

31 Flavors of Inclusionary Zoning:
Comparing policies from San
Francisco, Washington, D.C.
and Suburban Boston

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**31 Flavors of Inclusionary Zoning:
Comparing policies from San Francisco, Washington, D.C. and Suburban Boston**

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As housing costs have risen in the U.S. and federal subsidies for affordable housing programs have declined, inclusionary zoning (IZ) has become an increasingly popular local policy for producing low-income housing without direct public subsidy. The structure of IZ policies can vary in a number of ways; consequently, there is not yet a consensus about what policies constitute “true” inclusionary zoning. In this paper we compare the ways in which IZ programs have been structured in three regions in which it is relatively widespread and long-standing. Our results demonstrate that IZ programs are highly complex and exhibit considerable variation in their structures and outcomes. In the San Francisco Bay Area, IZ programs tend to be mandatory and apply broadly across locations and structure types, but attempt to soften potential negative impacts with cost offsets and alternatives to on-site construction. In the Washington DC area, most IZ programs are also mandatory, but have broader exemptions for small developments and low-density housing types. IZ programs in the Suburban Boston area exhibit the most within-region heterogeneity. In this area, IZ is more likely to be voluntary and to apply only to a narrow range of developments, such as multifamily or age-restricted housing, or within certain zoning districts. The amount of affordable housing produced under IZ varies considerably, both within and across the regions. The flexibility of IZ allows planners to create a program that accommodates local policy goals, housing market conditions and political circumstances.

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Section 1: Introduction

Faced with continuing needs for low-cost housing and declining federal subsidies, local governments have been forced to search for new policy tools to provide housing that is affordable to low- and moderate-income households. Over the past two decades, an increasing number of localities across the country have adopted inclusionary zoning (IZ) programs, also referred to as inclusionary housing or incentive zoning, that either require developers to make a certain percentage of the units within their market-rate residential developments available at prices or rents that are affordable to specified income groups, or offer incentives that encourage them to do so. IZ has generated considerable attention and controversy among policymakers, developers and advocates: in general, advocates argue that it can produce affordable housing without direct public subsidies, and critics counter that it may increase the price and reduce the supply of market rate housing (for example, see Basolo and Calavita 2004; Coyle 1991; Judd and Rosen 1992; Mallach 1984; Powell and Stringham 2004a and b; Rivinius 1991).

However, the debate has tended to treat IZ as a single monolithic policy, while in fact many of the policies that local governments adopt and refer to as IZ look quite different from one another. In this paper, we compare the structure of over 150 local IZ programs in three regions of the country, and find that IZ is an extremely nuanced and flexible mechanism for providing affordable housing. Although a number of organizations have drafted “model” ordinances, local governments appear to have translated the general template to fit their specific housing markets.¹ As the few empirical studies to date have shown, the outcomes of IZ programs – both in terms of affordable housing produced and impacts on market-rate housing – are far from uniform (Knaap

¹ See, e.g., American Planning Association. 2006. Model Affordable Housing Density Bonus Ordinance, *in* Model Smart Land Development Regulations, available at <https://www.planning.org/smartgrowthcodes/phase1.htm>; Institute for Local Self Government. 2003. California Inclusionary Housing Reader, Annotated Sample Inclusionary Housing Ordinance, available at http://www.cacities.org/resource_files/7653.sample%20ordinance.pdf

et al 2008; Schuetz et al 2008). Although neither of these studies directly linked the structure of IZ programs to outcomes, it seems highly likely that variation in components such as mandatory status and the required share of affordable units will have significant impacts both on the amount of affordable housing produced and on how the program affects the supply and price of market-rate housing.

The existing literature on IZ includes a number of descriptive studies that explore only one jurisdiction or state regulatory environment at a time, leaving cross-regional differences in program design largely unexamined (see, for example, Brown, 2001; Calavita and Grimmes 1998; California Coalition for Rural Housing 2003 and 2007; Delaney and Smith 1989a and b). Two works do address IZ more broadly: specifically, Pendall (forthcoming) synthesizes existing empirical studies and assesses the implications of adopting an IZ program generally, and Rusk (2005) documents the prevalence of IZ across the country, examines the lessons learned from early adopters of IZ, and assesses the potential benefits of IZ becoming more widespread. In addition, Calavita, Grimes and Mallach (1997) compare the legal and political framework of IZ in California and New Jersey but offer limited detail about the structure of local programs.

In this paper, we use primary and secondary data sources to conduct a detailed comparative analysis of local programs in three regions of the country that have relatively widespread and long-standing IZ: the San Francisco and Washington, D.C., metropolitan areas and the Boston-area suburbs.² We begin with an overview of the state regulatory environments and a description of our unique dataset of IZ programs. Then we examine the prevalence, structure, applicability, and affordable housing production of IZ programs in each region. We

² For the purposes of this study, we use the 2000 census definitions of the San Francisco-Oakland-San Jose and Washington-Baltimore CMSAs. The study area used for the Boston region includes all the cities and towns within a 50-mile radius of the city of Boston but excludes Boston itself; this area was chosen based on the availability of regulatory data for those jurisdictions.

find important differences both across and within the three study areas. As we discuss in the final section, this variation suggests that local governments can readily tailor IZ to meet local policy goals and economic or political circumstances.

Section 2: State Regulatory Environments

Like all types of land use regulation, IZ programs should be viewed within the larger context of a jurisdiction's housing policy, which in turn reflects both broader economic conditions and other local and state policies. Two elements of a state's regulatory environment are particularly relevant to the adoption and implementation of local IZ programs: the degree of authority over land use policies granted by the state to local governments, and the presence of statewide affordable housing laws or programs. Local governments may be hesitant to adopt strict IZ policies if state law is unclear or courts interpret the local government's authority narrowly. Similarly, state laws that encourage or restrict affordable housing may alter the incentives for localities to adopt IZ.

San Francisco Bay Area

California is a pioneer in land use policies, including IZ. It also is consistently identified as one of the country's most expensive and most highly regulated housing markets (Gyourko, Saiz and Summers 2006). In turn, the Bay Area is home to several well-established not-for-profit affordable housing organizations that have been at the forefront in advocating the adoption of IZ.

City and county governments in California are granted broad authority over land use regulation by the California Constitution and by statute.³ Accordingly, state court rulings generally have upheld the rights of local governments to adopt and enforce IZ.⁴ Four California laws or policies may especially affect the adoption and efficacy of local IZ programs. Since 1979, state law has required that each city and county provide density bonuses to developers seeking to build affordable or age-restricted housing.⁵ The requirement essentially creates a voluntary IZ program in jurisdictions without local IZ; interviews with local officials suggest, however, that the law is invoked infrequently. Second, California requires cities and counties to submit a general long-term physical development plan.⁶ The plan must contain a strategy to provide housing for people of all economic means.⁷ Third, state law requires Redevelopment Agencies designated to oversee construction in blighted areas to use a portion of the incremental taxes from newly redeveloped areas to subsidize affordable housing.⁸ Finally, for coastal property, the California Coastal Commission has had an affordable housing requirement in place since the 1960s (Vandell 2003).

Greater Washington, D.C.

The regulatory context of IZ in the Washington, D.C., area differs from the other two regions studied because it encompasses jurisdictions in three states (or state-equivalents), each

³ Cal. Const. Art. 11, §7; Cal. Gov. Code §65850 (originally adopted in 1965, most recently amended 2007); *see also* Cal. Gov. Code §65800 (declaring the state legislature’s intention “to provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters”).

⁴ *See, e.g.*, *Home Builders Ass’n of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001); *San Remo Hotel v. City and County of San Francisco*, 41 P.3d 87 (Cal. 2002) (upholding an ordinance requiring property owners converting single room occupancy hotels to other uses to pay a fee to replace affordable housing units lost in the conversion).

⁵ To qualify as affordable, a proposed development must include at least 10% low income housing, 5% very low income housing, with affordability restrictions for at least 30 years. Cal. Gov. Code §65915 (2007) (this statute is part of the chapter entitled “Density Bonuses and Other Incentives”).

⁶ Cal. Gov. Code §65300 (2007) (Statute added in 1965 and amended in 1984 to include charter cities).

⁷ *See id.* at §65580, *See also* 66 Cal. Jur. 3d §33 (explaining standard of judicial review for compliance) .

⁸ Several of the interviewees in the Furman Center’s survey mentioned this as a method by which the state encourages the production of affordable housing.

with a different approach to planning and zoning. Maryland is known as a fairly progressive state on land use policy; Virginia has traditionally been more laissez-faire; and the District of Columbia has a somewhat unusual governance structure and land market, given the amount of federally-owned land and potential oversight by Congress.

Maryland's legislature has demonstrated a substantial commitment to local land use control. The Maryland enabling act specifically endorses the use of local IZ and density bonuses to encourage affordable housing.⁹ Many local governments have made use of this power, notably Montgomery County, which has one of the nation's oldest IZ programs.

Unlike the other states in this study, Virginia's courts narrowly constrain the delegation of power to local government, generally holding that local jurisdictions exceed their powers if they adopt zoning tools not specifically authorized in the state enabling act. Indeed, Fairfax County adopted IZ in the early 1970s only to see the ordinance struck down.¹⁰ Virginia has since adopted an "Affordable Dwelling Unit" enabling act, which allows localities to offer affordable housing incentives, such as reductions or waivers of permit, development, and infrastructure fees.¹¹ Following this legislation's enactment, three counties adopted IZ ordinances, but their programs are limited, possibly in response to the restricted authority of localities in Virginia.

Although the District of Columbia's Zoning Commission is empowered to issue zoning ordinances,¹² land use in the District is not wholly under the control of local agencies. The District's Mayor and Zoning Commission have authority over local land use,¹³ but the National

⁹ MD. ANN. CODE ART. 66B, § 12.01 (2007).

¹⁰ Board of Supervisors v. De Groff Enterprises, Inc., 198 S.E.2d 600 (Va. 1973).

¹¹ Va. Code Ann. § 15.2-2305.

¹² DC ST § 6-641.01.

¹³ DC ST § 2-1002.

Capital Planning Commission (NCPC) must approve or deny federal building projects¹⁴ and may review the District's planning to prevent negative impacts on federal interests.¹⁵ District zoning regulations must not be inconsistent with the NCPC's Comprehensive Plan for the Capital,¹⁶ and proposed zoning changes must be submitted to the NCPC for comment and review.¹⁷ The District enacted its first IZ ordinance on March 17, 2007. In addition to this new IZ program, the District uses a Neighborhood Investment Program and Economic Development Zones to encourage development of workforce housing through subsidies and tax abatements.

Suburban Boston

Like California, Massachusetts is a high housing cost state with relatively stringent land use regulations, but it also boasts a strong infrastructure for developing subsidized housing (Glaeser, Schuetz and Ward 2006; Gyourko and Summers 2006). The Massachusetts Housing Partnership and state Department of Housing and Community Development administer a number of state-financed affordable housing subsidies. The state also has a well-established community of non-profit housing developers. The Massachusetts Constitution gives cities and towns home rule authority,¹⁸ and the state has a strong tradition of local self-governance.¹⁹ The Zoning Enabling Act specifies the zoning powers of towns and cities other than Boston;²⁰ Boston's zoning authority derives from a separate act.²¹

¹⁴ http://www.ncpc.gov/about/key_act/keyactive.html

¹⁵ DC ST § 2-1002.

¹⁶ DC ST § 6-641.02.

¹⁷ DC ST § 6-641.05.

¹⁸ MASS. CONST. amend. art. LXXXIX, §§ 1-9.

¹⁹ Because all land lies within city and town boundaries, counties have no role in zoning.

²⁰ MASS. GEN. LAWS ch. 40A, §§ 1-17 (2003). The act delegates authority to pass zoning ordinances and by-laws to "cities and towns to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of their present and future inhabitants." § 1A

²¹ See <http://www.ci.boston.ma.us/bra/pdf/ZoningCode/Chapter665.pdf>. Because the City of Boston operates under a different regulatory environment and has somewhat different authority over land use regulations, it was not included in the database that forms the basis of our analysis for this study. Boston adopted an inclusionary housing

The oldest state law that may alter local IZ programs is Chapter 40B, which allows developers to apply for a permit to build housing that does not conform to local zoning under an expedited process if a minimum percentage of units are affordable to low- and moderate-income households. The law applies if less than ten percent of a community's existing stock meets state affordability criteria. About one-third of all housing produced in the Boston region, excluding the City of Boston, and 80 percent of the affordable housing production, now occurs under the auspices of 40B (Gornstein 2007).²²

These differences in the degree of autonomy granted to local government with respect to land use practices across the three metropolitan areas may partly explain the variation in adoption and design of IZ. All three regions also have viable alternatives to IZ: these statewide programs may enhance the production of affordable housing if used in conjunction with a local IZ program, or the presence of substitutes may reduce the incentive to adopt IZ.

Section 3: Data

Unlike most previous studies of IZ, which focus on a single region, we combine a number of different datasets on IZ in each region to provide a broader comparison of differences in IZ across the country.

For California, we supplement four surveys conducted at various points in time by different organizations with a telephone survey by Furman Center staff. Most of the data are drawn from a 2002 survey by the California Coalition for Rural Housing (CCRH) and Nonprofit

policy (not part of the zoning ordinance) in 2000 that produced an estimated 665 units by 2006 (Boston Redevelopment Authority 2006).

²² Two additional laws enacted in 2006 (Chapters 40R and 40S) create incentives for localities to increase allowable density in designated "smart growth districts". Cities and towns with smart growth districts are eligible for financial incentives from the Smart Growth Housing Trust Fund,²² and, beginning in fiscal year 2008, reimbursements for added education costs resulting from the density increases.

Housing Association of California (NPH). Because that survey did not obtain complete data on the date of IZ adoption, mandatory status, and the presence of density bonuses, the Furman Center filled in the gaps by surveying municipal officials in approximately 35 jurisdictions.²³ We compared our dataset against several additional sources: a 1994 survey conducted by Calavita and Grimes; a list of IZ programs reported by Vandell (2003), originally compiled by Rusk (2003); a new Inclusionary Housing Policy database released in the summer of 2007 by CCRH, and a 2007 report by NPH, CCRH, and several other organizations.²⁴ For 49 of the 55 Bay Area IZ programs, the data sources report different years of adoption. For consistency, we use the earliest date corroborated by at least two of the sources.²⁵

For the Washington, D.C., metropolitan area, the primary data source is a survey conducted by Brown (2001). This information was supplemented by a 2003 PolicyLink report, and the Furman Center collected additional data via Internet searches and interviews of local officials. The Furman Center collected all data on Fauquier County.

All data on IZ in Massachusetts are taken from the Local Housing Regulation Database, compiled in 2004 by the Pioneer Institute for Public Policy and the Rappaport Institute for Greater Boston.²⁶ Unlike the California databases, most of the variables in this database were collected by reading and coding local ordinances rather than through surveys with staff.²⁷

²³ For more information on the survey, including the list of persons interviewed and the survey instrument, see <http://furmancenter.nyu.edu/publications/documents/IZDraftfinal.pdf>.

²⁴ According to the most recent survey, 77 jurisdictions in the Bay Area had adopted IZ as of 2006. We use the 55 jurisdictions identified in the earlier survey for our analysis, since the most recent programs are too new to have produced measurable effects. The database can be found online at <http://calruralhousing.org/housing-toolbox/inclusionary-housing-policy-search>.

²⁵ For two jurisdictions, Livermore and Menlo Park, the dates differed across all of the sources.

²⁶ More information on the development of the database, and downloadable data, can be found at www.pioneerinstitute.org/municipalregs/.

²⁷ The affordable housing production numbers for all three regions were obtained from staff surveys and cannot be verified by other documentation.

Section 4: Prevalence, Age and Mandatory Status of IZ

Inclusionary zoning is widely prevalent in the San Francisco Bay Area (see Table 1). As of 2002, seven of the ten counties and 48 of the 104 incorporated municipalities had adopted some form of IZ.²⁸ In two of the three counties without county-wide IZ, a majority of cities and towns have adopted their own ordinances. Most programs in the Bay Area are mandatory. IZ has been a part of California's regulatory environment longer than in the other two regions (Tables 2 and 3). Several of the pioneers of IZ in the 1970s, such as the City of Palo Alto, are in the Bay Area. More than one-third of current IZ programs were adopted prior to 1990, while about half were adopted during the 1990s.

A majority of the jurisdictions surveyed by the Furman Center reported making at least one major revision to their IZ policy after initial adoption, generally resulting in more stringent IZ ordinances.²⁹ Common revisions included raising the per-unit amount of in-lieu fees, increasing the percentage of affordable units required, and increasing the term of affordability.

Within the Washington, D.C., metropolitan area, six localities, including the District of Columbia, had adopted IZ programs as of 2007 (see Table 3).³⁰ Because five of these jurisdictions are counties, they encompass a large share of the region's land and population. While IZ seems to be gaining popularity in San Francisco³¹ and Boston, support in the D.C. region seems mixed. Virginia courts struck down an early IZ effort in Fairfax County, and Prince George's County repealed its program after only five years. On the other hand, several jurisdictions, including the District of Columbia, have adopted local IZ programs recently.

²⁸ County zoning ordinances apply to unincorporated land within the county; incorporated cities and towns that have adopted their own zoning ordinances are not subject to county zoning.

²⁹ This is consistent with the CCRH 2006 database, which reports more stringent characteristics than the earlier surveys (see Calavita & Grimes 1994, CCRH 2003).

³⁰ The county ordinances apply to unincorporated land in the county, and for the Maryland counties, to those incorporated municipalities that have chosen not to adopt separate zoning ordinances.

³¹ Note that at least 10 additional jurisdictions have adopted IZ since 2003, the end of the study period for this analysis.

Montgomery County's program, adopted in 1974, is the region's oldest; the other counties adopted theirs nearly two decades later in the early 1990s. All programs except Fauquier County's are mandatory, but they vary somewhat in how broadly they apply. Unlike in California, where most amendments have tended to increase the stringency of programs, amendments to D.C.-area programs have both relaxed and increased stringency.

IZ in the Boston area is relatively new, compared to the other two study areas. As of 2004, just over half the suburban jurisdictions within 50 miles of Boston had adopted some form of affordable housing incentive or requirement (see Table 2). Unlike those in D.C. and San Francisco, IZ programs in the Boston suburbs are more likely to be optional. Of the municipalities that had adopted IZ, just over one-third had entirely mandatory programs (Table 4). The popularity of IZ in the Boston suburbs has been increasing over time. Although a small number of municipalities report having adopted IZ in the 1970s, the number of communities adopting IZ increases in each successive period (see Table 2), with nearly 60 percent of jurisdictions reporting adoption dates between 2000 and 2004. Approximately two-thirds of the 48 programs adopted since 2000 have some mandatory component, while fewer than half of earlier programs did. Increasing stringency as well as greater rates of adoption may reflect pressures on communities to reach Chapter 40B's ten percent affordable housing quota.

Section 5: Affordability Requirements

IZ ordinances differ in the share of units in a particular development on which affordability requirements are imposed, the income level of the target population, and the length of time affordability must be maintained.

Required share of affordable units

Approximately 45 percent of IZ ordinances in the Bay Area require that up to ten percent of units be designated as affordable, while another one-third of ordinances require between eleven and fifteen percent (see Table 5). The highest share of affordable units required is 25 percent. Requirements often vary within a single ordinance, however. Higher requirements are usually imposed on larger projects, while fewer units may be required if the developer targets the units to the lowest income groups.

While the Boston suburbs generally require about the same share of units to be affordable as jurisdictions in San Francisco, a small number of Massachusetts jurisdictions have much higher requirements. Roughly 58 percent require ten or fifteen percent of the units to be affordable, but six communities require a 25 percent set-aside and a few require more than 50 percent (see Table 5). For instance, Hopkinton's IZ program applies only to duplexes, and requires that one unit in each building must be affordable. Among the IZ programs that are voluntary, it appears that developers can choose the share of affordable units and receive cost offsets on a sliding scale, or negotiate with the town on a case-by-case basis.

IZ programs in the D.C. area generally require a smaller share of affordable units, and vary less across jurisdictions in the region. Fairfax and Loudon Counties in Virginia require the smallest share of affordable units at 6.25 percent, with Montgomery County, Maryland, requiring the highest, up to 15 percent (see Table 6). The affordable share often is determined by a sliding scale: if the developer wants to obtain a larger density bonus, then he or she must include a higher percentage of affordable units.

Targeted income levels

In the Bay Area, units are most commonly set aside for a combination of very-low, low, and moderate-income households (39%), or low- and moderate-income households (34%) (see

Table 7.)³² Over half of IZ programs require some set-aside for very-low-income households, while only one has a set-aside aimed at median-incomes. Most ordinances provide a specific breakdown of the share of all units that must be reserved for each income group. Rental units are more likely to be targeted at low-incomes, with ownership units reserved for moderate-incomes.

Income targets in the Boston suburbs are higher than in D.C. and San Francisco. Over half of communities with IZ specify that the units should be affordable to low- and moderate income households (see Table 7).³³ A relatively small number of communities (17) target affordable units only to low-income households, one community requires units affordable to very low income households, four target only moderate income households, and 26 simply require that the units be “affordable” without referencing particular income targets. Some communities set different targets for rental and ownership.

Income targets in the Washington, D.C., area are generally consistent, at up to 65 to 70 percent AMI, although Loudon requires some units to be set aside for households at 30 percent AMI (Table 6). Overall, Montgomery County maintains the most stringent requirements, mandating that developers set aside 12.5 to 15 percent of the project’s units for households with incomes at or below 65 percent of AMI.³⁴

Length of affordable terms

³² Some ordinances describe the target population by giving a specific percent of area median income, while others use the terms “very low”, “low” and “moderate” income. Standard HUD guidelines define income thresholds as follows: very-low income is up to 50% of area median income, low-income is 50-80% of Area Median Income (AMI), 80-120% is moderate income. However, some communities appear to be using an alternate set of cutoffs, under which very low income is 30% of AMI, low income is 50% and moderate income is 80%. Many ordinances do not indicate which set of cutoffs they intend to follow.

³³ As in California, many ordinances do not define income groups by share of AMI, so it is unclear whether the categories are directly comparable. In addition, some communities specify cutoffs that do not correspond to generally used federal standards; for instance, Wenham’s program targets households up to 110% AMI and Concord allows up to 150% AMI (both are counted in the table as “moderate-income”, since that is the closest category).

³⁴ Fairfax County does reserve one-third of the units for households with incomes at or below 50% of AMI.

The length of affordability requirements among Bay Area IZ ordinances are fairly evenly distributed across a wide range of terms (see Table 8). Approximately 18 percent require units to be affordable for each of 30 years, 40-49 years, 50-59 years, and permanently. Often ordinances require longer terms for rental than ownership units. It also appears that jurisdictions frequently increase the lengths of affordability periods over time.³⁵ The affordability terms required by most Boston-area IZ programs are strikingly longer than in either of the two other regions. Nearly one-third of IZ programs impose permanent affordability constraints (Table 8). A few others require 80- or 99-year terms. At the other end of the spectrum, a handful of ordinances require affordability for only ten to fifteen years. However, anecdotal evidence suggests that term lengths are increasing over time (NHC 2002). The length of affordability requirements in the D.C. area is shorter than in California and Boston, although the pattern of longer affordability for rental units than owner-occupied units continues (see Table 6).³⁶

Section 6: Triggers, Exemptions, Cost Offsets and Buyout Options

Triggers and Exemptions

There are striking differences across the three regions in the breadth of applicability of IZ: in California, IZ applies to nearly all new residential developments, D.C.-area programs exempt small projects, while in the Boston suburbs IZ is often triggered only in a narrow set of circumstances.

Most ordinances in the Bay Area apply to all residential developments over some minimum size. The minimum size is generally small (see Table 9); approximately 45 percent require developments of at least two to five units to participate (in some cases, small

³⁵ Information on amendments is based on the Furman Center's survey.

³⁶ Note that prior to 1998, the length of mandatory affordability for Fairfax County was 50 years.

developments are required to pay a fee rather than build units). Only four jurisdictions exempt all developments under ten units, and nearly one-quarter have no minimum size, implying that all residential developments are subject to IZ.

In the D.C. area, IZ programs in all counties except Fauquier are mandatory for projects of 50 or more units, much higher than the minimum project sizes in California. Of the four counties, Montgomery's ordinance is most broadly applied: all as-of-right single- and multi-family developments above the minimum size are subject to IZ. In Fairfax and Loudon Counties, IZ is triggered when the developer applies for a rezoning, subdivision, or special exception.³⁷ Prince George's ordinance, now repealed, applied only in specific low-density districts in 12 different residential zones.

Unlike the jurisdictions in California, all of the D.C.-area counties with mandatory programs stipulate a variety of exemptions. All of the ordinances exempt developments in single-family zones with large minimum lot requirements. Fairfax County also exempts sites not served by public water or sewer infrastructure, and all counties but Fairfax exempt certain districts or zones. Fairfax, Loudon, and Prince George's exempt certain building types, namely larger multi-family buildings. In Loudon County, developers who are exempt may still receive density bonuses if they voluntarily include affordable housing.

IZ programs in Massachusetts are applied even more narrowly than those in the Washington, D.C., region, with most being triggered only by specific locations or development types (see Table 10). Fewer than one-third of IZ programs use project size as the trigger. Among the 26 communities that specify a minimum project size, the average minimum size is eight units. The trigger observed most frequently in Boston-area IZ ordinances is an attempt to

³⁷ It is unclear how frequently and under what circumstances development permits in Fairfax and Loudon Counties require special exceptions or rezonings.

use cluster or planned development zoning. Although cluster development provisions typically reduce the minimum lot size and other dimensional requirements, most do not authorize more units than could be built on the same parcel under conventional zoning. However, many communities offer the possibility of additional units in return for affordable housing or some other community benefit.³⁸

Cost Offsets

Density bonuses are the most common type of cost offset in all three regions. Two-thirds of Bay Area IZ programs offer some kind of density bonus. During interviews, municipal staff also mentioned several other types of cost offsets, including fast-tracking of permitting processes, fee waivers, and provision of subsidies. In addition, some jurisdictions that limit the annual number of permits as a form of growth control exempt affordable units, including those built under IZ, from the permit cap. In the D.C. area, all of the jurisdictions offer density bonuses ranging from ten to 25 percent. Only Montgomery County offers other cost offsets, including fee waivers, reductions in zoning standards, and tax abatements. In the Boston suburbs, mandatory and voluntary IZ programs differ considerably as to whether they provide cost offsets, such as density bonuses (see Table 11). Only about one-third of mandatory IZ programs offer a density bonus, while virtually all voluntary programs do. Of the four voluntary programs that do not offer bonus units, three relax other requirements, generally lot sizes or frontages.

Buyout Options

³⁸ Another common trigger is a request to build specific types of housing, especially multifamily or age-restricted housing. Another fairly common mechanism for voluntary IZ programs was suggested by a 1975 revision of the state's zoning enabling legislation, which explicitly authorized localities to grant increases in density in exchange for affordable housing (NHC 2002). Developers can apply for a special permit granting increased density over that allowed by right. Unlike the other two triggers, this can usually be applied to conventional subdivisions of single-family houses.

Alternatives to on-site construction of affordable units, often called buyout options, are widely available in Bay Area IZ programs. Only eight jurisdictions offer no buyout options and two-thirds offer more than one option (see Table 12). In-lieu fees are the most common option (77%), followed by off-site construction (70%), land donation (38%), and transferable development credits (16%). Some jurisdictions restrict the amount of the obligation that can be satisfied through buyouts. From the evidence that is available, it appears that some jurisdictions have set the amount of the in-lieu fees considerably below the costs of construction.

All of the counties in the Washington, D.C., area allow some buy-out options if developers can demonstrate that building units on-site would cause financial hardship. All five counties permit in-lieu fees, although Loudon County only does so for single-family detached units. Montgomery and Loudon allow off-site construction, while Montgomery and Fairfax allow land donation. Montgomery County has been hesitant to approve buyout options; between 1989 and 1999, only 10 requests were approved (Brown 2001). Prince George's County often only allowed off-site construction if it would result in significantly more affordable units.

In the Boston suburbs, buyout options are reasonably common, but differ between mandatory and voluntary programs. Roughly one-fourth of communities with voluntary IZ programs offer alternatives to on-site production, compared to half of communities with mandatory IZ (see Table 13).

Section 7: Affordable Housing Production

Nearly all Bay Area jurisdictions reported that IZ ordinances have resulted in at least some affordable units. In addition to on-site units, some officials indicated that units have been built off-site, and several also reported that developers have paid in-lieu fees or made land donations (see Table 14).³⁹ Over 40 percent of the jurisdictions reported that fewer than 100 units were built as a result of IZ, while one third report between 100 and 500, and two jurisdictions report more than 1000. As of 2003, 9,154 total units had been built across all 55 of the Bay Area jurisdictions with IZ programs. Collectively, these 55 jurisdictions issued just under 400,000 building permits between 1980 and 2006, so the affordable units produced under IZ made up approximately 2.3 percent of new residential units permitted during this period.⁴⁰

As of 2003, 15,252 units of affordable housing had been developed under IZ in the Washington, D.C., metropolitan area (Policy Link 2003). Between 1980 and 2006, the five counties with IZ collectively issued permits for about 500,000 new housing units. Both annual and total production in Montgomery County far outstrips the other counties, which in part reflects the longer life of the program (see Table 15). Prince George's program had the next highest average annual production rate, before it was repealed. Fairfax and Loudon have lagged well behind their Maryland counterparts. No data are available for Fauquier, but the general sense is that its program is grossly underused. To maintain unit affordability, all counties except Prince George's permit the local housing authority or qualified non-profits to purchase a certain percentage of the IZ stock.

³⁹ For all three of the metropolitan areas in the study, the data on affordable units produced under IZ are self-reported by municipal staff and cannot be independently verified. It is unclear whether the number of units reported is the number of affordable units ever developed or the number still under affordability restrictions. However we believe the data are likely to be accurate indicators of whether any affordable units have been developed since the programs' inception. To the best of our knowledge, the number of units reported reflects the total across all structure types and includes both owner-occupied and rental units.

⁴⁰ Affordable housing production numbers were obtained from surveys conducted by CCRH and NPH (2002); permit numbers were obtained from the U.S. Census.

IZ programs in Massachusetts, unlike in D.C. and San Francisco, have produced relatively few affordable units. One-fifth of communities with IZ programs that reported production outcomes have produced some affordable units through IZ (see Table 16). Over one-third could not state whether any affordable units had been built. The lack of production may reflect the very recent adoption dates: of the 33 communities with known adoption dates prior to 2000, ten reported that IZ had produced some affordable housing, eight reported none, and fifteen did not respond. An earlier survey by Citizens' Housing and Planning Association (CHAPA) estimates that between 1990 and 1997, approximately 1000 affordable units statewide were constructed under local IZ, while about 5000 affordable units were built under Chapter 40B (NHC 2002).

Section 8: Advice for Planners

IZ programs in the three regions examined exhibit considerable variation in structure and outcomes. Programs vary by mandatory status, share of affordable units required, incomes of targeted households, length of affordability restrictions, presence and nature of exemptions or triggers, and type and frequency of cost offsets and buyout options. Although there are significant intra-regional differences, we do observe consistent characteristics across jurisdictions within each study area. IZ programs in California apply broadly across locations and structure types, but attempt to soften negative impacts, such as decreases in housing production and increases in prices, with density bonuses, other cost offsets, and alternatives to developing affordable units on-site. In the Washington area, most IZ programs also are mandatory, but exempt small projects and those in low-density areas. They also grant density bonuses and cost offsets, while the period of affordability restrictions tends to be relatively short.

IZ programs in the Boston suburbs exhibit a high degree of heterogeneity. Although some programs are mandatory and apply broadly to most new development, many others are voluntary or apply only to certain types of development or specific geographic areas.

The wide variation in IZ program structures illustrated in this paper highlights one of the strengths of IZ as a policy tool: planners and policymakers considering adopting IZ can readily tailor their program to accommodate local policy goals, housing market conditions, and residents' preferences, as well as variations in state or local regulatory and political environments. Communities that place a high value on integrating affordable units into market-rate stock may prefer not to allow alternatives to on-site construction, while communities that have identified parcels of land appropriate for affordable housing might welcome cash in lieu of on-site units. The income levels targeted (or other guidelines for resident qualifications, such as preferences for teachers or local residents) also can be adapted to suit the characteristics of those perceived to have the greatest need within that community. Programs with greater flexibility – offering incentives rather than mandatory participation, or offering a variety of off-site alternatives – are less likely to have negative impacts on the price and supply of market-rate housing. In addition, when trying to build political support for a proposed IZ program, policymakers may find it necessary to negotiate alterations to the structure of the program, such as increasing the value of cost offsets or broadening the scope of exemptions.

Not only should policymakers pay great attention to the unique conditions of their local market in the initial design and adoption process, but once the IZ policy is in place, they should set up the means to monitor the performance and outcomes of the program. Our analysis revealed that the various surveys of California jurisdictions contain many discrepancies on program adoption dates, and many Massachusetts jurisdictions were unable to report either the

dates of adoption or the amount of affordable housing produced. Careful tracking of the affordable housing produced – both on-site and off-site, by structure type and tenure – as well as tracking the costs of adopting and implementing IZ, will allow policymakers to assess whether the policy is meeting their goals, observe how IZ interacts with the local housing market, and better inform future IZ adopters.

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Table 1: Presence and mandatory status of IZ programs, SF Bay Area

County	County IZ program	Cities/towns in county	Percent of cities/towns with IZ	
			Mandatory	Optional
Alameda CA	Mandatory	14	57%	0%
Contra Costa CA	Mandatory	19	21	5
Marin CA	Mandatory	11	64	0
Napa CA	Mandatory	5	60	0
San Francisco CA	Mandatory	--	--	--
San Mateo CA	Mandatory	20	35	0
Santa Clara CA	None	15	33	20
Santa Cruz CA	Mandatory	4	50	0
Solano CA	None	7	14	0
Sonoma CA	None	9	78	0
Total		104	40	4

Table 2: Timing of IZ adoption, SF Bay Area and Suburban Boston

Year IZ adopted	SF Bay		Suburban Boston	
	Number	Percent	Number	Percent
Pre 1980	5	9%	3	3%
1980-89	15	27	14	14
1990-99	27	49	16	16
2000-04	8	15	48	48
Date unknown	0	0	18	18
Total	55	100	99	100

Table 3: Timing of IZ adoption and amendment, Washington, D.C. Area

County	Adopted	Amended	Repealed
Fairfax VA	1990	1998	n/a
Fauquier VA	1996	n/a	n/a
Loudon VA	1993	2000	n/a
Montgomery MD	1974	1981; 1989	n/a
Prince George's MD	1991	n/a	1996
Washington, DC	2007	n/a	n/a

Note: Washington, D.C., is presented here but is not included in later comparisons of components because of its recent adoption date.

Table 4: Presence and mandatory status of IZ programs, Suburban Boston

Status	Cities/towns	Percent
Inclusionary zoning	99	53.0%
Optional	42	22
Mandatory	34	18
Both optional & mandatory	23	12
No inclusionary zoning	88	47.0
Total	187	100.0

Table 5: Required share of affordable units, SF Bay Area and Suburban Boston

	SF Bay		Suburban Boston	
	Number	Percent	Number	Percent
Min affordable share				
1-10%	25	45%	39	39%
11-15%	18	33	18	18
16+%*	11	20	15	15
Unknown/not defined	1	2	27	27
Total	55	100	99	100

* The maximum share affordable in the SF Bay area is 25%, the maximum in Suburban Boston is 60%.

Table 6: Required share, target population and affordable length, Washington, D.C. Area

County	Affordable Units Required	Targeted Income (% AMI)	Length of Affordability (years)	
			Owners	Renters
Fairfax VA	6.25-12.5%	Up to 70%	15	20
Fauquier	n/a	n/a	5	5
Loudon VA	6.25%	30%-70%	15	20
Montgomery MD	12.5%-15%	Up to 65%	10	20
Prince George's MD	10%	Up to 70%	10	10

Table 7: Target population for affordable units, SF Bay Area and Suburban Boston

	SF Bay		Suburban Boston	
	Number	Percent	Number	Percent
Target income pop				
VLI LI	7	13%	0	0%
VLI LI MI	23	39	1	1
VLI LI MI MD	1	2	0	0
VLI MI	1	2	0	0
LI	2	4	17	17
LI MI	19	34	45	45
LI MI MD	0	0	6	6
MI	2	4	4	4
Not defined	0	0	26	26
Total	55	100	99	100

VLI = very low income; LI = low income; MI = moderate income; MD = median income

Table 8: Distribution of affordability terms, SF Bay Area and Suburban Boston

Length of affordability	SF Bay		Suburban Boston	
	Number	Percent	Number	Percent
< 20 yrs	2	4%	6	6%
21-30 yrs	10	18	7	7
31-49 yrs	10	18	3	3
50-59 yrs	11	18	1	1
80+ yrs*	10	18	34	34
Unknown/not defined	12	25	48	48
Total	55	100	99	100

* The only lengths of time greater than 59 years chosen by jurisdictions in this sample are 80 years, 99 years, and permanent restrictions.

Table 9: Minimum project size subject to IZ, SF Bay Area

Minimum units	Jurisdictions	Percent
No minimum size	12	23%
2-5 units	26	45
6-10 units	13	21
11+ units	4	7
Total	55	100

Table 10: Trigger conditions for IZ, Suburban Boston

Trigger condition	Cities/towns
Minimum project size	28
Cluster/Planned Unit Development	33
Structure type	18 Multifamily: 14 Townhouse: 2 Accessory apartments: 2 Duplex: 1
Senior housing	11
Specific districts	12
Developer initiated	10
SP/variance request	7
Conversion/reuse	3
No specific condition listed	8

Note: the conditions are not mutually exclusive; many communities have more than one IZ with different triggers, or may list multiple conditions for a single program (i.e. multifamily housing in a specific district).

Table 11: Density bonuses by mandatory status, Suburban Boston

IZ program	Has density bonus	Total cities/towns	Percent
Mandatory	11	34	32%
Voluntary	38	42	90%
Both mandatory & voluntary	21	23	91%
Total	70	99	71%

Table 12: Alternatives to on-site construction, SF Bay Area

Buyout options	Jurisdictions	Percent
Alternative:		
In-lieu fees	44	77%
Off-site development	40	70
Land donation	21	38
Developer Credit Transfer	9	16
More than one buyout option	38	66
None	8	14

Note: rows are not mutually exclusive options. A jurisdiction that offers both in-lieu fees and off-site development would be included in both of those rows, and in the “More than one buyout option” row.

Table 13: Alternatives to on-site construction by mandatory status, Suburban Boston

Inclusionary status	Has buyout options?	Total cities/towns	Percent
Optional	11	42	26%
Mandatory	17	34	50%
Both opt & mandatory	10	23	43%
Total	38	99	38%

Table 14: Affordable units produced under IZ, SF Bay Area

Units produced	Jurisdictions	Percent
0 units	2	4%
1-100	22	39
100-500	18	32
501+	4	7
Unknown	9	18
Total	55	100

Table 15: Affordable units produced under IZ, Washington, D.C. Area

County	Total units produced		Average annual units (adoption to 2003)
	by 1999	by 2003	
Fairfax VA	582	1735	133
Fauquier VA	n/a	n/a	n/a
Loudon VA	208	707	71
Montgomery MD	10,600	11,210	387
Prince George's MD	1600	1600	320
Total	12,990	15,252	227

Note: Since Prince George's ordinance was repealed in 1996, no new units were produced between 1999 and 2003. No data on units developed in Fauquier are available.

Table 16: Affordable units produced under IZ by mandatory status, Suburban Boston

Inclusionary status	Any affordable units built?			Total	Percent built any (of known outcomes)
	Yes	No	Unknown		
Optional	10	18	14	42	36%
Mandatory	6	14	14	34	30%
Both opt & mandatory	5	11	7	23	31%
Total	21	43	35	99	33%