

## RETHINKING LOCAL AFFORDABLE HOUSING STRATEGIES: LESSONS FROM 70 YEARS OF POLICY AND PRACTICE

### IV. LAND USE AND REGULATIONS

State and local regulatory policies can profoundly affect the availability and cost of affordable housing. Most states delegate the authority to regulate the private housing market to local governments, which then establish and enforce zoning policies, land use restrictions, development fees, subdivision and design requirements, building codes, rent controls, and other regulations that reflect local priorities and objectives. Taken together, these regulations help determine whether and where different types of housing can be developed, how much it costs, and even how it is maintained.

In general, local zoning, land use, and building regulations have not had as their primary purpose the promotion of affordable housing. In fact, many local regulatory regimes have been designed to *exclude* lower-cost housing and its residents, so as to maximize local property values (Choppin 1994; Pendall 2000). In response to a survey (Lowry and Ferguson 1992), most local planning officials cited prevention of overload on utilities and school systems and “maintaining local atmosphere” as their top priorities. Among the least likely reasons given for regulating development was “maintaining or increasing the amount of affordable housing.”

Although regulatory issues are often overlooked in discussions of affordable housing policy, their potential impact may be even greater than that of conventional housing assistance programs because they influence the location, characteristics, and costs of housing in the private market (Nelson et al. 2002). Some widely used subdivision requirements, traditional zoning provisions, and building codes create barriers to the production of affordable housing or simply raise the cost of all construction. Removing or reducing these barriers can make a big difference. But in addition, some communities have developed regulatory provisions that actually promote or encourage the production of affordable housing. And several states have used their authority over local land use and building regulation to encourage affordable housing development across jurisdictions. In recognition of the important role of regulations, even HUD recently created a Regulatory Barriers Clearinghouse ([www.regbarriers.org](http://www.regbarriers.org)) to help state and local actors inventory the array of regulatory policies that may affect the quality, price, location, and supply of affordable rental and ownership housing.

This chapter provides a brief overview of state and local regulation of housing development, including the evolution of regulatory tools for addressing local and regional housing needs. The chapter then reviews the available evidence about the effectiveness of these tools for advancing the goals of an affordable housing strategy.

## A. State and Local Regulation of Private Housing Markets

Historically, local land use and development regulations have explicitly or implicitly limited or prevented the development of affordable housing—especially in suburban jurisdictions. Local land use regulations were originally established by landowners and municipalities to keep out unwanted uses, preserve property values, and separate people of different races and income levels. For instance, early zoning ordinances in the South were explicitly designed to separate black and white residents. Although they were ruled unconstitutional in 1917 (*Buchanan v. Warley*, 245 U.S. 60), local governments continued to adopt racial ordinances for another ten years. Land developers and homeowners then turned to private deed restrictions and covenants as tools to keep out minorities, but in 1948, the Supreme Court rejected racially restrictive covenants as unenforceable (*Shelley v. Kraemer*, 334 U.S. 1) (Nelson et al. 2002).

While land use and zoning regulations no longer directly create and maintain racial and economic segregation, many still indirectly (and sometimes intentionally) have this result. As summarized recently by Nelson et al., land use regulations “work indirectly by shaping local housing markets, encouraging or prohibiting the construction of certain types of housing, and thereby conditioning the tenure (rent versus own) and price of housing.” (Nelson et al. 2002).

For instance, subdivision regulations that mandate large lot sizes and costly amenities, zoning provisions that limit areas where multifamily housing can be developed, building codes that require costly materials or construction techniques, and development fees imposed to help pay for new infrastructure all discourage the production of housing that is affordable for low- and moderate-income households (Lowry and Ferguson 1992).

Some jurisdictions have practiced “exclusionary zoning” by preventing affordable housing construction through restrictive policies like outright bans on multifamily housing (Jackson 2000). These policies are usually justified as promoting community amenities, quality of life, safety, and property values, but often they also reflect residents’ fears of crime or lower property values, which they associate with economic or racial integration. Local policymakers may assume that residents of affordable housing will demand expensive social services and cause a strain on local budgets, or policymakers may simply favor higher-end residential or commercial development for the high property tax revenues they yield (Choppin 1994). Local opposition to affordable housing development is often called “NIMBYism,” an acronym for “Not In My Back Yard” (U.S. Department of Housing and Urban Development 1991a). NIMBYism is frequently a major driver for exclusionary zoning.

The most blatant exclusionary practices are “large-lot zoning, inadequate provision in the zoning code for affordable housing types, large lot width and setback requirements for subdivisions, and high impact fees” (Choppin 1994). Other practices include minimum house size requirements, prohibition of multifamily housing, and prohibition of mobile homes. Local zoning regulations that restrict medium-density, walk-up multifamily housing, for instance, can also severely limit affordable housing development. Requirements for design features such as side yards and large lots can also

add greatly to housing development costs (Lowry and Ferguson 1992). Arguably, the most famous court case with regard to exclusionary zoning policies was decided in 1975. In that case, the New Jersey Supreme Court declared that the township of Mount Laurel's zoning laws were unconstitutional because they precluded the opportunity for construction of affordable units. The ruling stunned local government officials who, until then, considered exclusionary zoning to be their "natural prerogative" (*Harvard Law Review* 2003).

Other state and local regulatory policies that aim to control, limit, or ration development can have significant effects on the supply of affordable housing in a region. Such policies include building moratoria, permitting caps, and development quotas. If these growth control policies are formulated without considering affordable housing needs, they may have a negative impact on the availability of affordable housing (Downs 2000b). Also, in some cases, local governments have used growth controls such as building moratoria as a "stealth" way to prevent development of affordable housing (Choppin 1994).

Distinguished from growth control policies are policies designed to manage metropolitan growth. The distinction is important. Growth *control* policies are designed to limit the growth of the housing stock; growth *management* policies accommodate projected development. The goals of growth management are to: preserve public goods, minimize negative externalities, minimize public fiscal impact, maximize social equity, and elevate quality of life. These goals are consistent with, and often explicitly include, expansion of the supply and accessibility of affordable housing. Nelson et al. (2002) has developed the most comprehensive and complete review of the literature on the link between growth management and housing affordability. The authors conclude that growth management programs usually focus on increasing densities, mixing housing types, and promoting regional fair share housing.

Exclusionary zoning has come under attack from many fronts. Conservatives argue that the practice constitutes unnecessary regulation and prevents the market from meeting demand for affordable housing. More liberal voices contend that it undermines principles of social equity, as well as broader regional housing needs, in favor of narrow local interests. In particular, the fragmentation of regulatory authority among individual jurisdictions in a metropolitan area undermines regionwide efforts to effectively manage growth, make housing affordable, and promote racial and economic diversity.

Remedies to the exclusionary effects of traditional regulatory regimes can take three basic forms: 1) reform of zoning requirements, subdivision regulations, and building codes to eliminate exclusionary provisions; 2) adoption of explicitly "inclusionary" zoning and land development regulations; and 3) statewide efforts to rein in local exclusionary practices and promote regional strategies for meeting affordable housing needs. Each of these approaches is discussed in turn below. In addition, we describe a fourth regulatory strategy for making housing affordable—the imposition of rent controls on existing, private-market housing.

## **1. *Regulatory reform.***

An obvious first step in aligning regulatory policies with affordable housing goals is to correct regulations or requirements that explicitly exclude affordable housing types or that unnecessarily raise the cost of construction. For example, zoning laws can be reformed to allow for garage apartments and other kinds of secondary units, to permit higher-density residential development, and to encourage a mix of housing densities and types in new subdivisions through Planned Unit Development or cluster zoning provisions (HUD 1991a). Building codes can be modified or made more flexible to eliminate unnecessarily costly requirements (Belsky and Lambert 2001). Subdivision regulations can be reformed by reducing required street widths and other unnecessary infrastructure requirements, and by streamlining approval processes to make the development process less time-consuming and costly (HUD 1991a). Finally, local governments that impose impact fees and other infrastructure requirements can waive or reduce those fees for affordable housing developments to make them financially feasible.

## **2. *Inclusionary zoning.***

States, regions, and local governments have employed “inclusionary zoning” and other regulatory reforms aimed at increasing the number of affordable units—for both ownership and rental—especially in areas where they are traditionally scarce (such as more affluent suburbs). Using a combination of mandates and incentives, inclusionary zoning can help compensate for past local exclusionary practices or can balance the effects of growth controls and other regulatory policies that may indirectly limit affordable development (Downs 1999).

Among the most frequently used tools of inclusionary zoning are “developer set-asides.” These programs require developers to make a certain percentage of units in a new residential development affordable and available to low- and moderate-income households. Set-aside programs may be voluntary or mandatory. They generally provide some form of developer incentives, such as “density bonuses,” which permit more units to be built than otherwise would be allowed under conventional zoning. Such incentives may also reduce impact fees, thereby cutting development costs. Some jurisdictions allow developers to build affordable housing off site or contribute cash to an affordable housing fund in lieu of including affordable units in the new development. In some set-aside programs, county or local housing authorities and nonprofit organizations buy a percentage of the affordable units and operate them as a sort of scattered-site public housing program (Brown 2001). For example, Montgomery County, MD, an affluent suburb in the Washington, D.C. metropolitan area, has for decades required that all new housing developments larger than 50 units include 12.5 percent to 15 percent of units to be affordable for households at or below the county’s median income. Over 25 years, this requirement has resulted in the production of 10,600 affordable housing units, integrated throughout more affluent communities. In addition, the county’s public housing authority retains the right to purchase some of these “inclusionary” units so that they can be made affordable for the poorest households (Brown 2001).

In addition to developer set-asides, some communities have used “development allocation plans” to explicitly include affordable housing. Development allocation plans enable jurisdictions with strict growth controls to authorize at least some affordable units. For example, Thousand Oaks, CA, evaluates development proposals using a point system that favors projects including affordable housing (Landis 1992). The city of Davis, CA, limits residential construction to an average of 500 units annually over a period of 20 years, holding “what one developer described as a beauty contest to award permits on the basis of developers’ proposals, considering...inclusion of affordable housing” as one of the factors for awarding a permit (Lowry and Ferguson 1992). A system based on development agreements, on the other hand, does not have a structured point system for allocating permits but allows different interests (local residents, developers, planners, and environmental advocates, for example) to enter a structured negotiation about the amount, types, and location of residential development to be permitted locally (White 1992).

### **3. Statewide strategies.**

Although land use and building regulations are typically enacted and implemented by towns, cities, and counties, their authority to do so comes from the state. State legislation sets the framework for local planning and development regulation. In recent years, some states have begun exercising more oversight of local regulatory policies in order to promote affordable housing and encourage more regional coordination. The strongest state systems view affordable housing as a foundation for community growth, and require localities to explicitly assess their housing needs and to create an institutional framework within which residents, advocates, and planners can meet to discuss these needs. California, New Jersey, Oregon, and Connecticut provide examples of four different state approaches:

- California requires its municipal and county governments to adopt housing elements in their mandatory general plans; the state’s laws on the contents of the housing strategies are among the most prescriptive of any of its laws on planning. Among other things, each local government must develop plans and programs, and identify sites, to accommodate a “fair share” of its region’s new growth of all kinds of housing, affordable and market-rate housing alike. The state Department of Housing and Community Development reviews these elements, which must be revised every five years, for their consistency with state law. Penalties for noncompliance, however, are weak (Calavita, Grimes, and Mallach 1997).
- New Jersey also has a procedure through which local governments submit housing elements to a state agency, the Council on Affordable Housing (COAH), which also determines municipalities’ fair share targets, but only for affordable housing. The New Jersey housing element process has much different roots from California’s, however; it was established in response to the *Mount Laurel* court decision that allowed builders of market-rate housing to file suit against exclusionary suburbs and to build large developments that incorporated affordable housing. Jurisdictions with COAH-approved housing elements are immune from these “builders’ remedy” lawsuits (Calavita, Grimes, and Mallach 1997).

- Oregon's well-known state growth management system—dating from 1973—has goals for urbanization and housing that each local government must meet in its comprehensive plan. In the Portland region, these goals have been embodied in the Metropolitan Housing Rule (adopted in 1981), which requires local governments to demonstrate that their zoning can accommodate an even mix of single-family and multifamily housing. The state's planning process also works more generally to ensure an adequate supply of sites for housing, although there is substantial dispute over how effectively it does so. Oregon's planning system has historically been weaker for truly affordable housing, however, and Metropolitan Portland recently developed a fair share plan to ensure that all jurisdictions plan not just for density but also for affordability (Toulan 1994).
- Connecticut has experimented with a regional negotiation process, which is weaker because participation is voluntary for local governments. Individual jurisdictions in two metropolitan areas entered into a structured negotiation process to decide how to address regional housing needs. The conditions and terms of the regional negotiations were prescribed by the enabling legislation; each local government in a metro region sent one representative to the bargaining table. All decisions about regionwide zoning and regulatory reform had to be approved by a two-thirds majority, and an outside mediator facilitated the negotiations. This process produced regional affordable housing and zoning reform strategies within a short time period (Wheeler 1993).

Other states have taken a more reactive approach, allowing local governments to plan and regulate housing development as they choose, while providing special appeals mechanisms to override exclusionary behavior. To illustrate, Massachusetts enacted an "Anti-Snob Zoning" law in 1969 that provides a consolidated permit application and hearing process for developers. It also provides a state zoning appeals system that strongly favors developers over local zoning boards. For a local planning board to block a development project with an affordable set-aside, it must prove that other local considerations—environmental, open space, or safety, for example—outweigh the regional housing need. The state Housing Appeals Committee presumes that local affordable housing needs outweigh other local planning considerations in most cases. An executive order related to the legislation gives state agencies the authority to withhold financial assistance for development from communities that continue exclusionary practices (Stockman 1992).

#### **4. Rent controls.**

Although zoning, land use, and building codes are the most widely used tools for regulating the private housing market, some states also authorize local jurisdictions to regulate rent levels for existing housing. Rent control is most commonly imposed in high-cost housing markets in urban areas and covers an estimated 10 percent of existing rental units nationwide (HUD 1991b). Rent control programs vary considerably across municipalities. Although some of the earliest rent control programs (implemented during World War II) imposed absolute caps on rent levels, most existing programs are "second generation" rent control regimes, which allow for annual rent increases based on increases in operating costs. Typically, these programs also allow for rent increases when a

landlord makes significant improvements to the building and "hardship increases" for landlords who are not earning a fair return on their investment. Many modern rent control programs also exempt new rental housing construction or luxury housing (Keating 1998).

## **B. Performance of Regulatory and Governance Tools**

Because they govern the development and operation of the private housing market, state and local regulatory tools have a potentially far-reaching impact on housing outcomes. Research on the effects of various regulatory tools suggests that they can influence the overall supply of affordable housing as well as the geographic distribution of different housing types. The remainder of this section reviews evidence about the effectiveness of regulatory tools in advancing each of the seven housing policy objectives.

### **1. *Preserve and expand the supply of good-quality housing units.***

As already discussed, many widely used zoning, subdivision, and building codes create barriers to the production of low- and moderate-cost housing or add unnecessarily to the costs of housing development. Regulatory reforms that eliminate (or moderate) these barriers represent an important first step in expanding the production of affordable housing.

However, some states and localities have implemented more proactive regulatory strategies. Recent research has addressed two major questions about the potential impacts of these strategies on housing production. First, several studies have assessed the effectiveness of various inclusionary zoning provisions (particularly set-asides), generally concluding that these programs provide an effective and low-cost way for local governments to encourage affordable housing production. A second set of studies has focused on the impacts of growth management and other antisprawl strategies to determine whether they restrict the production of affordable housing. These studies conclude that even areas with strict growth management can continue to produce affordable housing if controls are designed and implemented intelligently.

Inclusionary zoning programs have been found to constitute an important source of affordable housing production in the jurisdictions where they exist. For example, in Montgomery County, MD, inclusionary zoning accounted for half of the suburban county's newly created affordable units since the programs' inception in 1974, adding more units than the Low-Income Housing Tax Credit and Section 8 project-based programs combined (Brown 2001). Administrative costs are minimal; the onus is on developers, not governments, to build and sell the units (and maintain them, if they are rental units). Developers or residents of market-rate units in the developments generally absorb any extra costs of building the affordable units (Calavita and Grimes 1998; Cowan 2001). Research shows that affordable units can be incorporated into a larger development through inclusionary zoning policies with little or no effect on the economies of the development as a whole (Mallach 1984). Set-aside programs can also save public funds by reducing the need for government housing subsidies. In Massachusetts, Rhode Island, and Connecticut, government subsidies decreased in areas that adopted set-aside programs (Cowan 2001).

Some set-aside programs have been criticized for failing to fully address local shortages of affordable housing. For example, Goetz (2000) argues that the Twin Cities Livable Communities Act did not set its production targets high enough to increase the relative availability of affordable housing in the Twin Cities region. As a result, he suggests that there was actually less affordable housing construction in most parts of the Twin Cities area than there would have been under the status quo. In addition, inclusionary zoning does not necessarily produce housing that is affordable over the long term. Although some set-aside programs impose caps on home sales prices for a number of years, these time limits eventually expire and jurisdictions lose affordable units (Brown 2001).

Housing market conditions can greatly affect the ability of inclusionary zoning programs to produce units (Philip B. Herr and Associates 2000; Burchell and Galley 2000). In periods of rapid population growth and in areas with a lot of new residential development, set-asides can produce large numbers of new affordable units. However, in areas where the supply of undeveloped land is great or in periods when little new housing is being produced, these programs have little impact (Choppin 1994). A strong housing market may be necessary to make affordable construction financially feasible for developers (Burchell and Galley 2000). For example, developers' use of California's inclusionary zoning provisions declined during the early 1990s as a result of land values being driven down by recession (Calavita, Grimes, and Mallach 1997).

Not all inclusionary zoning programs offer sufficient incentives to entice developers to include affordable units in their projects. For example, a survey of developers in California indicated that they "...were not much interested in density bonuses that limited the prices they could charge for their dwellings...(and that) financial incentives did not loom large in the developers' perceptions," particularly incentives designed to encourage residential development for families with low to moderate incomes (Choppin 1994). In general, mandatory set-asides appear to be more effective than voluntary programs that depend on incentives to induce developer participation (Philip B. Herr and Associates 2000).

Although much of the research on housing-market regulation and housing production focuses on inclusionary zoning practices, which are intended to promote affordable housing, other research has focused on the impacts of growth management programs, such as urban growth boundaries,<sup>39</sup> and their potential to restrict housing production. Recent research on Portland, OR (arguably the most frequently cited example of an urban growth boundary) finds no significant relationship between regional housing prices and the existence of the boundary (Downs 2002; Phillips and Goodstein 2000). This research focuses on house prices generally, not specifically on affordable housing production, but Nelson (2002) points out that a key element of the Portland area's growth management strategy is to explicitly and creatively increase the type and amount of housing

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<sup>39</sup> Urban growth boundaries (UGBs) and more general urban containment policies are designed to promote infill and redevelopment programs while preserving open space, agricultural land, and environmentally sensitive areas. They are commonly considered to be programs that discourage development outside of a metropolitan boundary while promoting development within it (Nelson and Duncan 1995).

provided in the region, which is meant to ensure that as land supply is constrained, the supply of housing is not.

Portland's policies are decidedly anti-exclusionary (as opposed to being specifically inclusionary) in that they promote a range of housing types spread throughout the metropolitan area. For example, Portland encourages housing units created out of existing buildings as well as lofts and other housing types that many localities restrict. In connection with regional and statewide growth management, Oregon's metropolitan housing rule is intended to address socioeconomic concerns in conjunction with growth management (Toulan 1994). In the Portland region, the rule requires every suburban city and county to adopt plans that set minimum housing densities and allow for at least 50 percent of new housing to be multifamily or attached single-family units (Span 2001). The result is that moderate- and low-income families are not necessarily restricted to the most distressed suburbs to find housing (Connerly and Smith 1996). The Portland Metropolitan Government adopted a Regional Affordable Housing Strategy in 2001. This program requires each part of the metro region to provide a fair share of affordable housing needs, determined on the basis of 5- and 20-year population predictions (Canada Mortgage and Housing Corporation 2001).

The potential negative effects of growth control strategies such as building permit caps and building permit moratoria, on the other hand, may be significant. Particularly if growth controls are implemented in conjunction with other exclusionary regulations, they can reduce the overall volume of housing production in a jurisdiction and increase the cost of housing significantly. And by limiting the amount of new housing that can be produced, growth control measures may cause gentrification and displacement (Pendall 2000). However, research shows that even areas with strict development and growth controls can enjoy a continued supply of new affordable units, if policies that promote affordable development are incorporated (Nelson et al. 2002).

While rent control is primarily intended to regulate the costs of rental housing, some forms of rent control discourage the production of new units, because limits on rent increases are expected to reduce the return on investment. Even in cities where new units are not covered by rent control, developers and investors may be wary of future regulation and invest elsewhere. In Los Angeles, Teitz (1998) found both an absolute and a relative drop in multifamily housing production during the initial years of the city's rent control ordinance. Other cases present contradictory evidence. However, Goetz (1995) analyzed trends in San Francisco's rental market and found that rent increases accelerated and the production of multifamily housing increased following the adoption of rent control. Similarly, Turner (1998) found an increase in multifamily housing production following the implementation of rent control in Washington, D.C.

## **2. *Make housing more affordable and more readily available.***

Despite the advantages of inclusionary zoning programs, they generally do not produce housing units that are affordable for the poorest households (with incomes at or below 50 percent of area medians). And relatively few set-aside programs produce rental housing units. Instead, the main beneficiaries of these programs are moderate-income families who are able to purchase

homes. For example, most of the units produced in New Jersey since the Mt. Laurel decision have been targeted to home buyers making at least 50 percent of the area median income (Calavita, Grimes, and Mallach 1997). Without additional subsidies, inclusionary zoning alone probably cannot be expected to produce rental housing units that are affordable for the poorest households. Nonetheless, set-aside programs and other inclusionary zoning strategies can help reduce production costs and moderate market pressures (Choppin 1994). And as discussed earlier, they can be linked to other subsidy programs that supplement what the poorest households can afford to pay for housing. Montgomery County's inclusionary zoning program explicitly requires that some affordable units be purchased by the local public housing authority and set aside for occupancy by very low income households.

While zoning, subdivision, and building codes all have the potential to shape the production of new housing units, rent control is intended to make existing housing more affordable, primarily by moderating rent increases in volatile markets. Research on the impacts of rent control indicates that it does result in lower rent levels than would prevail in an unregulated market. However, rent control is often characterized as an inefficient affordability mechanism because it reduces housing costs for middle- and upper-income households as well as for the poor. In addition, some evidence suggests that rent control may discourage private investment in rental housing, undermining both the size and the condition of the stock.

Rent controls promote housing affordability by regulating annual rent increases. A study of rent control in Los Angeles found that the program has kept housing costs in the affordable range for 12,000 to 25,000 households that would otherwise be paying unaffordable rent burdens (City of Los Angeles 1985). Levine, Grigsby, and Heskin (1990) found that in Santa Monica, those paying the highest share of income for rent experienced a significant reduction in shelter cost as a result of rent control.

Rent control also smoothes out fluctuations in the rental market. Limits on rent increases prevent displacement that might result under volatile economic conditions. Nash and Skaburskis (1998) compared rent levels in Toronto, which has rent control, with Vancouver, BC, which is uncontrolled. Over the long term, rents in the two cities were similar. The authors found that rent control stabilized rents and smoothed the fluctuations in Toronto's rental market. Furthermore, rent control reduces uncertainty about future rent increases. In a study of rent control in Washington, D.C., Turner (1998) found that rent control provided residents the security to stay in their apartments if they wanted to.

One of the major criticisms of rent control is that its benefits are not necessarily targeted to those with the greatest need. Most rent control regimes enforce some form of vacancy decontrol, under which the landlord can raise rents to "market" rates when a unit is vacated and a new household moves in. As a result, those who benefit most from rent control are those who stay in their apartments the longest, and households that move frequently may actually pay higher rents than they would in an unregulated market. Although a significant portion of long-term renters are low-

income households, middle- and upper-income households also benefit if they stay in their apartments. Some needy households get no benefit if they are frequent movers or recent arrivals.

The rent savings generated by rent control are not as substantial as many renters believe. Turner (1998) found that 90 percent of residents in the District of Columbia believed that rent control had made their units more affordable. About a quarter of those in rent-controlled units, however, were estimated to be paying rents as high as or higher than they would have paid in an uncontrolled market.

Some of the costs of rent control may be transferred to renters living in unregulated units through higher rents. In Los Angeles, renters of uncontrolled units who had moved the year before were found to be paying \$15 to \$28 more per month than if rent control had not been adopted (City of Los Angeles 1985). Using data from the American Housing Survey, Early and Phelps (1999) found that an uncontrolled unit's rent is \$85 higher as a result of rent control. However, their study also found that the effects of rent control on uncontrolled units diminished over time. Therefore, the authors concluded that eliminating rent controls could not be expected to reduce the price of uncontrolled housing, but that the imposition of new rent controls would increase the price of housing in the uncontrolled market.

Landlords may also recoup revenues lost due to rent control by deferring maintenance of rent-controlled units. Moon and Stotsky (1993) examined the effect of rent control on the quality of rental housing in New York City. A hedonic price index showed that rent control reduces the chances that a unit will improve in quality. However, White (1992) argues that rent control need not be detrimental to the condition of the housing stock if the program of controls is well designed. And Turner (1998) found that the physical condition of controlled units in the District of Columbia was as good as or better than that of unregulated units.

### **3. *Promote racial and economic diversity in residential neighborhoods.***

Because local regulatory policies influence the volume, characteristics, and cost of new housing in individual jurisdictions, they can have an important impact on economic and racial integration. Regulations that discourage the production of affordable housing, including rental housing and high-density development, can exclude lower-income households from a community. More inclusionary policies, on the other hand, make it possible for lower-income households to find housing in a community and therefore create opportunities for racial and economic integration. Inclusionary zoning policies alone, however, cannot ensure that low-income households or minorities will gain access to affluent or predominantly white communities.

The regulations that are most detrimental to racial and economic integration appear to be low-density-only zoning and building permit caps (Pendall 2000). Low-density-only zoning discourages the production of lower-cost homes (such as townhouses) and rental units. Permit caps create incentives to build larger, more expensive homes and may cause communities to allocate the limited number of permits to higher-value housing (Pendall 2000).

Implementing inclusionary zoning in affluent suburban areas can play a part in regional strategies to open up the suburbs to lower-income and minority households (Rusk 2000). In fact, some researchers argue that set-aside-type inclusionary zoning is “the best, perhaps even the only currently available means by which residential integration can be actively fostered” (Calavita, Grimes, and Mallach 1997). However, inclusionary zoning programs that include “in-lieu of” provisions (allowing developers to produce affordable units off site or contribute to a housing fund in lieu of incorporating them into the new development) may limit the extent to which racial and economic integration is encouraged (Calavita and Grimes 1998).

Although there is clear evidence that various forms of inclusionary zoning can produce economic integration, the evidence of achievement on racial integration is mixed. Some jurisdictions have had some degree of success in promoting both. For instance, affordable units built under inclusionary zoning programs in suburban counties in metropolitan Washington, D.C., have been found to provide housing for low- and moderate-income households of diverse racial and ethnic backgrounds. A 1998 profile of a small sample of owners of inclusionary units in Montgomery County, MD, showed that 80 percent of the households were minorities and 84 percent earned less than \$36,000 per year (Brown 2001). Tying the development of affordable units to market-rate construction in economically healthy areas has benefited minority and low- and moderate-income households.

The success of inclusionary zoning programs in New Jersey helped to “soften stereotypes” about affordable housing in many suburban areas (Lamar, Mallach, and Payne 1989)—perhaps easing the way for more low-income families to be successfully integrated into middle-class areas. However, relatively few minority households live in the new developments (Lamar, Mallach, and Payne 1989). Similarly, Goetz (2000) argues that the Twin Cities Livable Communities Act encouraged the development of more affordable housing in neighborhoods with higher housing prices. However, increased levels of affordable housing development were not linked with racial composition of neighborhoods, job opportunities, or percentage of households with very low incomes: “At the community level, the distribution of affordable housing under the program is virtually identical to what it would be under a continuation of the status quo” (Goetz 2000). And Cowan (2001) found that although inclusionary zoning was effective in increasing the supply of affordable housing units in metro areas in Connecticut, Rhode Island, and Massachusetts, it was not as effective in promoting racial integration, particularly in suburban areas. Cowan also found a lower rate of increase in affordable housing production in communities that were particularly affluent or had a very low percentage of minority householders.

#### **4. *Help households build wealth.***

Inclusionary zoning programs have succeeded in creating considerable opportunities for first-time home buyers of modest means. The primary group benefiting from New Jersey’s inclusionary zoning requirements, for instance, is first-time home buyers (Lamar, Mallach, and Payne 1989). And because these affordable homes are tied to market-rate housing and often located in suburbs or



**6. *Link housing with essential supportive services.***

Regulatory policies have little impact on the goal of linking housing with supportive services, unless they explicitly prohibit or limit the development of housing designed for people with special needs. Examples could include group homes for people with developmental disabilities or continuing care facilities for the elderly.

**7. *Promote balanced metropolitan growth.***

State and local regulation of land use and development can help promote balanced metro growth and ensure that affordable housing is available throughout a metropolitan area, especially if states or regional authorities take action to mandate inclusionary housing approaches in suburban communities.

Regulatory schemes that promote the production of affordable housing across all communities in a region may be more effective than those implemented voluntarily by individual jurisdictions. In some states, fair share laws have helped to distribute affordable units throughout many suburban areas for the first time. For example, 20 years after the passage of the Massachusetts act, affordable housing had been introduced to many suburbs where it had never existed before, although the total number of units built and planned under the act did not come close to meeting affordable housing demand for the state (Stockman 1992). State and regional fair share mandates that require localities to plan for levels of affordable housing in line with regional needs can also be effective in promoting economic and racial integration because they require local governments to plan with the needs of lower-income households in mind (Pendall 2000).

The spatial mismatch between low-income workers and jobs and the need to build “workforce housing” near major employment centers are two of the major challenges of affordable housing at a regional scale. Studies have found that some reduction of spatial mismatch can be achieved through the use of linkage fees on commercial development and public-private trust funds for affordable housing (White 1992). By siting affordable housing in areas located closer to job opportunities, set-aside development itself also helps to solve problems of jobs-housing mismatch (Calavita and Grimes 1998).

Well-designed growth management policies, by definition, are efforts to anticipate and plan for growth at a metropolitan scale while ensuring that growth is environmentally and fiscally sustainable, promotes economic growth, and maximizes the benefits to all residents, including low-income persons and persons of color. Thus, well-designed regulatory regimes can address sprawl, revitalize central-city communities, and provide sufficient affordable housing throughout a metropolitan area at the same time.

Portland is a prime example of a metro area that has attempted to address the problems of sprawl, housing affordability, transit and congestion, and jobs-housing proximity comprehensively and on a metropolitan scale. According to its Regional Urban Growth Goals and Objectives

statements, recently adopted by Portland Metro (Portland's regional authority), "there shall be a range of housing types available inside the Urban Growth Boundary for rent or purchase at all costs in balance with the range of household incomes in the region," and "housing should be located in proximity to major activity centers and regional transportation system." Through mandatory inventory-taking of buildable land and careful planning for denser residential development, Portland has managed to avert many of the potential negative impacts of growth management on its housing market (Toulan 1994). Portland's Downtown Plan, adopted in 1972, also helps to counteract potential housing price pressures of the Urban Growth Boundary by controlling land values in urban renewal projects, providing density bonuses for developers, and setting replacement policies that guard against net loss of affordable units under urban renewal activities (Toulan 1994).

To ensure regional equity among richer and poorer communities, regional governing bodies must be sure that incentives they provide for affordable housing development are enticing enough for richer communities to "bite." For example, the Twin Cities Livable Communities Act offers loans and grants to encourage affordable housing development near transportation nodes, but the program makes little economic sense for communities that can easily attract upscale commercial and residential development. Sanctions as well as incentives are necessary for such initiatives to have any real impact on growth patterns and affordable housing development patterns in all areas of the city (Goetz, Chapple, and Lukermann 2001).

In Hartford and Bridgeport, the structured, mediated negotiations among local governments allowed participating municipalities to solve affordable housing problems within a context that took into account regional infrastructure and economic development and environmental protection needs. The negotiations also eased tensions between city and suburb (Wheeler 1993).

Some regulations undermine the goals of promoting balanced metropolitan growth and true regional housing choice. The primary ones are exclusionary land use and zoning policies designed at the local jurisdictional level, rather than on a regional scale. California is one state with a high number of local governments that have adopted growth controls with the explicit goal of limiting the supply of housing and thus excluding new residents (Nelson et al. 2002). Downs suggests that these local antigrowth controls helped reduce California's production of housing units by 46 percent between 1986 and 1990 (Downs 1992). Statewide and metropolitanwide growth management programs can help ease the restrictiveness of local land use regulations and thus help reduce housing rents and home prices (Nelson et al. 2002).

### **C. Summary and Implications for Local Action**

Regulatory policies are often neglected as potential tools for an affordable housing policy because they do not directly subsidize either housing units or households. But as the research presented here demonstrates, state and local regulations governing land use, residential development, construction standards, subdivision design, and property maintenance play critical roles, even when they are not explicitly considered as part of an affordable housing strategy. Some regulations may undermine housing affordability and exclude lower-income and minority households

from parts of a metropolitan area. Others can be explicitly incorporated into a local or regional housing strategy. Exhibit 3 summarizes the findings presented in this chapter, showing what is known about the performance of regulatory and governance tools for each of the seven policy objectives introduced in Chapter 1.

**Exhibit 3: Performance of Land Use and Regulatory Tools**

	<b>Land Use and Regulations</b>
<b>Preserve and Expand the Supply of Good-Quality Housing Units</b>	Mixed—some programs expand supply while others limit new affordable construction
<b>Make Housing More Affordable and More Readily Available</b>	Maybe—rent control may moderate rent increases in tight markets
<b>Promote Racial and Economic Diversity in Residential Neighborhoods</b>	Mixed—some reforms can expand affordable housing in affluent communities
<b>Help Households Build Wealth</b>	Mixed—some programs provide wealth building opportunities while others do not
<b>Strengthen Families</b>	No
<b>Link Housing with Essential Supportive Services</b>	No
<b>Promote Balanced Metropolitan Growth</b>	Mixed—zoning and regulatory reforms can promote affordable development in all jurisdictions, though some do not

Regulatory tools may be of particular importance to localities. Unlike the other programmatic tools discussed in this report, the federal government plays almost no role in the regulation of local housing markets. These powers belong to state government and are often delegated to local authorities. Thus, local policymakers enjoy a relative freedom from federal program rules and definitions when they weigh the use of regulatory tools. In fact, the biggest constraint on the effective use of regulatory tools is fragmentation of authority among individual cities and counties. This fragmentation makes it difficult to craft regional strategies for expanding the availability of affordable housing, promoting racial and economic diversity, or promoting balanced growth. Often, action at the state level is required to establish and empower regional decision-making bodies or to limit the authority of individual jurisdictions to implement exclusionary zoning and land use regulations. Without this kind of state intervention, the use of regulatory tools by individual localities can have only limited impacts.

Historically, local land use and development regulations have tended to undermine the goals of affordable housing policy, whether intentionally or not. Requirements for large lot sizes; expensive subdivision design standards and construction codes; prohibitions against manufactured housing, townhouses, or multifamily development; and time-consuming permitting processes have all been shown to make housing more expensive. These regulatory barriers have also prevented the

development of affordable housing and reinforced patterns of economic and racial separation. Getting rid of exclusionary regulations works. Even in the absence of a comprehensive regional approach, eliminating (or moderating) regulatory barriers to affordable housing development can be effective. This does not mean that all regulations on land use and residential construction should be eliminated. Many regulations that raise the cost of housing development have legitimate goals, such as protecting health and safety or preserving farmland. Local governments need not abandon these goals, but they can and should reassess their regulatory policies to ensure that they allow for the development of more affordable rental and homeowner housing.

While simply eliminating exclusionary regulations on a jurisdiction-by-jurisdiction basis can be effective, more comprehensive regional strategies can use regulatory tools to advance affordable housing goals across a metropolitan area and balance affordable housing with other goals, such as environmental protection and preservation of open spaces. Critics of regulations that attempt to limit urban sprawl or redirect new development to already urbanized areas have argued that these regulations undermine housing affordability. And indeed, development moratoriums and high permitting fees can raise the cost of new housing if they are implemented without accompanying tools for promoting affordable development. But the research evidence suggests that regional regulatory strategies like Portland's Urban Growth Boundary or Connecticut's regional negotiation process can expand the availability of affordable housing in communities throughout a metropolitan area. These innovations also can promote economic and racial diversity in suburban as well as central-city communities, limit sprawl, and preserve open spaces, all while helping to revitalize central-city neighborhoods.

#### **D. Priorities for Future Research**

Many questions remain unanswered by existing research on the link between land use regulations and affordable housing, although there has been renewed interest in the topic, as more states and localities are considering or adopting growth management approaches. Much of the academic literature to date has focused on two strands of investigation: the historical role of traditional land use and zoning regulations on racial and economic segregation, and the role of urban growth boundaries on home values, land prices, or home sale prices. This literature generally does not examine the effect of land use regulations on other measures of affordable housing, such as housing types, overall housing supply, residential mobility, or the price of rental housing.

Most of the existing research has focused on a single type of land use tool or growth control, such as urban growth boundaries or traditional Euclidian zoning. However, most jurisdictions use a multitude of land use tools to manage growth, such as open space preservation, density bonuses, adequate facilities ordinances, and the like. Additional research is needed to understand the effectiveness of comprehensive growth management regimes. Moreover, although some growth management strategies are implemented at the jurisdictional level, the effects are clearly regional, as is the housing market itself. Analysis of the effects of these strategies needs to take a regional perspective, rather than focusing narrowly on outcomes within individual jurisdictions.

A critical challenge for research in this area is the problem of generalizing across regulatory regimes and market conditions. To date, it has been difficult to isolate the effects of growth management policies from issues about the effectiveness of their enforcement, and variations in underlying market conditions. For example, most case studies examining the effects of urban growth boundaries or growth management policies on home prices have focused on Portland, OR, and to a lesser extent on Washington, California, and Florida, all of which are rapidly growing, high-cost housing markets, not representative of many other regions that may have an interest in growth management.