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

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Summary

In response to the nationwide affordable housing crisis, many municipalities are turning to inclusionary zoning programs as an effective tool for generating much needed affordable housing. Research shows that local governments increasingly favor mandatory inclusionary zoning programs rather than voluntary programs for three reasons:

- 1) **Mandatory programs produce more affordable units.** The lack of affordable housing, particularly in job-rich communities around the country, harms vulnerable households and hinders local economic development. Mandatory inclusionary zoning programs generate more units of affordable housing. This means more workforce housing near jobs, reduced sprawl, and less traffic congestion and air pollution.
- 2) **Mandatory programs produce more affordable units for a wider range of income levels within the affordable spectrum.** While voluntary programs may produce upper-range moderate-income housing, mandatory programs more effectively generate housing for low-income entry-level workers, who help drive local economies.
- 3) **Mandatory programs offer uniformity and predictability in their implementation and enforcement.** Developers benefit from uniform expectations and certainty throughout the development process, and municipalities benefit from a more predictable level of affordable housing production.

With all the benefits of mandatory programs, it is not surprising to find that more municipalities around the country are adopting mandatory, rather than voluntary, inclusionary zoning programs.

Comparing Mandatory and Voluntary Inclusionary Zoning Programs

1. Mandatory programs produce more affordable housing units.

Experts agree that mandatory, rather than voluntary, inclusionary zoning programs are more effective at generating a larger supply of affordable housing. A 1994 study conducted on inclusionary zoning programs in California found that “mandatory programs produce the most very-low- and low-income affordable units compared with voluntary programs, both in terms of absolute numbers and percentage of total development.”¹ The report concluded that the effectiveness of inclusionary programs in California was closely correlated with their mandatory nature; in fact, nine of the top fourteen most productive inclusionary housing programs in California are mandatory.² Two counties cited in another California study “specifically blame the voluntary nature of their programs for stagnant production [of affordable housing]

¹ *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994: 42.

² *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994: 48.

despite a market-rate boom.”³ A Massachusetts study regarding inclusionary zoning programs reached similar conclusions. The report stated that the “greatest potential” for inclusionary zoning lies in mandatory, rather than voluntary, inclusionary zoning programs.⁴

2. Voluntary programs fail to produce enough housing affordable to low- and very-low-income households.

While voluntary inclusionary zoning programs can generate upper-range moderate-income housing (with a significant number of developer incentives), they generally fail to produce affordable housing for low- and very-low-income households in the absence of subsidies. For example, Austin, Texas, adopted a voluntary program called the S.M.A.R.T. (Safe, Mixed-Income, Accessible, Reasonably-priced, Transit-oriented) Housing Initiative in April 2000. While the program has created a substantial number of units for moderate-income households (through aggressive program implementation and an agreement to waive 100% of the building fees if a 40% set-aside is included⁵), it has only produced a small percentage of housing for low- and very-low-income households. While 62% of the total units in the program to date are affordable to families at or below the median family income (MFI), only 2% of the total units are affordable to low-income households earning at or below 40% of the MFI.⁶

Voluntary inclusionary zoning programs that 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. The City of Roseville, California adopted an “Affordable Housing Goal” (AHG) program in 1988, which encourages developers to work with the city to voluntarily build affordable housing within residential developments. Since 1988, the program has produced 2000 affordable units through significant federal, state, and local subsidies. However, \$233,708,554 in subsidies would be necessary to meet the city’s goal of 5,944 affordable units by 2007—that is \$217,608,554 more in funding than the city is expected to capture between 2002 and 2007.⁷ In the absence of expanded funding, it will be impossible for Roseville to meet its regional affordable housing goal through its voluntary program.

³ *Inclusionary Housing in California: 30 Years of Innovation*, prepared by the California Coalition for Rural Housing and the Non-Profit Association of Northern California, 2003.

⁴ Ziegler, Clark. *Inclusionary Zoning: Lessons Learned in Massachusetts*, National Housing Conference Affordable Housing Policy Review, VI. 2, Issue 1, January 2002

⁵ Interview of Regina Copic, S.M.A.R.T. Housing Program Director, July 2003.

⁶ A reasonable priced housing unit in Austin is defined as being affordable for a family that earns 80% of the MFI and spends no more than 30% of the gross income on housing. To qualify for the program, a family of four that lives in Austin must earn no more than \$56,500 a year.

⁷ Roseville General Plan, *Revisions to Draft Update to Housing Element 2002 for HCD Review*, August 23, 2002: 12.

3. Mandatory programs are more predictable in enforcement and results.

Mandatory programs offer reliability and predictability in their ability to create integrated affordable units and/or generate fee in-lieu payments, depending on how the program is structured. Developers also benefit from mandatory programs because they offer uniform expectations and provide more certainty throughout the development process. Mandatory programs create a level playing field for developers, ensuring that all developers must adhere to the same guidelines throughout the development process. Developers in Irvine, California recently lobbied the city council to change the city's inclusionary housing ordinance from voluntary to mandatory enforcement due to the confusion and uncertainty developers experienced in the development process under a voluntary program.⁸

The most successful voluntary programs are treated in practice as mandatory requirements.

A dedicated city staff is critical to the success of any inclusionary zoning program, voluntary or mandatory. However, for a voluntary program to succeed, it is particularly important to have a dedicated city staff willing to aggressively implement such a program. Calavita and Grimes, for example, have attributed the success of the voluntary inclusionary zoning program in Irvine, California to an "unusually sophisticated" and "particularly gutsy" staff committed to making the program work.⁹ (In fact, Irvine's voluntary inclusionary housing policy changed to a mandatory inclusionary housing ordinance in the spring of 2003).

In Chapel Hill, North Carolina, the city's voluntary ordinance is aggressively enforced in a mandatory fashion.¹⁰ The policy began as an "expectation" for developers with residential rezoning requests to include at least a 15% affordable housing set-aside. However, the voluntary program is so rigorously enforced by town staff and the Town Council that no new residential developer, regardless of requiring a rezoning request, has approached the Planning Commission without at least a 15% affordable housing set-aside or plans to pay a fee in lieu of building affordable units.¹¹ In practice, developers construe the inclusionary zoning expectation as mandatory because residential development proposals are difficult, more expensive, and less likely to win approval without an affordable housing component.¹² However, because the program is voluntary, developers do not have the benefit of a policy that is uniform and predictable.

The trend in inclusionary zoning is towards the adoption of mandatory, rather than voluntary, inclusionary zoning programs.

⁸ Interview of Barry Curtis, Associate Planner for the City of Irvine, June 16, 2003.

⁹ Calavito, Nico and Kenneth Grimes. "Inclusionary Housing in California: The experience of two decades," *Journal of the American Planning Association*. Chicago: Spring 1998, Vol. 64, Is. 2: 150-170.

¹⁰ The State of North Carolina has not legally enable municipalities to pass mandatory inclusionary zoning ordinances.

¹¹ Interview of Phil Mason, Senior Planner for the Town of Chapel Hill, June 2003.

¹² Ibid.

The current trend in inclusionary housing programs is towards the mandatory end of the implementation spectrum. BPI's research has so far identified only one municipality in the country that has changed from a mandatory to a voluntary program: Orange County, California. This switch in enforcement led to a dramatic drop in the production of affordable housing.¹³ Meanwhile, as the table below demonstrates, other communities around the country have recently switched to a mandatory status in order to gain the benefits of additional affordable units and greater predictability.

A. Switching from Voluntary to Mandatory Inclusionary Zoning

Municipality or County	Reason for Change	Result
Cambridge, MA	10 years of voluntary inclusionary zoning districts failed to generate any affordable housing.	In 1999 Cambridge switched to a mandatory program that has since produced over 100 affordable units.
Irvine, CA	Developers initiated a switch to a mandatory ordinance after over two decades of confusion and uncertainty under a voluntary program. ¹⁴	New mandatory ordinance (adopted in the spring of 2003) is a concise program with uniform expectations and rewards for developers.
Pleasanton, CA	Voluntary ordinance proved ineffective at creating affordable housing in the face of increasing housing costs and decreasing availability of land.	Passed mandatory ordinance in late 2000. ¹⁵
Boulder, CO	Throughout the 1980s and 1990s, the city's voluntary ordinance proved an ineffective tool to generate affordable housing.	Mandatory ordinance went into effect in 2000 and has generated 56 units of affordable housing, with more in the pipeline.

B. Switching from Mandatory to Voluntary Inclusionary Zoning

Municipality or County	Reason for Change	Result
Orange County, CA	Local political reasons.	A decrease in the production of affordable housing units: the mandatory program produced 6,389 units of affordable housing in four years (1979-1983), while the voluntary program has produced just 952 units over eleven years (1983-1994). ¹⁶

¹³ *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994: 45.

¹⁴ Interview of Barry Curtis, Associate Planner for the City of Irvine, June 2003.

¹⁵ Statistics on the number of units generated under the new mandatory ordinance are not yet available.

¹⁶ *Creating Affordable Communities*, Prepared by the California Coalition for Rural Housing Project, November 1994.

C. Recent trend in large cities adopting mandatory ordinances

Inclusionary zoning is quickly becoming a mainstream policy tool for increasing the supply of affordable housing. In most cases, municipalities are adopting mandatory inclusionary zoning programs to increase the supply of workforce housing. The five largest cities to adopt inclusionary zoning, Boston, Denver, Sacramento, San Diego, and San Francisco, chose mandatory ordinances in the face of severe affordable housing shortages.¹⁷ 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.

Inclusionary zoning programs can fall between mandatory and voluntary enforcement based on nuances in the ordinances.

Not all inclusionary zoning ordinances fit neatly into the categories of mandatory or voluntary enforcement. Policies may fall between mandatory and voluntary compliance if applied to certain districts or types of developments, such as a revitalizing business district or a PUD. Policies might also fall between if they apply only to projects with a rezoning request, or only affect projects proposed after the adoption of the ordinance.

For practical reasons, some municipalities design ordinances that are mandatory but include voluntary provisions. For example, Cambridge, Massachusetts adopted an inclusionary zoning ordinance that exempts rehab projects because one of the city's main developer incentives is a density bonus, which is difficult to accommodate in rehabs. Boston, Massachusetts currently has an effective mandatory inclusionary zoning policy that applies to any residential project of 10 or more units that requires zoning relief or is financed by or developed on property owned by the City of Boston or the Boston Redevelopment Authority (BRA). Due to the nature of Boston's zoning code, practically every new residential development over nine units is subject to zoning relief, and thus the policy.

The Bottom Line

The experience of municipalities and counties nationwide demonstrates that mandatory inclusionary zoning works as a practical and successful tool for generating affordable housing. While the success of voluntary programs is contingent on the availability of subsidies and aggressive staff implementation, mandatory programs have produced more affordable units overall, and more units for a wider range of income levels within the affordable spectrum. Not only are more municipalities establishing mandatory inclusionary zoning programs, many municipalities with experience implementing voluntary ordinances are switching to mandatory ordinances. Their uniform and predictable nature, coupled with their documented effectiveness at producing more affordable units, has made mandatory programs overwhelmingly more popular.

¹⁷ All five cities have a population exceeding 400,000 people.