Despite the prevalence of these restrictions, many advocates of inclusionary zoning argue that residential developers are all too often able to avoid mixed-income projects by paying modest fees that do not reflect the true cost of producing comparable affordable housing at an alternative location. In-lieu fees of only a few hundred dollars in some jurisdictions provide support for these claims.[25] Nonetheless, other municipalities collect fees in excess of $100,000 per affordable housing unit. The fact that real estate developers voluntarily choose to pay these large fees may suggest that the amount is still insufficient to cover the cost of building affordable housing. On the other hand, real estate developers opting to pay significant in-lieu fees may do so not because the fee is lower than their cost of including affordable housing in a project, but rather because the indirect costs of mixed-income development are anticipated to make it a sub-optimal alternative. Local governments must therefore consider affordable housing's potential effect on the marketability of market-rate residential units before concluding that fees are too low. Continually reviewing in-lieu fee levels may also help ensure they are appropriate for the market and keep pace with construction cost escalations over time.[26]

THE ECONOMIC INCIDENCE OF INCLUSIONARY ZONING

The analysis presented thus far demonstrates that inclusionary zoning encourages the production of affordable housing through a combination of legal mandates and economic incentives. An ordinance's effectiveness hinges upon the costs it imposes on the private sector, a municipality's ability to offset any such costs and the characteristics of the local housing market. Examining the relationship between these variables is essential to evaluate inclusionary zoning's potential for success in different economic environments. It also sheds light on the parties bearing the financial burden of affordable housing development in strong and weak markets.

Inclusionary zoning ordinances impose both direct and indirect costs on the private sector. Set-aside requirements and income targets directly affect the profitability of residential development by limiting the amount of revenue a project can generate. Indirect costs also can be incurred if mixed-income housing projects produce less rent or operate at higher vacancy rates than comparable market-rate properties.[27] Advocates of inclusionary zoning contend these direct and indirect costs do not discourage development because the public sector provides offsetting economic incentives. Some scholars even suggest density bonuses and other incentives are generous enough to make mixed-income housing the most profitable option.[28]

Despite these claims, the cost neutrality of inclusionary zoning has been drawn into question for a number of reasons. Scholars generally agree that mandatory inclusionary zoning ordinances produce more affordable housing than do voluntary programs.[29] Requiring the private sector to participate would presumably be unnecessary if mixed-income development were, in fact, the most lucrative alternative.[30] It has been suggested that developers refrain from participating in voluntary inclusionary zoning programs because they lack the knowledge required to complete successful mixed-income housing projects, but the argument is somewhat unconvincing in light of the level of sophistication present in the real estate industry.[31] The unavailability of appropriate economic incentives to fully compensate developers for the cost and risk associated with mixed-income housing is a more plausible explanation.

Housing market characteristics are another factor making it difficult to assess the cost neutrality of inclusionary zoning. Residential developers may continue to build, irrespective of the economic incentives offered by local government, as long as the financial burden of obtaining regulatory entitlements can be passed along to other market participants. Developers operating in these areas will maintain a competitive rate of return by charging more for market-rate housing or by reducing the amount they are willing to pay for developable land. The former approach is possible in strong markets where buyers are relatively insensitive to price changes, while the latter is anticipated in weak markets where housing demand is soft. Developers will exit the market if the financial burden of an inclusionary zoning ordinance cannot be passed forward or backward in this manner.[32]

Since inclusionary zoning ordinances have characteristics of both public subsidies and excise taxes, their ability to stimulate the production of affordable housing can be predicted by analyzing the interrelationship between the strength of the local housing market and the economic incentives offered by local governments. Inclusionary zoning should produce the most affordable housing in strong markets where generous economic incentives are available. Real estate developers will produce mixed-income housing in this type of environment because public sector incentives offset a large portion of any financial burden imposed by the ordinance. Any additional costs required to construct affordable units, over and above the amount of the incentives, can be passed forward to market-rate home buyers.

Economic incentives are expected to help stimulate the development of affordable housing, but they may not be essential in strong markets. Real estate developers can maintain a competitive rate of return by passing the entire cost of low- and moderate-income housing on to market-rate home buyers when demand is robust.[33] While such an approach may strain the financial resources of households that do not qualify for affordable housing programs, residential units should be produced for the targeted income groups.[34] Critics argue that local governments intentionally use inclusionary zoning to shift the cost of affordable housing to the private sector in this manner. The approach is potentially beneficial for the public sector because it provides a subtle way to raise revenue for the construction of low- and moderate-income housing that may face less political opposition than other initiatives.[35]

Inclusionary zoning is anticipated to be less effective in weak markets where the cost of producing affordable housing cannot be shifted to market-rate home buyers. Real estate developers must reduce land bids or request assistance from the public sector to maintain a competitive rate of return in these cases. It may be impossible for developers to pass regulatory costs backwards in the event they already own buildable sites. Some mixed-income development may occur when generous economic incentives are available, although inclusionary zoning ordinances are expected to be largely ineffective in weak markets when public sector support is limited.

The theoretical conclusions presented above were tested in three recent empirical studies completed by independent authors.[36] The Furman Center for Real Estate and Urban Policy at New York University examined inclusionary zoning's impact on housing supply and prices in the San Francisco and Boston metropolitan areas.[37] Inclusionary zoning encouraged a modest amount of affordable housing development in the San Francisco metro area over time without constraining market-rate housing supply or putting upward pressure on prices. Density bonuses were found to increase the number of affordable units constructed in the market. Municipalities near Boston with mature inclusionary zoning ordinances had a higher probability of affordable housing development than those without. However, economic effects commonly associated with excise taxes were observed in the market. Municipalities with inclusionary zoning ordinances issued 10–30 percent fewer single-family building permits on an annual basis when compared to municipalities without inclusionary zoning. Housing prices also were found to be 2.8–3.9 percent higher in municipalities with inclusionary zoning. Both supply and price effects increased with the amount of time an inclusionary zoning ordinance was in place.

Another study examining inclusionary zoning's impact on housing supply was completed in Los Angeles County and Orange County, California.[38] Seventeen cities with inclusionary zoning ordinances adopted at different times over the last 35 years were evaluated. No statistically significant effect was found on the total number of residential building permits issued. The authors interpreted the results as evidence that "critics of inclusionary zoning misjudge its adverse effects on housing supply" when appropriate economic incentives are provided by the public sector. While this may be true, the results of the study left unanswered questions about the merits of inclusionary zoning because price effects were not considered. Housing starts would not be expected to decline in these municipalities if strong demand during the study period allowed developers to pass additional regulatory costs on to market-rate home buyers.

The National Center for Smart Growth Research and Education completed a more comprehensive analysis of inclusionary zoning in California by examining its impact on the supply, price and size of housing throughout the state.[39] Once again, inclusionary zoning was not found to restrict housing supply. The research did, however, find evidence that inclusionary zoning increased the price of constant quality single-family housing by approximately 2.2 percent after controlling for jurisdictional and temporal factors. A more granular analysis demonstrated that inclusionary zoning ordinances increased the price of housing sold for more than $187,000 by approximately five percent, while increasing the price of housing sold for less than $187,000 by only .8 percent. Homes sold for less than $187,000 were, however, found to be 33 square feet smaller on average in municipalities with inclusionary zoning ordinances. All of the results are consistent with economic theory and suggest inclusionary zoning ordinances can operate as an excise tax. In strong markets, regulatory costs may be passed forward to affluent home buyers in the form of higher housing prices and on to less affluent home buyers in the form of a reduction in the size of residential units.

CONCLUSIONS

Inclusionary zoning ordinances encourage or require the private sector to produce affordable housing for a specific segment of the market through a unique combination of legal mandates and economic incentives. Over the past three decades, this type of land use regulation has proven effective in municipalities with strong housing demand. There is, however, convincing empirical evidence that inclusionary zoning ordinances can operate as an excise tax on residential development in some instances. Policymakers must be aware of potential excise tax effects in the current economic environment because weak housing demand may prevent developers from passing regulatory costs on to market-rate home buyers. Inclusionary zoning may therefore stifle residential development and produce little affordable housing unless the ordinance balances any financial burden imposed on the private sector with offsetting economic incentives. ■

ENDNOTES

1. Calavita, Nico (2004). "Inclusionary Housing in California: 30 Years of Innovation," *NHC Affordable Housing Policy Review*, 3:1, pp. 3–31.
2. See Fox, Radhika K. and Kalima Rose (2003). "Expanding Housing Opportunity in Washington D.C.: The Case for Inclusionary Zoning," PolicyLink Research Report.
3. A succinct overview of the potential advantages and disadvantages of inclusionary zoning from a fiscal and social perspective can be found in Burchell, Robert and Catherine C. Galley (2000). "Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis," *New Century Housing*, 1:2, pp. 1–12.
4. West, Ryan (2005). "Inclusionary Zoning: Is it Right for Florida?" Policy Brief prepared by the DeVoe L. Moore Center at Florida State University. Kautz, Barbara Ehrlich (2002). "In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing," *University of San Francisco Law Review*, 36, pp. 971–988. West describes inclusionary zoning as the "mirror image" of exclusionary housing policies and Kautz describes it as a "response to exclusionary land use practices."
5. Carlson, Daniel and Shishir Mathur (2003). "Can We Tell if Growth Management Thwarts Affordable Housing?" Paper prepared for the Brookings Institution Symposium of Growth Management and Affordable Housing.
6. Ladd, Helen F. (1992). "Population Growth, Density and the Cost of Providing Public Services," *Urban Studies*, 29:2, pp. 273–295.
7. Fenster, Mark (2006). "Regulating Land Use in a Constitutional Shadow: The Institutional Contexts of Exactions." A working paper hosted by the Berkeley Electronic Press. The author suggests estimating the impact of negative externalities amounts to guesswork in many instances.
8. Schill, Michael A. (2005). "Regulations and Housing Development: What We Know and What We Need to Know." Report prepared for the U.S. Department of Housing and Urban Development's Conference on Regulatory Barriers to Affordable Housing.
9. Stockman, Paul K. (1992). "Anti-Snob Zoning in Massachusetts: Assessing One Attempt at Opening the Suburbs to Affordable Housing," *Virginia Law Review*, 78:2, pp. 535–580. The article describes Massachusetts' anti-snob legislation and notes similar statutes have been enacted in Connecticut and New Hampshire.
10. Citizens' Housing and Planning Association (2006). "Fact Sheet on Chapter 40B: The State's Affordable Housing Zoning Law," www.vitualcap.com. Goodman, Michael and Palma James (2004). "Winners and Losers in the Massachusetts Housing Market." A study for Citizens' Housing and Planning Association and the Massachusetts Housing Partnership prepared by the UMass Donahue Institute.
11. For a discussion of anti-snob legislation see Cowan, Spencer (2006). "Anti-Snob Land Use Laws, Suburban Exclusion, and Housing Opportunity," *Journal of Urban Affairs*, 28: 3, pp. 295–313; Witten, Jonathan Douglas (2003). "The Cost of Developing Affordable Housing: At What Price?" *Environmental Affairs*, 30, pp. 509–553.

12. For a comprehensive overview of the structure of inclusionary zoning ordinances see Schuetz, Jenny, Rachel Metzler and Vicki Been (2009). "31 Flavors of Inclusionary Zoning: Comparing Policies from San Francisco, Washington D.C. and Suburban Boston," Furman Center for Real Estate and Urban Policy Working Paper; Coalition for Rural Housing and Non-Profit Housing Association of Northern California (2003). "Inclusionary Zoning in California: 30 Years of Innovation," A discussion of hybrid inclusionary zoning ordinances in Chapel Hill, NC and Lexington, MA can also be found in Brunick, Nicholas, Lauren Goldberg and Susannah Levine (2004). "Voluntary or Mandatory Inclusionary Housing? Production, Predictability and Enforcement." Research report prepared by Business and Professional People for the Public Interest.

13. Harmon, Tasha (2004). "Integrating Social Equity and Smart Growth." Research report prepared for the Institute for Community Economics. Morgan, Jennifer M. (1995). "Zoning for All: Using Inclusionary Zoning Techniques to Promote Affordable Housing," *Emory Law Journal*, 44, pp. 359–393.

14. Brunick, Nicholas (2004a). "The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs over Voluntary Programs," *Zoning Practice*, 9:1, pp. 1–7. The author provides an example of a hybrid inclusionary zoning program in Chapel Hill, N.C., where planning staff noted "developers construe the [voluntary] inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component." Development agreements can be used to effectuate affordable housing requirements in these cases. See Pindell, Ngai (2007). "Developing Las Vegas: Creating Inclusionary Affordable Housing Requirements in Development Agreements," *Wake Forest Law Review*, 42, pp. 419–458.

15. Hollister, Timothy S., Allison M. McKeen and Danielle G. McGrath (2007). "National Survey of Statutory Authority and Practical Considerations for the Implementation of Inclusionary Zoning Ordinances." Report prepared for the National Association of Home Builders. Since the completion of the survey a fourteenth state, Michigan, has adopted inclusionary zoning enabling legislation.

16. Hollister et al. (2007) discuss the relationship between home rule statutes and inclusionary zoning ordinances in detail.

17. The structure of several inclusionary zoning ordinances adopted in both large and small municipalities are summarized in Fischer, Paul and Jo Patton (2001). "Expanding Housing Options through Inclusionary Zoning." Research report prepared for the Campaign for Sensible Growth; Brunick, Nicholas (2004b). "Inclusionary Housing: Proven Success in Large Cities," *Zoning Practice*, 10, pp. 1–9.

18. See Coalition for Rural Housing and Non-Profit Housing Association of Northern California (2003).

19. Deed restrictions and other legal devices to maintain affordable housing developed through inclusionary zoning ordinances are discussed thoroughly in Padilla, Laura M. (1995). "Reflections on Inclusionary Housing and a Renewed Look at its Viability," *Hofstra Law Review*, 23, pp. 539–625.

20. Denver, Sacramento and San Diego impose affordability periods of 15, 30 and 55 years respectively according to Brunick (2004b), while Boston opted for the "maximum [affordability period] allowable by law." Harmon (2004) states that over a quarter of the jurisdictions with inclusionary zoning ordinances in California impose indefinite affordability periods.

21. Brown, Karen D. (2001). "Expanding Affordable Housing through Inclusionary Zoning: Lessons from the Washington Metropolitan Area," Brookings Institute Center on Urban and Metropolitan Policy Working Discussion Paper.

22. For a more extensive discussion of the advantages and disadvantages of multiple types of exemptions see Brown (2001).

23. Schuetz, Jenny, Rachel Metzler and Vicki Been (2007). "The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington D.C. and Suburban Boston Areas." Policy report prepared by the Furman Center for Real Estate and Urban Policy at New York University.

24. Powell, Benjamin and Edward Stringham (2004). "Housing Supply and Affordability: Do Affordable Housing Mandates Work?" and "Do Affordable Housing Mandates Work? Evidence from Los Angeles County and Orange County," Reason Foundation Research Reports.

25. Calavita, Nico, Kenneth Grimes and Alan Mallach (1997). "Inclusionary Housing in California and New Jersey: A Comparative Analysis," *Housing Policy Debate*, 8:1, 109–141. The authors identify in-lieu fees varying from a few hundred dollars to more than $100,000 per unit. The fees may also be used for a variety of purposes ranging from homelessness elimination to special needs housing to land acquisition for affordable housing.

26. Mukija, Vinit, Lara Regus, Sara Slovin and Ashok Das (2007). "The Inclusionary Housing Experience in Southern California: An Evaluation of the Programs in Los Angeles and Orange Counties." A report prepared by the Richard S. Ziman Center for Real Estate at UCLA. The report concludes in-lieu fee provisions are updated irregularly and may fail to represent the true cost of providing affordable housing.

27. Schwartz, Alex and Kian Tajbakhsh (1997). "Mixed-Income Housing: Unanswered Questions," *Cityscape: A Journal of Policy Development and Research*, 3:2, 7, pp. 1–92. The authors note little research has been done to examine the competitiveness of mixed-income housing projects and their ability to retain tenants and maintain rent levels/occupancy in different economic environments. Also see Smith, Alastair (2002). "Mixed-Income Housing Developments: Promise and Realty." A report prepared by the Joint Center for Housing Studies at Harvard University.

28. See Talberth, John (2005). "Economic Benefits of the Santa Fe Homes Program Ordinance." Policy brief prepared for the Center for Sustainable Energy. Tetreault, Bernard (2000). "Arguments Against Inclusionary Zoning You Can Anticipate Hearing," *New Century Housing*, 1:2, pp. 17–20.

29. See Brunick, Nicholas (2004a).

30. Powell, Benjamin and Edward Stringham (2003). "Affordable Housing Laws Make Homes More Expensive," *American Institute for Economic Research's Economic Education Bulletin*, v. XLIII, n. 2. Critics of inclusionary zoning argue that it is similar to a price control, decreasing development activity and putting upward pressure on market-rate housing prices.

31. Dietderich, Andrew G. (1996). "An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed," *Fordham Urban Law Journal*, 24, pp. 23–104.

32. See the following articles for influential theoretical discussions of inclusionary zoning's potential economic impact on real estate markets: Clapp, John M. (1981). "The Impact of Inclusionary Zoning on the Location and Type of Construction Activity," *Journal of the American Real Estate and Urban Economics Association*, 9, pp. 436–456; Ellickson, Robert C. (1981). "The Irony of Inclusionary Zoning," *Southern California Law Review*, 54, pp. 1167–1216.

33. A number of urban housing markets have experienced tremendous growth over the last five years, which has allowed some municipalities to enforce mandatory inclusionary zoning ordinances without offering economic incentives. See Kautz (2002).

34. Conine, Kent (2000). "A Home Builder's Policy View on Inclusionary Zoning," *New Century Housing*, 1:2, pp. 27–29. The impact on middle-income families may be pronounced in areas where housing prices are already increasing rapidly, which is often the case in jurisdictions adopting inclusionary zoning.

35. Calavita et al. (1997). The authors note that political support for inclusionary zoning may erode in these instances when housing markets soften because a greater financial burden is imposed upon residential developers.

36. Recent studies expand upon previous research examining the economic effects of inclusionary zoning. See Powell, Benjamin and Edward Stringham (2004). "Housing Supply and Affordability: Do Affordable Housing Mandates Work?" and "Do Affordable Housing Mandates Work? Evidence from Los Angeles County and Orange County," Reason Foundation Research Reports; Rosen, David (2004). "Inclusionary Housing and its Impact on Housing and Land Markets," *NHC Affordable Housing Policy Review*, 3:1, pp. 38–46.

37. Schuetz, Jenny, Rachel Metzler and Vicki Been (2008). "Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets," Furman Center for Real Estate and Urban Policy Working Paper.

38. Mukhija, Vinit, Lara Regus, Sara Slovin and Ashok Das (2008). "Can Inclusionary Zoning be an Effective and Efficient Housing Policy? Evidence from Los Angeles and Orange Counties." Working Paper Presented at the 2009 Association for Public Policy Analysis and Management Annual Conference.

39. Knaap, Gerrit-Jan, Antonio Bento and Scott Lowe (2008). "Housing Market Impacts of Inclusionary Zoning," National Center for Smart Growth Research and Education Research Report.