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Inclusionary Zoning

A selected annotated bibliography

Compiled February 2014

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Recent Social Science and Planning Articles

Basolo, Victoria, “Viewpoint: Inclusionary Housing: The Controversy Continues.”
***The Town Planning Review* 82 no. 2 (2011): i–vi.**

*Summary*¹: Inclusionary housing is aimed at creating better communities by producing affordable housing and encouraging social inclusion. As used here, ‘inclusion’ encompasses racial and ethnic integration and income-mixing with the latter typically employed to achieve integration. Despite its laudable goals, inclusionary housing continues to spark controversy and litigation in many places. What then is the future of inclusionary housing, and, who cares? These questions are important to planners and public officials concerned with housing affordability, social inequalities, land use inefficiencies and environmental quality. Despite inclusionary housing’s potential to address an array of community issues, its history, the housing crash and subsequent global economic recession threaten the survival of this planning policy.

Bento, Antonio, Scott Lowe, Gerrit-Jan Knaap, and Arnab Chakraborty, "Housing Market Effects of Inclusionary Zoning," *Cityscape* 11 no. 2 (2009): 7-26.

Abstract: This article presents an empirical analysis of the effects of inclusionary zoning policies on housing prices and starts in California during the period from 1988 through 2005. The analysis compares cities with and without such policies and isolates the effects of inclusionary zoning programs by carefully controlling for spatial and temporal conditions, such as the neighborhood or school district within which the house is located

¹ “Abstracts” of articles presented in this bibliography are copied verbatim from the published article. “Summaries” of articles were drafted by PRRAC staff, who are solely responsible for any mis-characterizations of content.

and changing market conditions over time. The analysis found that inclusionary zoning policies had measurable effects on housing markets in jurisdictions that adopt them; specifically, the price of single-family houses increases and the size of single-family houses decreases. The analysis also found that, although the cities with such programs did not experience a significant reduction in the rate of single-family housing starts, they did experience a marginally significant increase in multifamily housing starts. The magnitude of this shift varied with the stringency of the inclusionary requirements. Finally, the analysis found that the size of market-rate houses in cities that adopted inclusionary zoning increased more slowly than in cities without such programs. The results are fully consistent with economic theory and demonstrate that inclusionary zoning policies do not come without costs.

Cowan, Spencer M., “Anti-Snob Land Use Laws, Suburban Exclusion, and Housing Opportunity,” *Journal of Urban Affairs* 28 no. 3 (2006): 295–313.

Abstract: Creating housing opportunities in exclusionary suburbs for lower-income households is an essential component of any effort to reduce the concentration of the poor and minorities in central cities. Three New England states have adopted anti-snob land use laws in an effort to promote the development of more affordable housing in the suburbs. Those laws limit the ability of local government to use its power over land use and development permitting to effectively exclude housing that lower-income households can afford. This research describes how those laws relate to other efforts to open the suburbs, how the laws work, and what impact adoption of the laws has had on the supply of affordable housing in exclusionary municipalities.

Hughen, W. Keener, and Dustin C. Read, “Inclusionary Housing Policies, Stigma Effects and Strategic Production Decisions,” *The Journal of Real Estate Finance and Economics* (2014): 1–22.

Abstract: Inclusionary housing policies enacted by municipal governments rely on a combination of legal mandates and economic incentives to encourage residential real estate developers to include affordable units in otherwise market-rate projects. These regulations provide a means of stimulating the production of mixed-income housing at a minimal cost to the public sector, but have been hypothesized to slow development and put upward pressure on housing prices. The results of the theoretical models presented in this paper suggest that inclusionary housing policies need not increase housing prices in all situations. However, any observed impact on housing prices may be mitigated by density effects and stigma effects that decrease demand for market-rate units. The results additionally suggest real estate developers are likely to respond to inclusionary housing policies by strategically altering production decisions.

Kontokosta, Constantine E., “Mixed-Income Housing and Neighborhood Integration: Evidence from Inclusionary Zoning Programs,” *Journal of Urban Affairs* (2013).

Abstract: Using propensity score matching and regression techniques, together with an original database of approximately 12,000 inclusionary zoning (IZ) units built in Montgomery County, Maryland and Suffolk County, New York, this article comparatively analyzes the effect of IZ programs on racial and income integration and

neighborhood change at the census tract level between 1980 and 2000. In particular, the article explores the question of whether IZ programs encourage stable neighborhood integration over time. This analysis fills a gap in the current empirical literature on the effect of IZ programs on neighborhood change and integration, an original policy goal that has not been evaluated previously due to data limitations. The findings indicate that the effect of IZ units on neighborhood racial and income transition is dependent on the siting of IZ units, the initial characteristics of the neighborhoods in which they are built, and the institutional framework of the IZ program. In the aggregate, IZ units positively affect the level of both racial and income integration in neighborhoods where units are built, although stark differences emerge between the two study areas. The findings do reveal the potential for IZ programs to exacerbate existing concentrations of poverty and patterns of residential racial segregation.

Meltzer, Rachel, and Jenny Schuetz, “What Drives the Diffusion of Inclusionary Zoning?” *Journal of Policy Analysis and Management* 29 no. 3 (2010): 578-602.

Abstract: Social scientists offer competing theories on what explains the policymaking process. These typically include economic rationalism, political competition or power struggles, and policy imitation of the kind that diffuses across spatially proximate neighbors. In this paper, we examine the factors that have influenced a recent local policy trend in California: inclusionary zoning (IZ). IZ programs require developers to make a certain percentage of the units within their market-rate residential developments affordable to low- or moderate-income households. By 2007, 68 percent of jurisdictions in the San Francisco Bay Area had adopted some type of IZ policy. We test the relative importance of economic, political, and spatial factors in explaining the rapid diffusion of IZ, across 100 cities and towns in the Bay Area. Consistent with an economic efficiency argument, results of hazard models provide some evidence that IZ is adopted in places with less affordable housing. However, political factors, such as partisan affiliation and the strength of affordable housing nonprofits, are even more robust predictors of whether or not a local government adopts IZ. There is no evidence of spatial diffusion in the case of IZ adoption; jurisdictions are not, on average, responding to the behavior of their neighbors.

Mukhija, Vinit, Lara Regus, Sara Slovin, and Ashok Das, “Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence from Los Angeles and Orange Counties.” *Journal of Urban Affairs* 32 no. 2 (2010): 229–252.

Abstract: Inclusionary zoning—requiring and encouraging developers to build some affordable housing in market-rate projects—is a growing but deeply contested practice. We evaluate the experience of inclusionary zoning programs in Los Angeles and Orange Counties, including their structure and elements, effectiveness in delivering affordable housing, and effect on housing markets and supply, to address the debate. We find that the programs vary but are not heavily demanding and include cost offsets. Low in-lieu fees, however, can be the weak link. Many of the mandatory programs are effective, if effectiveness is measured by comparing the affordable housing productivity of inclusionary zoning with other affordable housing programs. We found no statistically significant evidence of inclusionary zoning's adverse effect on housing supply in cities with inclusionary mandates. We conclude that critics underestimate the affordable housing productivity of inclusionary zoning, and overestimate its adverse effects on

housing supply. Nonetheless, inclusionary zoning is no panacea and needs to be part of a comprehensive housing strategy.

Pfeiffer, Deirdre, "Passing a Mandatory Inclusionary Housing Ordinance: Lessons from San Francisco and San Diego," *Berkeley Planning Journal* 20 (2007): 77-95.

Abstract: A mandatory inclusionary housing ordinance is a strong act on behalf of a city government in support of housing affordability. This paper examines the conditions and decision making processes that enabled San Francisco and San Diego to pass mandatory inclusionary housing measures, with the intent of developing recommendations for other large cities that wish to undertake similar programs. Three factors are identified as important in the successful passage of inclusionary housing ordinances: the involvement of a broad-based housing coalition, the existence of forums for negotiation between stakeholders, and the incremental enactment of tenets.

Schuetz, Jenny, "No Renters in My Suburban Backyard: Land Use Regulation and Rental Housing," *Journal of Policy Analysis and Management* 28 no. 2 (2009): 296–320.

Abstract: Academics and policymakers have argued that the ability of low- and moderate-income families to move into desirable suburban areas is constrained by the high cost of housing. Local zoning and other forms of land use regulation are believed to contribute to increased housing prices by reducing supply and increasing the size of new housing. Suburban restrictions on rental housing are particularly likely to reduce mobility for low-income families. In this paper, I employ an instrumental variables approach to examine the effects of zoning on the quantity and price of rental housing in Massachusetts, using historical municipal characteristics to instrument for current regulations. Results suggest that communities with more restrictive zoning issue significantly fewer building permits for multifamily housing but provide only weak evidence of the effects of regulations on rents. The lack of effects on rents may reflect the low level of multifamily development, while analysis is complicated by development of subsidized housing under the state's affordable housing law.

Schuetz J., Meltzer R., and Been V., "31 flavors of inclusionary zoning: Comparing policies from San Francisco, Washington, DC, and suburban Boston," *Journal of the American Planning Association*. 75 no. 4 (2009): 441-456.

Abstract:

Problem: Over the past several decades, inclusionary zoning (IZ) has become an increasingly popular, but sometimes controversial, local means of producing affordable housing without direct public subsidy. The conversation about IZ has thus far largely ignored variations in the structure of IZ policies, although these variations can impact the amount of affordable housing produced and the effects of IZ on production and prices of market rate housing.

Purpose: We provide a detailed comparison of the ways in which IZ programs have been structured in the San Francisco and Washington metropolitan areas and in suburban Boston.

Methods: We create a unique dataset on IZ in these three regions by combining original data collected from several previous surveys. We use these data to compare the prevalence, structure, and affordable housing output of local IZ programs.

Results and conclusions: In the San Francisco Bay Area, IZ programs tend to be mandatory and apply broadly across locations and structure types, while including cost offsets and alternatives to onsite construction. In the Washington, DC, area, most IZ programs are also mandatory, but have broader exemptions for small developments and low-density housing. IZ programs in the Boston suburbs exhibit the most heterogeneity. They are more likely to be voluntary and to apply only to a narrow range of developments, such as multifamily housing, or within certain zoning districts. The amount of affordable housing produced under IZ varies considerably, both within and across the regions. There is some evidence that IZ programs that grant density bonuses and exempt smaller projects produce more affordable housing.

Takeaway for practice: Although variation in IZ program structures makes it hard to predict effectiveness, IZ's adaptability to local circumstances makes it a particularly attractive policy tool. IZ programs can easily be tailored to accommodate specific policy goals, housing market conditions, and residents' preferences, as well as variations in state or local regulatory and political environments.

Schuetz, Jenny, Rachel Meltzer, and Vicki Been, “Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in the United States,” *Urban Studies* 48 no. 2 (2011): 297–329.

Abstract: Many local governments are adopting inclusionary zoning (IZ) as a means of producing affordable housing without direct public subsidies. In this paper, panel data on IZ in the San Francisco metropolitan area and suburban Boston are used to analyse how much affordable housing the programmes produce and how IZ affects the prices and production of market-rate housing. The amount of affordable housing produced under IZ has been modest and depends primarily on how long IZ has been in place. Results from suburban Boston suggest that IZ has contributed to increased housing prices and lower rates of production during periods of regional house price appreciation. In the San Francisco area, IZ also appears to increase housing prices in times of regional price appreciation, but to decrease prices during cooler regional markets. There is no evidence of a statistically significant effect of IZ on new housing development in the Bay Area.

Social Science and Planning Articles before 2000

Calavita, Nico, and Kenneth Grimes, “Inclusionary Housing in California: The Experience of Two Decades,” *Journal of the American Planning Association* 64 no. 2 (1998): 150–169.

Abstract: Answering the call for a “new comprehensiveness” in planning that enhances community equity, this paper presents a case study of Inclusionary Housing (IH), a program that can foster both residential integration and affordable housing. IH in California has evolved in response to, and has adapted to changing economic and

political conditions. Survey findings for 75 IH programs show that they have produced more than 24,000 units, provide flexibility to the developers in meeting program requirements, establish affordability terms that are usually met at 30 years or longer, and favor moderate-income home buyers. Interviews with planners in San Diego County reveal that IH programs are usually established as a response to an actual or perceived threat of litigation due to noncompliance with state “housing element” law. Planners can enhance a new comprehensiveness by emphasizing state mandates and regional housing needs and by pursuing IH as one of the regulatory choices available to decision-makers.

Calavita, Nico, Kenneth Grimes, and Alan Mallach, “Inclusionary Housing in California and New Jersey: A Comparative Analysis,” *Housing Policy Debate* 8 no. 1 (1997): 109–142.

Abstract: Many people have argued that inclusionary housing (IH) is a desirable land use strategy to address lower-income housing needs and to further the geographic dispersal of the lower-income population. In an attempt to evaluate the effectiveness of IH, this article examines the experiences of New Jersey and California, two states where IH has been applied frequently over an extended period.

While the concept of regional “fair share” is central to both states’ experiences, the origins of the programs, their applications, and their evolutions are quite dissimilar. IH originated in New Jersey from the famous Mount Laurel cases and in California from housing affordability crises and a legislatively mandated housing element. The experiences of both states indicate that IH can and should be part of an overall affordable housing strategy but that it is unlikely to become the core of such a strategy.

Goetz, Edward G., “Promoting Low Income Housing Through Innovations in Land Use Regulations,” *Journal of Urban Affairs* 13 no. 3 (1991): 337–51.

Abstract: Many analysts argue that important structural conditions exist that discourage city governments from engaging in redistributive policy, especially programs that create direct costs for private developers. Labeled the limited city argument, this logic concludes that only cities with sufficient levels of economic and fiscal well-being can afford to impose upon private developers to meet social needs. Using survey data from 133 cities with populations over 100,000, this paper examines land use regulations that impose obligations or restrictions on the private sector to promote low income housing. The data suggest that the limited city argument is only part of the explanation. The use of regulatory housing policy is also correlated with measures of need and low income housing advocacy.

Books

Calavita, N., & Mallach, A., *Inclusionary housing in international perspective: Affordable housing, social inclusion, and land value recapture* (Cambridge, MA: Lincoln Institute of Land Policy, 2010).

Mallach, A., *Inclusionary Housing Programs: Policies and Practices* (New Brunswick, NJ: Center for Urban Policy Research, Rutgers, 1984).

Merriam, D., Brower, D. & Tegeler, P., *Inclusionary Zoning Moves Downtown*, (Chicago: Planners Press, 1985)

Reports

Brown, Karen Destorel. “Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area.” *Brookings Institution: Center of Urban and Metropolitan Policy* (2001).

Abstract: Many jurisdictions are looking for new ways to house not only low-income residents, but also working families who fill critical positions in the labor market. One of the ways in which jurisdictions are meeting this challenge is through inclusionary zoning, a program that principally requires developers to include affordable homes when they build a particular number of market-rate homes. This paper examines the effectiveness of inclusionary zoning programs as tools for not only providing affordable housing, but also ensuring that such housing is built throughout a jurisdiction. Focusing particularly on the Montgomery County, MD ordinance and those found in three other Greater Washington area jurisdictions, this paper will: highlight the effectiveness of inclusionary zoning in several jurisdictions; examine the obstacles facing new and old ordinances alike; and identify where opportunities for change exist to ensure the program's longevity and productivity. By illustrating how inclusionary zoning has been implemented in this area, we hope to inform those who want to implement inclusionary zoning in their jurisdictions, and to assist those who want to improve and preserve existing ordinances.

Brunick, N. “The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs over Voluntary Programs.” *Zoning Practice, American Planning Association* (2004).

Summary: 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.

Brunick, N. “Inclusionary Housing: Proven Success in Large Cities.” *Zoning Practice*, American Planning Association 10 no. 4 (2004), Available at <http://www.planning.org/zoningpractice/2004/pdf/oct.pdf>

Summary: In a climate of decreased federal support, local governments in affluent communities found inclusionary zoning to be a cost-effective way to produce homes and apartments for valued citizens, including seniors, public employees, and working-poor households, who would otherwise be excluded from the housing market. Until recently, no large U.S. city had adopted an inclusionary housing program. With the 1990s resurgence of many urban centers as vibrant locations for new investment, inclusionary zoning has surfaced as a policy solution to rising housing costs in big cities.

This issue of *Zoning Practice*—the second in a two-part series on inclusionary housing—discusses why large urban centers are examining and adopting inclusionary housing strategies. The article also presents five case studies of recently enacted inclusionary housing programs in Boston, Denver, Sacramento, San Diego, and San Francisco. Finally, lessons that other local governments (large or small) can draw from the large-city inclusionary housing experience will be proposed and examined.

“Expanding Housing Opportunities Through Inclusionary Zoning: Lessons From Two Counties.” *Urban Institute* (2012), Available at http://www.huduser.org/portal/publications/HUD-496_new.pdf

Abstract: Inclusionary zoning (IZ), also known as inclusionary housing, has become a popular policy tool that local jurisdictions use to increase the production of affordable housing. IZ ordinances either require or encourage builders of new residential developments to set aside a certain percentage of the housing units for low- or moderate-income residents.

This pilot study examines how effective IZ programs are as a strategy to increase the supply of affordable housing and further other housing- and community-related goals in two study sites: Montgomery County, Maryland, and Fairfax County, Virginia. These programs were selected because they operate in the same metropolitan housing market and have been in place for decades. The design and structure of these programs, however, differ significantly and therefore offer potential insight into how contrasting approaches relate to outcomes. The research team collected data, including IZ ordinances and other

relevant documents, program data, interviews with key stakeholders, and local housing-market statistics, to evaluate how well IZ strategies provide affordable housing options for low-income communities over time.

A key observation is that, although inclusionary zoning has increased the supply of affordable housing units in these two sites, IZ requirements must be clear and administered consistently so that developers can effectively predict when it is economically feasible to build projects that require inclusionary housing units. The researchers recommend that future inquiry should focus on how IZ programs perform across various economic and political contexts. They also suggest that more research is necessary to evaluate the costs and benefits of IZ programs, particularly given the variation among programs.

Fox, R.K. and K. Rose. “Expanding Housing Opportunity in Washington, DC: The Case for Inclusionary Zoning.” (2003) Available at <http://policylink.info/Research/DCIZ/>

Summary: The growing need for housing that is affordable to low- and moderate-income families is an issue facing nearly every part of the United States. This new PolicyLink report draws on inclusionary zoning successes from around the country and makes recommendations for expanding the availability of affordable housing in Washington, DC that apply to other cities as well.

Expanding Housing Opportunity in Washington, DC: The Case for Inclusionary Zoning uses data compiled from hundred of localities where inclusionary zoning has made a critical difference in providing affordable housing to low- and moderate- income families. The report shows how inclusionary zoning helps increase the development of affordable rental and ownership units; expand opportunity by creating mixed income communities; contribute to deconcentration of poverty, by spreading affordable housing across jurisdictions or regions, rather than isolating it in the poorest neighborhoods; and makes recommendations to jurisdictions for crafting a comprehensive and successful inclusionary zoning program.

Hickey, Robert. "After the Downturn: New Challenges and Opportunities for Inclusionary Housing." *Center for Housing Policy* (2013) Available at <http://www.nhc.org/media/files/InclusionaryReport201302.pdf>

Summary: While most inclusionary policies survived the downturn, eight key challenges have come into greater focus over the past five years, affecting inclusionary policies in various parts of the country. These include — among others — new restrictions on applying inclusionary requirements to rental housing, a shift in development patterns toward “infill” settings where developments costs are often higher, and lingering difficulties selling affordable homes produced through inclusionary policies in a number of communities.

At the same time, new opportunities have emerged for communities seeking to establish or expand their inclusionary housing programs. In spite of the downturn, some jurisdictions have added or intensified their policies in areas experiencing significant upzoning and/or major new transit investments. In addition, the U.S. Department of

Housing and Urban Development (HUD) has intensified scrutiny of local housing policies that impede fair housing choices, creating new openings for local conversations about the potential of inclusionary housing policies to affirmatively further fair housing. Finally, new difficulties have spawned new creativity, creating opportunities for jurisdictions to learn from one another about new ways to strengthen policies and make them more workable for private developers. This paper, the first in a series, focuses on key challenges while hinting at creative responses worth further study and experimentation.

“Increased Housing Opportunity in NYC: The Case for Inclusionary Zoning.” Pratt Center for Community Development (2014), Available at <http://prattcenter.net/research/increased-housing-oppourtunity-nyc-case-inclusionary-zoning>.

Summary: Pratt Center and PolicyLink make the case for inclusionary zoning- setting aside low- and moderate-income units in new housing developments under designated areas in a rezoning- as a tool to ensure that the benefits of change in NYC neighborhoods will be fairly shared in the years to come. This report presents the need for affordable housing, the opportunity presented by the Bloomberg administration’s redevelopments, and recommendations for an inclusionary zoning policy that can guaranteed that redevelopment plans create thousands of units of permanently affordable housing in mixed-income neighborhoods throughout the city.

Schwartz, Heather L., Liisa Ecola, Kristin J. Leuschner, and Aaron Kofner. “Is Inclusionary Zoning Inclusionary? A Guide for practitioners” (2012), Available at http://www.rand.org/pubs/technical_reports/TR1231.html.

Abstract: Inclusionary zoning (IZ) has become an increasingly popular tool for providing affordable housing in an economically integrative manner. IZ policies typically require developers to set aside a proportion of units in market-rate residential developments to be made affordable for lower-income households in exchange for development rights or zoning variances. These policies are considered "inclusionary" because they are intended to allow lower- and moderate-income households to buy or rent property in middle- and upper-income communities. This report examines 11 IZ programs across the United States to determine the extent to which the policies serve lower-income families and provide IZ recipients with access to low-poverty neighborhoods and residentially assign them to high-performing schools, thereby promoting the academic achievement and educational attainment of their children. It also considers ways in which IZ policies vary and how different design features might affect the success of the programs in promoting affordable housing and social inclusion for IZ recipients. Finally, it identifies key program-design aspects that shape the potential to meet the goals of providing affordable housing to low-income households and promoting social inclusion for IZ recipients.

Law Review Articles

Benson, Nicholas. "Tale of Two Cities: Examining the Success of Inclusionary Zoning Ordinances in Montgomery County, Maryland and Boulder, Colorado, A." *J. Gender Race & Just.* 13 (2009): 753.

Summary: Inclusionary zoning is a regulatory policy, often consisting of a zoning ordinance promulgated by the state or local government that encourages or requires developers to include affordable housing units in new development. Using the experiences of Montgomery County, Maryland and Boulder, Colorado as cases in point, this Note explores what makes an inclusionary zoning ordinance successful and how it can help to create affordable housing units. Inclusionary zoning can be a useful tool for local and state governments who wish to produce affordable housing, as long as certain conditions are met.

Ennis, Josephine L. "Making room: Why inclusionary zoning is permissible under Washington's tax preemption statute and takings framework" *Washington Law Review* 88, no. 2 (2013).

Abstract: Inclusionary zoning ordinances, which typically require developers to set aside a percentage of new residential units for low and moderate income households, are a popular mechanism for ensuring the development of affordable housing in many communities. Washington State jurisdictions have been slow to introduce inclusionary zoning--particularly mandatory set-asides--perhaps because of the legal battles they would face. The Washington State Supreme Court previously relied on RCW 82.02.020 (the "tax preemption statute") to invalidate a low-income housing ordinance in *San Telmo Associates v. City of Seattle* and in *R/L Associates, Inc. v. City of Seattle*. Washington courts have also relied on a unique and complex takings analysis to invalidate low-income housing and manufactured housing laws on grounds that they constituted a "taking" of private property or a violation of substantive due process under the U.S. Constitution, or in some cases, under the Washington State Constitution. This Comment argues that inclusionary zoning is authorized by RCW 36.70A.540, the Affordable Housing Incentive Programs Act, which expressly amended the tax preemption statute and permits both voluntary and mandatory inclusionary zoning programs. This Comment explores the differences between the federal and Washington takings analyses and argues that the Washington State Supreme Court should abandon its unique tests in favor of the federal approach as articulated in *Lingle v. Chevron U.S.A., Inc.* Finally, this Comment explains why mandatory set-asides are constitutional under both federal and Washington takings law.

Jerzyk, Matthew. "Gentrification's Third Way: An Analysis of Housing Policy & (and) Gentrification in Providence." *Harvard Law & Policy Review* 3 no. 2 (2009): 413.

Summary: This article examines gentrification in the national housing market and, more specifically, in Providence, Rhode Island and the recent development debate in Providence's poorest neighborhood, Olneyville. While both national and local commentators have disagreed on the benefits and disadvantages of gentrification, this phenomenon has been underway in Olneyville for almost a decade. Recent developments

in Olneyville may illustrate how to mitigate the harmful effects of gentrification for urban neighborhoods whose residents are seeking economic rebirth after the devastation of the foreclosure crisis. Housing policies that target the redevelopment of former industrial buildings, in concert with development tax incentives, targeted rent control, and inclusionary zoning initiatives have the potential to increase the economic, social, and political capital in America's poorest neighborhoods, reduce absentee landlordism, increase meaningful home-ownership opportunities, diminish displacement of neighborhood residents, and build multiracial and mixed-income neighborhoods.

Kautz, Barbara Ehrlich. "In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing." *USFL Rev.* 36 (2001): 971.

Summary: In response to a California Court of Appeal decision which upheld the constitutionality of inclusionary zoning--a program that in the past twenty-five years has housed over 50,000 low- and moderate-income families in new homes that they would otherwise have been unable to afford. Inclusionary zoning requires a developer of new residences to make a certain percentage of its homes available to low- and/or moderate- income households at an affordable price. In *Home Builders Ass'n v. City of Napa*, Napa's inclusionary zoning withstood a major takings challenge mounted by the Home Builders Association of Northern California ("HBA") and the Pacific Legal Foundation, both leaders in the property rights movement. The California Supreme Court and the United States Supreme Court have denied certiorari, and thus local governments can continue to use inclusionary zoning as an effective tool to provide affordable housing.

Part I of this Comment describes the development of inclusionary zoning and reviews the policy debates. It concludes that, in a setting where housing supply is constrained by local zoning, inclusionary programs are a fair and reasonable way to provide affordable housing. Part II describes the legal standards applicable to review of land use regulations as opposed to exactions and discusses unresolved constitutional issues. Part III presents *City of Napa* and analyzes its likely impact on future takings challenges to inclusionary ordinances. Part IV reviews the legal issues involved when an inclusionary ordinance is considered to be a rent or price control. Part V discusses features that should be incorporated into inclusionary ordinances to withstand a constitutional challenge. In particular, it concludes that most inclusionary ordinances, as now drafted, can be viewed as either exactions or land use ordinances and that cities may be in a stronger legal position if they draft their ordinances to more clearly reflect one, but not both, of those positions.

Kelly Jr, James J. "Homes Affordable for Good: Covenants and Ground Leases as Long-Term Resale-Restriction Devices." *St. Louis U. Pub. L. Rev.* 29 (2009): 9.

Summary: Both inclusionary zoning programs and Community Land Trusts (CLTs) are developing legal arrangements that balance responsiveness to changing circumstances with an immovable commitment to the goods offered by permanently affordable homeownership. At the core of these arrangements is a single legal device that embodies the essential facets of the stewardship approach to permanent affordability: the pre-

emptive option. Whether contained in an inclusionary zoning covenant or in a CLT ground lease, the inclusion of a pre-emptive option provides affordability stewards with an assignable right of first refusal on any attempt by the homeowner to sell the property. Most importantly, this ability to have the first opportunity to buy the property when the homeowner sells includes an agreement between the affordability steward and the homeowner as to the sale price.

Part II will articulate the goal of permanently affordable homeownership and set out the criteria for evaluating different resale restriction devices to achieve it. Part III will begin by articulating the reasons why a stewardship approach to restricting resale is superior to testamentary or regulatory approaches to sustaining the affordability of subsidized homes. Part III will examine the pre-emptive option as the legal device of the stewardship approach and how it facilitates permanently affordable homeownership in a legal environment still hostile to long-term alienation restrictions that do not benefit particular landowners. Part IV concludes with an examination of how the Inclusionary Zoning and CLT using pre-emptive options in covenants and leases respectively.

Kelly, James. "Inclusionary Housing on a Global Basis." *Journal of Affordable Housing and Community Development Law* 20 (2011): 261.

Abstract: In the conventional telling of the story, inclusionary housing, a/k/a inclusionary zoning, is an American invention, an ingenious inversion of the class segregating mechanics of Euclidean zoning for the purpose of fostering social inclusion. Advocates for the proliferation of affordable housing options found a way to deploy the machinery of bulk and use restrictions in order to include, rather than exclude, affordable homes in new residential developments, beginning with the D.C. suburbs and California municipalities in the 1970s. In an inclusionary development approval process, residential construction projects of a certain size must dedicate some small portion of the new housing stock to meet the needs of those not served by the market. Often, the costs occasioned by the subsidized units are at least partially offset by the easing of density restrictions on the project. In the United States, inclusionary housing mechanisms have created well over 125,000 residential units priced below market.

Lerman, Brian R. "Mandatory inclusionary zoning – The answer to the affordable housing problem." *Boston College Environmental Affairs Law Review* 33, no. 2 (2006).

Abstract: Affordable housing has always been a problem in the United States. Cities and towns originally engaged in forms of discrimination through exclusionary zoning to exclude low-income residents. While many of the social attitudes persist today, the question is how to encourage new affordable housing development. This Note introduces the concept of inclusionary zoning as a successful method for creating affordable housing. The Note examines the constitutional analyses used for land use ordinances. Then, the Note evaluates existing affordable housing programs, distinguishing between the eastern approach and the western approach. The eastern approach--represented by New Jersey, Massachusetts, and Montgomery County, Maryland--is based upon a "fair share" of affordable housing but lacks any planning requirement. The western approach, as illustrated by Oregon and California, is based upon community planning of all necessary elements including affordable housing, and have successfully required

affordable housing development. Ultimately, the Note adopts a perspective that mandatory inclusionary zoning in all communities is the best option and should be valid under an impact fee-like analysis.

Mensz, Jan P. "Citizen Police: Using the Qui Tam Provision of the False Claims Act To Promote Racial and Economic Integration in Housing." *U. Mich. JL Reform* 43 (2009): 1137.

Abstract: Economic and racial integration in housing remains elusive more than forty years after the passage of the Fair Housing Act. Recalcitrant municipal governments and exclusionary zoning ordinances have played a large role in maintaining and exacerbating segregated housing patterns. After discussing some of the persistent causes of segregated housing patterns, this Note presents a novel approach to enforcing the Fair Housing Act and the "affirmatively furthering fair housing" requirement on recipients of federal housing grants. This Note presents a citizen suit that emerged from the Southern District of New York in *Anti-Discrimination Center v. Westchester County*, where a private plaintiff successfully used the False Claims Act to enforce the Westchester County's obligations to overcome impediments to racial integration. This Note concludes by arguing for specific reforms, regional coordination, and inclusionary zoning policies that recipients of federal funds should adopt as part of a truly integrated fair housing policy.

Papke, David Ray. "Keeping the underclass in its place: Zoning, the poor, and residential segregation." *The Urban Lawyer* (2009): 787-806.

Abstract: This article discusses the ways suburban zoning keeps the underclass out of the suburbs. The article begins by discussing the complex and sometimes contentious notion of an "underclass," which became part of popular and political discourse in the United States in the late 1970s and early 1980s. This socio-economic group is defined not by race but rather by the group's weak ties to the labor market. The article continues by considering the specific steps suburban zoning officials take to make it impossible for members of the underclass to find low-cost rental housing in the suburbs. The article then explores the possibility of challenging these zoning practices by invoking federal constitutional law standards, concluding that challenges of this sort hold little promise. In conclusion, the article addresses what might be accomplished not only by keeping the urban poor out of the suburbs but also by keeping them in the center-city. The article does not critique lines of legal reasoning or propose law reform but rather captures an oppressive aspect of American life and underscores the role law plays in it.

Riffkin, Jay A. "Responsible Development? The Need for Revision to Seattle's Inclusionary Housing Plan." *Seattle Univ. LR* 32 (2009): 443-1011.

Abstract: This Comment explores how Seattle's enactment of a limited inclusionary housing plan can effectively meet the challenges of responsible development, both satisfying the city's need for density and affordability and maintaining an economic environment conducive to developer profitability. Although Seattle's current inclusionary housing plan may give adequate incentives to developers, the city needs to move away from its current voluntary plan and toward a mandatory plan that balances increasing developer incentives with a demand for affordable onsite development to serve a broader spectrum of income levels. Part II of this Comment lays out the background of

exclusionary and inclusionary zoning laws, which form the foundation of every modern inclusionary housing plan. Part III examines the different approaches taken by the cities of Seattle, San Francisco, and Denver within the inclusionary housing framework. Finally, Part IV proposes several recommendations that will enhance the effectiveness of Seattle's inclusionary housing plan.

Talbert, Cecily T., and Nadia L. Costa. "Inclusionary Housing Programs: Local Government Respond to California's Housing Crisis." *BC Env'tl. Aff. L. Rev.* 30 (2002): 567.

Abstract: As anti-growth sentiment increases across the country, two laudable goals—affordable housing and environmental protection—are coming into conflict. This tension is most evident in California. Nine of the ten least affordable communities in the country are in California. California also has one of the most complicated and expensive environmental regulatory processes for development. This results in builders being unable to produce housing to keep up with demand, and an increase in the cost of those units that are available. “Smart Growth” is often proffered as the answer to this dilemma: by promoting more compact development, mixed-use and mixed-income neighborhoods, and creating jobs near housing and transportation, housing production will be available to meet the demand at affordable costs. While these principles may serve as a valuable planning guide, they are not a panacea. In this respect, local governments have used inclusionary housing programs as one tool to respond to this escalation of housing costs and probably will continue to do so.

Tober, Jessica A. "Bringing Home, Home: Is There a Home Rule Argument for Affordable Housing." *S. Cal. Rev. L. & Soc. Just.* 20 (2011): 91.

Summary: This Note argues that reliance on the Palmer court's preemption analysis is questionable because the decision failed to consider whether the state's affordable housing legislative scheme was reasonably related and narrowly tailored to its goal of mitigating the affordable housing crisis. Part II provides an overview of the history and current state of inclusionary housing programs, with particular attention to the Mt. Laurel line of cases, which solidified inclusionary housing's place in affordable housing plans. Part III introduces California's statutory scheme for providing affordable housing and the distribution of authority between the state and its cities. Part IV then describes general preemption principles in California and introduces some of the ambiguities in state and local preemption laws with respect to charter cities. With this foundation in place, Part V discusses the Palmer decision, its underlying preemption analysis, and the implications of the decision for future affordable housing efforts. Here, this Note argues that the Palmer decision creates an irrational framework for California's affordable housing goals. Part VI suggests solutions for clarifying the extent of local authority to enact programs to meet state mandates, and Part VII concludes.

Other Publications of Interest

National Housing Conference (NHC) Affordable Housing Policy Review. *Inclusionary Zoning: The California Experience*. Volume 3 Issue 1 (February 2004). Available at http://www.nhc.org/media/documents/IZ_CA_experiencet.pdf.

California Department of Housing and Community Development: Housing Policy Division. *Inclusionary Housing Publications* (August 2008). Available at <http://www.hcd.ca.gov/hpd/inclusionary.pdf>.

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

Ellickson, R., "The Irony of 'Inclusionary' Zoning." *Southern California Law Review* 54 (1981): 1167-1216.

Padilla, Laura M., "Reflections on Inclusionary Housing and a Renewed Look at its Viability," *Hofstra Law Review* 23 no.3 (1995): 540-626.
Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol23/iss3/1>

Rawson, M. Inclusionary zoning after Palmer and Patterson: Alive and well in California. Oakland: California Affordable Housing Law Project of the Public Interest Law Project (2010).

Tegeler, P., "Developer Payments and Downtown Housing Trust Funds," 18 *Clearinghouse Rev.* 679 (Nov. 1984)