ROUTLEDGE

Zoning

A Guide for 21st-Century Planning

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8 Zoning for Inclusion and Affordability

US Lessons on the Opportunities and Limits for Local Housing Policy

Adèle Cassola

Introduction: The Promise of Inclusionary Zoning

The complex relationship between zoning and housing in the US includes a long history of discriminatory and exclusionary regulations (see Whittemore, this volume) as well as efforts to zone for more inclusive development. "Inclusionary zoning" typically describes modifications of land use regulations to link market-rate residential development to the production of rental or ownership units affordable to low- or moderate-income households (see the following box). Since developers benefit from public investments and zoning changes that increase the value of the land they own and build on, advocates of inclusionary zoning argue that governments should capture a portion of development profits to create affordable housing (Calavita & Mallach, 2010; Jacobus, 2015).

In the US, legal challenges to exclusionary practices provided an early foundation for the policy focus on socioeconomically integrated housing. Two critical rulings in New Jersey, known as *Mount Laurel I* (1975) and *II* (1983), declared exclusionary zoning practices illegal and established municipalities' obligations to host a "fair share" of regional housing for low- and moderate-income households.[1] Similar principles continue to shape many inclusionary zoning programs, with the policy goal of increasing lower-income households' access to high-amenity neighborhoods by situating below-market-rate units within or close to market-rate developments.[2]

Over recent decades, the possibility of leveraging the zoning system to create affordable housing became pivotal in light of reduced federal support for subsidized housing development and fiscal pressure on cities to meet a range of new responsibilities (Sclar, this volume). The bulk of affordable housing in the US is still built through federal, state, and local programs that provide developers with subsidies or tax incentives, but these fall far short of meeting demand. Inclusionary zoning offers localities an attractive complement to these initiatives because it can produce affordable units without direct public fiscal assistance. The tool became particularly popular during the early to mid-2000s, as increased growth and investment intensified affordability pressures in many jurisdictions (Calavita & Mallach, 2010; Mukhija, Das,

Regus, & Tsay, 2015; Thaden & Wang, 2017). By 2016, an estimated 886 jurisdictions across the US had inclusionary zoning programs (Thaden & Wang, 2017). More than 60% of programs nationally were adopted from 2000 onward (Stromberg & Sturtevant, 2016). Among localities with available data, it is estimated that 173,707 affordable units were created in 675 jurisdictions and that $1.7 billion in affordable housing fees were collected in 373 jurisdictions by the end of 2016 (Thaden & Wang, 2017).

Despite inclusionary zoning's popularity and productivity, it is only effective in certain institutional contexts, and multiple trade-offs complicate its implementation. Drawing on past studies and an original data set of 79 large-city governments, this chapter shows that inclusionary zoning is most feasible in jurisdictions with high affordability pressures, a supportive state government environment, strong market demand, and favorable political conditions.[3] The design of inclusionary programs also requires careful consideration of its public and market impacts. Programmatic decisions can have critical implications for equity and involve compromises among inclusionary zoning's key goals. Two of the trade-offs addressed in this chapter are especially important for planners seeking to create equitable cities. First, the goals of maximizing affordable housing production and promoting socioeconomic integration are in constant tension. Second, incentivizing the creation of affordable units through higher-density market-rate development risks accelerating housing pressures in areas of increasing demand. In light of these issues, inclusionary zoning programs should be designed and wielded carefully, with attention to the local institutional context and the potential adverse consequences for those already disadvantaged in the housing market.

How Inclusionary Zoning Works

Developers undertake construction projects when they can assemble sufficient funding sources (in the form of equity, loans, and subsidies) to cover land, construction, and associated "soft" development costs. Investors and lenders will not provide financing unless the expected revenue from sales or rents exceeds the anticipated operating expenses and loan repayments, thus ensuring a positive cash flow and a sound financial return. Zoning rules directly influence a development's possible revenue by dictating the maximum size and density of a plot—which translates into the number and size of possible units. Using historical rental and sales figures from similar units, developers then project their revenue.

Pricing units at below-market (affordable) rates reduces developers' revenue. In inclusionary zoning projects, the income from the market-rate portion of the development typically finances, or cross-subsidizes, units that are offered at more affordable rates either within the market-rate development or elsewhere in the city. To make this financially feasible, inclusionary zoning

programs typically provide developers with zoning concessions that increase their projected revenue, such as the ability to build at higher densities than existing regulations allow. If the revenue that can be generated by the increased density allowance (or other incentives) exceeds the cost of providing below-market-rate units, developers have financial justification to participate.

Because inclusionary zoning relies on robust revenue from rental or sales income, this model is most productive where demand for market-rate housing is strong. However, even in high-demand areas, local governments must carefully calibrate program requirements—such as the number and location of required affordable units and the income levels targeted—to avoid unduly suppressing new housing aimed at high- and middle-income households.

Inclusionary Zoning Goals and Outcomes

Producing Affordable Housing

A primary goal of inclusionary zoning is the creation of housing that low and moderate-income households can afford, especially in growing areas where they are being priced out. For example, Seattle's Mandatory Housing Affordability program aims to "mitigate impacts of new development on the demand for affordable housing" and ensure "affordability for households across the income spectrum as [the city's] population and employment continue to grow" (City of Seattle, 2015, pp. 4, 8).

Inclusionary zoning's success in creating affordable housing is difficult to evaluate, because local governments do not always keep systematic records and because of the lack of a good counterfactual: it is unknown how many units would have been produced in the absence of inclusionary zoning (Levy et al., 2012; Mukhija et al., 2015; Thaden & Wang, 2017). Nonetheless, several studies provide insight into these programs' productivity. Inclusionary zoning contributed 43% of new affordable units across three counties in the Washington, D.C., metropolitan area from 1974 to 1999, including half of the affordable units built in Montgomery County (Brown, 2001).[4] Between 1980 and 2003, affordable units created through inclusionary programs constituted 2.3% of all new residential development in the San Francisco Bay Area (Schuetz, Meltzer, & Been, 2009). The productivity of mandatory inclusionary zoning programs across seven Los Angeles and Orange County jurisdictions roughly matched that of the federal Low-Income Housing Tax Credit (LIHTC) program from 1998 to 2005 (Mukhija, Regus, Slovin, & Das, 2010)—although an analysis of five high-cost regions found that the LIHTC program produced substantially more units annually, on average, than inclusionary programs (Freeman & Schuetz, 2017). Despite varying findings across jurisdictions, there is a strong consensus that inclusionary zoning can increase localities' below-market-rate housing stock but falls far short of meeting local and national

affordable housing gaps (e.g., Freeman & Schuetz, 2017; Mukhija et al., 2015; Schwartz, Ecola, Leuschner, & Kofner, 2012).

Promoting Racial and Socioeconomic Integration

Many inclusionary zoning programs aim to reduce residential segregation by siting affordable housing within or close to market-rate developments in amenity-rich neighborhoods. Despite mixed evidence of the benefits of residential integration efforts for the groups they aim to assist, it remains a common goal of government housing policy broadly and inclusionary zoning more specifically (e.g., Chetty, Hendren, & Katz, 2016; Goetz, 2018; Levy, McDade, & Bertumen, 2013; Ludwig et al., 2012; Massey, Albright, Casciano, & Kinsey, 2013). Some inclusionary zoning programs, such as San José's, explicitly promote "the geographic dispersal of affordable housing throughout the City to enhance the social and economic well-being of all residents" (City of San José, 2010, p. 5). An analysis of 11 regionally and programmatically diverse programs concluded that they had dispersed affordable housing throughout the relevant jurisdictions, with units typically located outside of high-poverty areas—consistent with several other studies (Brown, 2001; Dawkins, Jeon, & Knaap, 2016; Kontokosta, 2015; Levy et al., 2012; Schwartz et al., 2012). In other contexts, however, inclusionary zoning has concentrated affordable units in neighborhoods with greater shares of minority and low-income residents and higher proportions of multifamily housing (Kontokosta, 2015; Ryan & Enderle, 2012). Such concentrations may reflect the lower cost of, and decreased resistance to, affordable housing construction in these areas (Kontokosta, 2015; Ryan & Enderle, 2012). More broadly, these outcomes illustrate a tension between the goals of promoting residential integration—at a higher cost—and maximizing affordable housing production (Goetz, 2018; Mukhija et al., 2015).

The SRU Law: When French Zoning Says No to Inclusion

Magda Maaoui

As in the US, zoning has important implications for the reproduction of segregation in French cities. In December 2000, France passed the Loi sur la Solidarité et Renouvellement Urbain, or SRU Law.[5] It requires selected municipalities[6] to devote 25% of their housing stock to social units by 2025, with the goal of equitably distributing national construction efforts. This requirement, announced in a nationally adopted housing plan, is implemented through municipal zoning documents.

The law subjects municipalities that do not meet these goals—"outlaw municipalities"—to financial penalties and three-year construction recovery plans with stricter affordability requirements. Financial penalties—based on

the municipality's tax capacity and the number of units constructed—can amount to 5% of a city's operating budget. Still, many localities remain noncompliant: in 2017, 62% of municipalities (1,222 of 1,997) have not reached their goals. The penalties for just 269 of these municipalities total to an additional €76.8 million for national social housing construction efforts.

Uneven adoption does not simply line national housing coffers; it also represents a localized manifestation of larger political disputes about the distribution of space among socioeconomic groups in French cities. Noncompliant municipalities cluster in two regions (Figure 1.1): Provence-Alpes-Côte d'Azur in South of France (40%) and Paris' Île-de-France region (18%).[7]

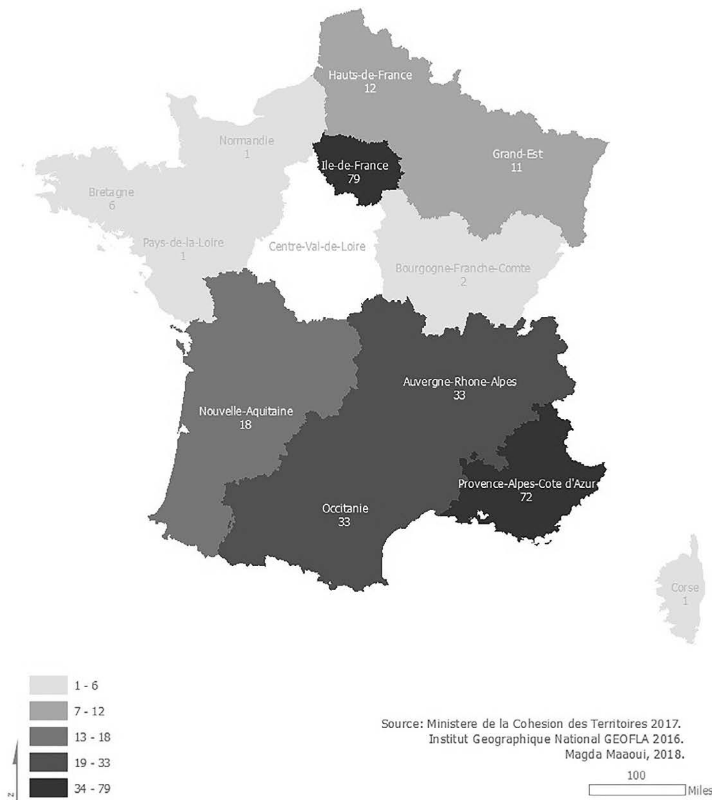

Figure 8.1 (a) Outlaw municipalities, by region (Ministère de la Cohésion des Territoires, 2017); (b) percentage of new social housing units concentrated in Quartiers prioritaires de la politique de la ville (QPV) (low-income) neighborhoods, by region (RPLS, 2017)

Noncompliance is correlated with political affiliation, as 71% of outlaw municipalities have a right-wing mayor. While social housing construction has increased from 4.1 to 4.9 million units between 1999 and 2017, half of all French municipalities have no social housing. At the neighborhood level, social housing appears to cluster in ways that undermine social integration goals. Many units are located in what the national government has designated as historically underserved neighborhoods, which already have a high concentration of social housing and lower-income ethnic minorities (Figure 2.1). This is even more striking in French municipalities located overseas, where 38% of the stock is concentrated in underserved neighborhoods. Social mixing policies like the SRU Law have long been subject to scorn by dissenting local governments (Tissot, 2007) who have traditionally used zoning laws to

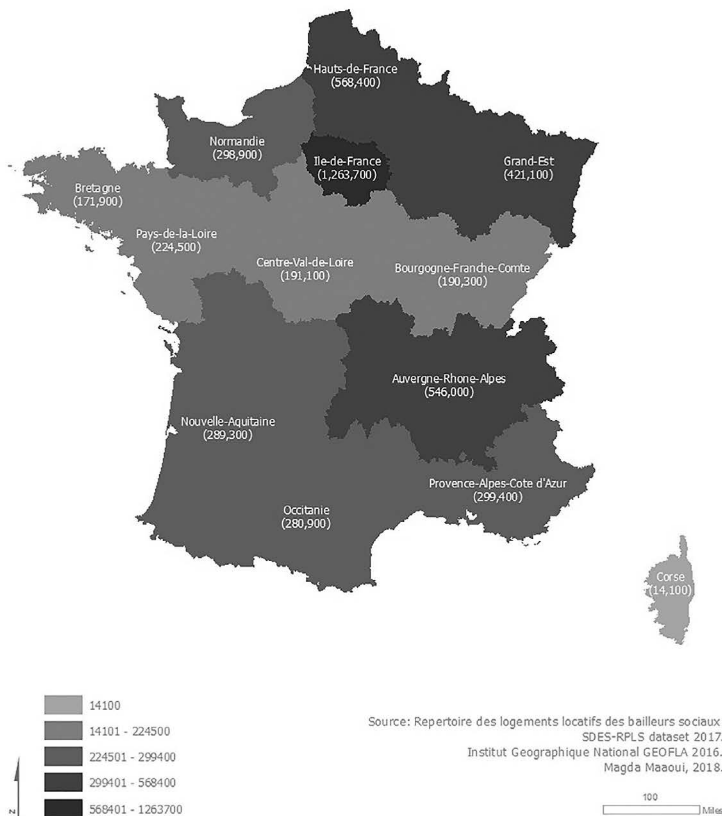

Figure 8.1 (Continued)

exacerbate exclusionary logic. This case illustrates the challenges of using local zoning tools to make reluctant municipalities fix much deeper affordability and segregation problems.

Ministère de la Cohésion des Territoires. (2017). *Chiffres et Statistiques du Logement Social* [National dataset]. Retrieved from https://www.cohesion-territoires.gouv.fr/chiffres-et-statistiques-du-logement-social

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Tissot, S. (2007). *L'état et Les Quartiers: Genèse D'une Catégorie de L'action Publique*. Paris: Seuil.

Minimizing Displacement

Some inclusionary zoning programs aim to mitigate the residential displacement pressures that can result from zoning changes or increased investment in specific neighborhoods. As demand for development rises in these areas, an opportunity exists for governments to trade zoning concessions for the creation of affordable units. For example, the mandatory inclusionary policy in Portland, Oregon, is expected to "create opportunities for middle and low income households to stay in neighborhoods and adapt to rapidly chang[ing] economic conditions that are manifested through housing price increases" (Portland Bureau of Planning and Sustainability, 2016, p. 8). To increase the chances that inclusionary zoning will assist incumbent low-income residents, some programs give such households priority for on-site inclusionary units. For example, up to 40% of affordable units developed through San Francisco's Inclusionary Housing Program are reserved for households that live in the district in which the new project is built or within a half-mile of the development (San Francisco Mayor's Office of Housing and Community Development, 2018). Although inclusionary zoning's effectiveness at mitigating displacement has yet to be evaluated, case studies and policy critiques suggest that there are serious trade-offs involved in using a strong-market tool to address the adverse impact of private development for lower-income households (ACT-LA, 2018; Angotti, 2008; Stabrowski, 2015; Stein, 2018). These trade-offs, which are discussed in more detail later, are at the heart of resistance to the rezonings associated with inclusionary programs (Stahl, this volume).

The Policy Design of Inclusionary Zoning Programs

Although inclusionary zoning programs typically have similar aims, the diverse contexts in which they are used and the different priority that local stakeholders place on these goals ensure that no two programs are identical. Policies thus vary along multiple dimensions (Table 8.1).

Table 8.1 Inclusionary Zoning Program Design Alternatives

Type of compliance
- ⇒ Voluntary
- ⇒ Mandatory

Form of affordability contributions
- ⇒ On-site construction
- ⇒ Off-site construction
- ⇒ In-lieu housing fees
- ⇒ Donating land for affordable housing construction
- ⇒ Preserving/rehabilitating existing affordable units
- ⇒ Linkage fees to account for impact on surrounding area

Form of on-site affordable units
- ⇒ Units for differently sized households
- ⇒ Units located in market-rate developments or separate buildings

Scale of affordability
- ⇒ Different percentages of units required at below-market rates

Level of affordability
- ⇒ Affordable units reserved for households earning different percentages of area median income (AMI)

Length of affordability terms
- ⇒ Unit costs set at below-market rates permanently or for a certain period

Incentives and cost offsets
- ⇒ Density/height/floor area ratio bonuses
- ⇒ Tax incentives
- ⇒ Direct subsidies
- ⇒ Fee reductions/waivers/deferrals
- ⇒ Other zoning variances and regulatory concessions

Qualifying projects
- ⇒ Developments of a certain size
- ⇒ Ownership and/or rental units
- ⇒ Developments citywide or in specific neighborhoods

Type of Compliance

Mandatory inclusionary zoning policies require developers to build or fund affordable units as a condition for the approval of market-rate projects. Voluntary programs provide incentives in exchange for such contributions but do not require developers to participate. Cities can employ both tactics simultaneously: New York City's Mandatory Inclusionary Housing program requires affordable housing contributions in specific rezoned

neighborhoods, while a separate voluntary program allows an increase in a building's floor area ratio if developers include below-market-rate units in target areas (New York City Department of City Planning, 2018). In the US, mandatory programs are more prevalent; existing research also suggests that they are more productive than voluntary ones (Brunick, 2004; Mukhija et al., 2010; Stromberg & Sturtevant, 2016; Thaden & Wang, 2017).

Form of Affordability Contributions

Developers can usually choose to meet their inclusionary commitments by building affordable units on-site, constructing them off-site, or paying into an affordable housing fund, although some programs also include other options (Table 8.1). In the US, an estimated 22% of programs require on-site development, while approximately half allow for in-lieu fees and off-site construction, respectively (Thaden & Wang, 2017). Trade-offs exist between requiring affordable units on-site and permitting off-site construction or in-lieu monetary contributions. Integrating units into market-rate developments can increase lower-income households' access to amenity-rich environments, but due to higher construction costs in such areas, this typically produces fewer (or less deeply affordable) units than off-site construction. In-lieu fees can be used to address housing needs of groups not served by the market or by inclusionary construction, but they are only likely to be productive in jurisdictions with available land and a strong affordable housing development infrastructure (Hollingshead, 2015; Jacobus, 2015). Jurisdictions must also avoid setting fees too low, which can reduce the units assisted through inclusionary zoning, or too high, which may deter market-rate development (Hollingshead, 2015; Jacobus, 2015; Mukhija et al., 2010; Williams, Carlton, Juntunen, Picha, & Wilkerson, 2016).

Form of On-Site Affordable Units

The size and distribution of affordable units that are built on the same project site as market-rate developments also vary. Because market-rate buildings in urban areas typically target small households and include luxury design standards and amenities, it can be more costly for developers to integrate affordable units into these developments than to construct an adjacent building where all units are offered at below-market rates (Joseph, 2010; Mallach & Calavita, 2010; Roberts, 2007). While this separation may enable the construction of affordable units that are more numerous and/or better able to accommodate large families, it also raises critical questions of equity—particularly in light of the integration aims of on-site inclusionary units.

Level of Affordability

Inclusionary zoning programs typically set rent or mortgage payments for affordable units at 30–40% of the occupying household's monthly income (Schwartz et al., 2012). The income groups targeted therefore affect developers' revenue. Most localities determine eligibility for inclusionary units based on households' monthly earnings as compared to the metropolitan area median income (AMI), a calculation standardized by the national housing agency, the Department of Housing and Urban Development (HUD; see the following box for more detail). The federal LIHTC program serves households earning up to 50% to 60% of AMI (US Department of Housing and Urban Development, 2016). In contrast, of 507 inclusionary zoning programs nationwide, over half target households with incomes between 51 and 80% of AMI and only 2% require affordability for those earning below 50% of AMI (Stromberg & Sturtevant, 2016). Moreover, nearly two-thirds of large-city programs with available information in my data set include options allowing developers to target those earning over 80% of AMI. The higher income levels served by inclusionary programs reflect a financial reality: without more subsidy, inclusionary zoning projects are only feasible with tenants that contribute more rent. This does not mean there is no benefit: by subsidizing affordable units for moderate-income households, inclusionary zoning programs arguably free up public funds to create more or more deeply affordable units through other programs.

HUD AMI designations

Extremely low income: Up to 30% of AMI
Very low income: Up to 50% of AMI
Low income: Up to 80% of AMI

Source: US Department of Housing and Urban Development, 2018

Scale of Affordability

Inclusionary zoning programs require different percentages of units to be provided at affordable rates. Of 507 US programs, 80% require fewer than 20% of units to be affordable, and 40% require fewer than 10% (Stromberg & Sturtevant, 2016). Similar trends exist in large cities: among programs in my data set, three quarters require 20% or fewer units at below-market rates, and 35% require 10% or fewer. However, requirements typically vary depending on the form of affordability contributions and the income groups targeted (see the following box).

Example of different income targeting options based on construction location

Portland Oregon's mandatory program requirements

On-site construction

⇒ 20% of units for households earning up to 80% AMI, or
⇒ 10% of units for households earning up to 60% AMI

Off-site construction

⇒ 20% of units for households earning up to 60% of AMI, or
⇒ 10% of units for households earning up to 30% of AMI

Source: Portland Bureau of Planning and Sustainability (2016).

Length of Affordability Terms

For inclusionary zoning programs to work long term, housing must remain available at below-market rates. Montgomery County's Moderately Priced Dwelling Unit (MPDU) program produced more than 12,000 inclusionary units between 1973 and 2005, but due to the ordinance defining an affordability term of just 10 years for ownership units and 20 for rentals, only a quarter of those remained price- or rent-restricted at the end of this period (Brown, 2001; Brunick & Maier, 2010; Jacobus, 2015). The ordinance has since been amended to require 99 years of affordability for rental units and 30 years for ownership units (Dawkins et al., 2016). Among the interventions captured in my data set, requirements varied from five years to permanent affordability. The most common affordability term was 30 years—similar to national trends (Thaden & Wang, 2017).

Incentives and Cost Offsets

Incentives or zoning concessions compensate developers for the cost of contributing affordable units and may lessen the legal risk of inclusionary zoning programs being challenged as "takings."[8] Offsets can directly reduce developers' costs through tax abatements, direct subsidies, regulatory concessions, and fee reductions; they can also increase developers' revenue by permitting a greater height or density than building regulations allow. Nationally, only a quarter of programs with available data do not offer cost offsets, while 42% offer two or more—with density bonuses and zoning variances representing the most common incentives and public subsidies and tax concessions the least common (Thaden & Wang, 2017). Similarly, 86% of large cities with inclusionary zoning programs in my

data set offer density, height, or floor area ratio bonuses (or other valuable zoning allowances), while only 30% provide financial assistance or tax exemptions.

Qualifying Projects

Inclusionary zoning regulations often apply to projects with a minimum number of units for sale or rent. Among inclusionary rental programs in the US, the most commonly specified minimum was between two and five units (Thaden & Wang, 2017). Regulations may cover size-qualifying projects citywide or in specific areas, such as neighborhoods rezoned for greater density or targeted for growth. Some also target areas near planned transit investments, as in South Africa (see McVitty in Fischer, this volume). Requirements may also differ based on the development location: in Boston, requirements vary by existing area property values (Boston Planning & Development Agency, 2015).

Inclusionary Zoning and Institutional Contexts

Inclusionary zoning programs differ widely in their design, but their common underlying logic—using the zoning system to leverage market-rate demand for the creation and integration of affordable units—makes them more feasible and effective in certain regulatory, economic, social, and political contexts.

Lessons From a Bold Experiment: Special Zones of Social Interest in the Municipality of São Paulo

Daniel Montandon

In the 1980s, Brazilian municipalities turned to zoning to address the rapid expansion of precarious low-income urban settlements that had been largely invisible to the state. Over the following 40 years, a type of inclusionary zoning district known as ZEIS—Special Zones of Social Interest—have become a central mechanism to advance social goals. Looking forward, the main challenge of ZEIS lies in the difficulty of aligning it with other planning and financing mechanisms to achieve concurrent goals of the urbanization of precarious settlements and the production of social housing.

The municipality of Recife's PREZEIS (ZEIS Regularization Plan) of 1987, perhaps the first full ZEIS prototype, demarcated precarious settlements on Recife's zoning map—recognizing areas that had been largely invisible to the state—and mandated that any future land use interventions inside of these polygons require legalizing and servicing the settlement areas to improve living conditions for residents.

Based on the experience in Recife, several Brazilian municipalities implemented their own ZEIS practices, especially after the creation of the wide-reaching 2001 City Statute (Federal Law 10.257/01). The City Statute created a new mandate and regulation for urban policy across Brazil and recommended ZEIS as one of the primary instruments of local development policies. In practice, the implementation of the federal law resulted in the development of two types of ZEIS:

1. ZEIS in precarious settlements: Guarantees secure tenure of families that live there and synchronizing the formal zoning maps with the settlement urbanization plans.
2. ZEIS in empty areas: Guarantees the provision of housing for low-income families on empty or underutilized land located in urban areas.

The municipality of São Paulo initiated the implementation of ZEIS in the Strategic Master Plan (2002), and in revisions to the Zoning Law (2004), São Paulo planners expanded ZEIS to four types:

- ZEIS 1: areas with precarious settlements (favelas, tenements, and low-quality housing blocks); these zones are the most prevalent across the city.
- ZEIS 2: for empty or underutilized land; such zones are relatively dispersed.

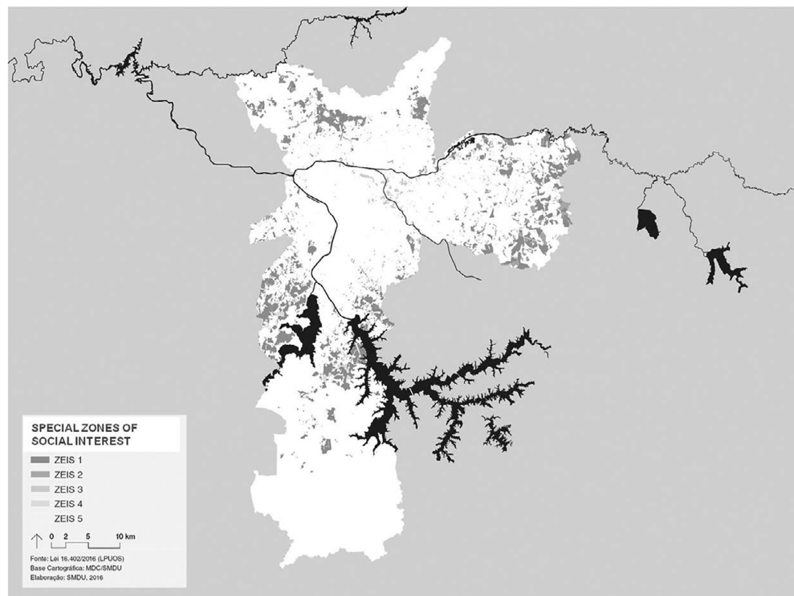

Figure 8.2 ZEIS, São Paulo, Brazil

Source: Secretaria Municipal de Urbanismo e Licenciamento of the Prefecture of the City of São Paulo, 2016.

- ZEIS 3: focused on central areas with infrastructure that are considered underutilized; such zones are sporadically located in the region.
- ZEIS 4: similar to ZEIS 2, but these zones are focused on improving water access and establishing environmental protection areas.

National housing policy has a large impact on ZEIS implementation; large-scale subsidies have incentivized most private production of social housing developments in poorly located land outside the city. The social housing production in ZEIS areas in the municipality of São Paulo has been primarily initiated by the government.

The municipality of São Paulo improved on ZEIS in the Strategic Master Plan in 2014. The revisions included the expansion of ZEIS in the territory overall by more than 8% and the addition of a fifth ZEIS category, which facilitates the private production of housing. Unfortunately, ZEIS 5 does not mandate the creation of low-income housing, which is still in dire shortage across the municipality.

Further English-language references:

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Holmes, C. (2016, February 8). São Paulo is betting better urban planning can solve a housing crisis. *Next City*. Retrieved from https://nextcity.org/features/view/sao-paulo-housing-crisis-master-plan-zeis-haddad-habitat-iii

State Regulations

As of 2018, seven US states prohibited some form of inclusionary zoning, 22 had potential legal barriers to its adoption (such as rent-control bans), 11 had neither explicit legal permission nor barriers, and 10 expressly permitted or mandated inclusionary zoning (Grounded Solutions Network, 2018). Statewide inclusionary zoning policies exist but are rare. For example, Chapter 40B under Massachusetts State Law allows for flexibility in the local approval of developments that include long-term affordable units (Commonwealth of Massachusetts, 2018).

Unsurprisingly, jurisdictions located in states that require or permit inclusionary zoning are more likely to adopt policies; indeed, one national study estimated that almost 90% of localities with such programs are located in three states with supportive frameworks (New Jersey, California, and Massachusetts; Thaden & Wang, 2017). Among large cities, 77% of those in states that allow (or do not present barriers to) inclusionary zoning have programs, compared to 38% in states that have barriers. Cities in supportive states are more likely to have inclusionary zoning in place even after accounting for other local economic, political, and demographic conditions.[9]

Economic Conditions

Internal economic conditions also affect inclusionary policies. Places with stronger market-rate housing demand are more likely to introduce programs and produce units through them. Among cities in my data set, 81% of those with the top third of property values have an inclusionary zoning program—a substantially higher rate than in areas with lower property values. Property values are significantly and positively associated with the likelihood of having an inclusionary zoning program even when accounting for other contextual features, including housing affordability. Inclusionary zoning programs are also most productive where demand for development is high (Jacobus, 2015; Mallach & Calavita, 2010; Williams et al., 2016).

Another key economic indicator of program adoption is the level of housing need, as localities with greater affordability pressures have stronger cause to intervene. My analysis found that inclusionary zoning programs are more likely to exist in jurisdictions with a higher percentage of rent-burdened households, and a separate national study found that programs are adopted earlier in such places (Stromberg & Sturtevant, 2016). However, this relationship may not hold in all contexts. For example, an analysis of Bay Area jurisdictions found only tentative evidence of a relationship between housing costs and inclusionary zoning adoption (Meltzer & Schuetz, 2010).

Political Context

The political context determines the level of pressure and support for the introduction of inclusionary zoning. Community-based advocacy and established nonprofit organizations play a critical role in pushing inclusionary zoning adoption forward by providing political support and local expertise (Levy et al., 2012; Mallach & Calavita, 2010; Meltzer & Schuetz, 2010). On the other hand, owner-occupiers often oppose inclusionary zoning in their jurisdictions because they perceive it as threatening property values or community cohesion by bringing higher-density development, below-market-rate units, or newcomers of a different socioeconomic and racial group to their neighborhoods (Brown, 2001; Massey et al., 2013; Ryan & Enderle, 2012; Stromberg & Sturtevant, 2016).

Pro-business and real estate industry organizations opposed to regulations on private development also often fight inclusionary zoning. Their involvement can influence program design or impede policy adoption. For example, real estate industry input led Montgomery County to add density bonuses to its original MPDU ordinance, among other revisions (Levy et al., 2012). Nashville's 2016 ordinance that tied affordability requirements to approvals of increased development capacity was challenged in court by a pro-market organization and was later nullified by a state bill that business and real estate groups participated in developing (Garrison, 2017; Metropolitan Planning Commission of Nashville and Davidson County, 2016; Reicher, 2018a, 2018b; Tennessee Senate, 2018).

Demographic Factors

Demographic conditions can also affect the feasibility of inclusionary zoning, although these associations vary across contexts. Nationally, inclusionary zoning programs are adopted earlier in less-populous and higher-density places (conditions that often typify fast-growing inner-ring suburbs), as well as those with younger and more highly educated populations (Stromberg & Sturtevant, 2016). In my analysis, more populous cities were more likely to have inclusionary zoning programs, but no association was found between this outcome and an index variable measuring demographic factors such as educational attainment, single-person or nonfamily households, and the percentage of the population aged 18 to 44.

The Import of Institutional Context

Different associations between conditions and outcomes across geographic contexts highlight the need for careful attention to local institutions when designing inclusionary zoning programs. This involves considering needs across neighborhoods, as contexts can vary widely in different parts of the city. Even in a market like New York City's, where many areas have experienced dramatic price increases in recent years, there remain lower-cost neighborhoods where density-based incentives are insufficient to make below-market-rate construction attractive to for-profit developers without additional subsidies (Madar & Willis, 2015).

Jurisdictions also need to reevaluate their program design when local conditions change. For example, when a California court ruled in 2009 that inclusionary mandates without cost offsets violated a state act giving developers control over initial rent levels, many jurisdictions responded by establishing in-lieu-fee alternatives to their inclusionary policies or suspending their programs until greater legal clarity emerged (Crispell, Gorska, & Abdelgany, 2016; Hollingshead, 2015). Inclusionary zoning's reliance on strong markets also means that governments may have to revise their programs when demand weakens, whether by requiring fewer affordable units, targeting higher income levels, reducing affordability terms, shifting to a voluntary policy, or temporarily suspending regulations (Kroll, Mun, Rosenthal, & Singal, 2010; Schuetz et al., 2009).

The Public and Private Costs of Inclusionary Zoning

In addition to ensuring that the local institutional context can support inclusionary zoning, governments must carefully consider the policy's potential costs and unintended effects.

Private Costs and Development Impact

In the absence of sufficient cost offsets, developers lose revenue when they are required to provide units at affordable rates. In response, developers

may accept reduced profits, shift to types of construction that do not trigger affordability requirements, build in jurisdictions without inclusionary zoning, or pass the costs on to consumers or landowners (Ellickson, 1981; Dietderich, 1996; Powell & Stringham, 2004; Schuetz, Meltzer, & Been, 2011). Inclusionary zoning programs that are not carefully calibrated may therefore have unintended market consequences, including reducing the supply and increasing the cost of housing.

Not surprisingly, the market impacts of inclusionary zoning vary across programs and contexts. Tentative evidence from suburban Boston suggests that when markets are rising, inclusionary zoning moderately reduces single-family home production—but in several California jurisdictions, inclusionary zoning did not reduce the overall rate of residential construction (Bento, Lowe, Knaap, & Chakraborty, 2009; Mukhija et al., 2010; Rosen, 2002; Schuetz et al., 2011). Although programs in suburban Boston and California have been associated with significant increases in home prices in strong markets (Bento et al., 2009; Schuetz et al., 2011), developers in Fairfax County did not perceive that a mandatory inclusionary program had affected market-rate prices (and felt that it would increase housing supply as a result of the associated density bonus; Levy et al., 2012). The diversity in findings stems in part from the heterogeneous program designs and institutional contexts examined and the difficulty of evaluating inclusionary zoning's impact without counterfactuals. On balance, however, they indicate that localities should carefully track the market impacts associated with the private costs of inclusionary zoning.

Public Costs and Neighborhood Pressures

When inclusionary zoning programs offset developers' affordable housing contributions through subsidies, tax breaks, and fee waivers, local governments and taxpayers pay the cost. Moreover, inclusionary zoning is resource-intensive to implement and requires government staff to monitor compliance from the diverse actors involved in creating and managing affordable units (Brunick & Maier, 2010; Schwartz et al., 2012). More and higher-density development from zoning incentives can also strain existing infrastructure and increase traffic congestion (Jacobus, 2015; Mallach & Calavita, 2010; Mukhija et al., 2015).

Rezonings that allow higher-density development can also increase housing pressures in lower-income neighborhoods where costs are rising. Local governments often perceive inclusionary zoning as a tool to maintain affordability in cost-increasing neighborhoods before it becomes too expensive to intervene. However, the higher cost of on-site construction complicates inclusionary zoning's potential to mitigate displacement, just as it complicates the goal of residential integration more broadly. Creating more units that reach lower levels of affordability on-site requires public funds, which are scarce, or cross-subsidies from more (or more expensive) market-rate

units, which can accelerate socioeconomic change and worsen displacement pressures (Garde, 2015; Sarmiento & Sims, 2015; Schwartz et al., 2012; Stein, 2018).

In rezoned neighborhoods, local governments may mitigate the displacement pressures associated with the more intense market-rate development by adopting antidisplacement measures. For example, New York City has attempted to address the side effects of rezoning through additional subsidies to reach lower-income households, preference to existing residents for units built with city assistance in their neighborhoods, and measures that bolster tenant rights, penalize predatory landlords, preserve existing low-cost housing options, and combat speculative investment (New York City Department of Housing Preservation and Development, 2016, 2018; New York City Office of the Mayor, 2015, 2016, 2017; Stringer, 2015). In a different approach, Seattle's proposal to tie affordability requirements to increases in development capacity included the decision to limit rezonings in areas where lower-income residents face a high risk of displacement (City of Seattle, 2018).

Conclusion: Reconsidering Inclusionary Zoning

Inclusionary zoning is a flexible tool that can help localities produce affordable housing in amenity-rich or cost-increasing neighborhoods at a time when public resources are scarce. However, this policy is not a silver bullet for meeting the full range of a jurisdiction's housing needs. Inclusionary zoning is effective in specific institutional contexts and involves trade-offs between producing more affordable units and locating them in higher-cost areas. Furthermore, unintended market consequences may include increasing the price of market-rate housing, deterring development, or incentivizing development in ways that destabilize lower-income neighborhoods.

In light of these limitations and tensions, inclusionary zoning should be viewed as a complement to rather than a replacement for other federal, state, and local affordable housing programs. Advancing equity in the housing market requires harnessing all the regulatory tools and resources available. This includes combining inclusionary zoning with other funding sources to make units affordable to lower income levels and introducing robust antidisplacement measures to reduce the pressures that market-incentivizing cost offsets put on lower-income households. Decisions about program adoption and design must also consider the extent of residential segregation, the groups least served by the market and existing programs, the government's capacity to reach those who would not have access to inclusionary units, and the policies in place to guard against ripple effects in the housing market. Inclusionary zoning programs must also be flexible enough to accommodate differing neighborhood dynamics and adapt to changing conditions.

For proponents of equity in urban development, the key to wielding this tool responsibly will be to ask not only how many units of affordable

housing will be built, but to take a long-term and holistic view of how lower-income households may be excluded or adversely affected by the policy. Ultimately, it will also mean recognizing the limits of using a market-based tool to address the inequities produced by market-oriented development.

Notes

1. *Southern Burlington County NAACP et al. v. Mount Laurel Township et al.*, 92 N.J. 158, 1983; *Southern Burlington County NAACP et al. v. Township of Mount Laurel, et al.*, 67 N.J. 151, 1975.
2. "Below-market-rate" units limit the price or rent that can be charged, with the aim of making them affordable to lower-income households. The terms *below market rate* and *affordable* are used interchangeably in this chapter.
3. My data set includes information on inclusionary zoning policies in 79 of the 146 most populous US cities. Data were collected in late 2016 and early 2017 through a survey of local officials and a comprehensive review of ordinances, policy documents, plans, and program descriptions. The cities in the data set are comparable to the 146 most populous cities across a range of demographic, budgetary, economic, and housing indicators.
4. Montgomery County's Moderately Priced Dwelling Unit (MPDU) program is one of the oldest, most productive, and most well-researched inclusionary zoning policies in the US. (Levy et al., 2012).
5. Loi n°2000 1208, or Loi sur la Solidarité et Renouvellement Urbain, the same law which also redefined French municipal zoning, replacing the classic POS (Plans d'Occupation des Sols) with the more flexible PLU (Plans Locaux d'Urbanisme), through which municipal housing, transportation, and environment goals are implemented.
6. Municipalities with at least 3,500 residents, within a metropolitan area of at least 50,000 residents that has at least one city of 15,000 residents.
7. We can list among outlaw municipalities paying the highest fees Le Cannet (Alpes-Maritimes), with only 7.32% of its housing stock dedicated to social units, therefore paying an annual fee of €1,373,586, or Nogent-sur-Marne (Val-de-Marne) with 12.55% social housing units, and an annual fee of €637,653.
8. Under a provision of the US Constitution known as the "takings clause," it is illegal to seize private property for public use without fair compensation. Several court rulings on inclusionary zoning have referenced the importance of cost offsets in ensuring that such programs have a valid legal foundation (Mallach & Calavita, 2010).
9. Results are from a multivariate logistic regression. Data were drawn from my data set of large cities. The dependent variable indicated whether the city had an inclusionary zoning program. The independent variables were the percentage of households that were rent-burdened, the log of population, the log of median housing value, and the percentage of the population that rents (all drawn from the 2011–15 American Community Survey); the level of community pressure to address affordability and displacement (from my survey of city governments); the state regulatory context regarding inclusionary zoning (from Grounded Solutions Network, 2018); and an index that included the percentages of the population aged 18 to 44; individuals living alone or with nonrelatives; same-sex partner households; women in the workforce; residents in professional, technical, educational, creative, or knowledge-based jobs; the workforce that bikes or walks to work; and residents older than 25 with a college degree (drawn from the 2011–15 American Community Survey).

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