Municipal Strategies for Affordable Housing: Incenting and Exacting Public Goods from Private Developers

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ABSTRACT

This thesis studies the next generation of municipal housing policy by asking, "How can cities effectively use the private-sector to promote affordable housing development?" In response, it looks at an array of public-sector municipal policy tools ranging from incentives to exactions. In particular, it focuses on tools that are able to leverage hot real estate markets, such as inclusionary zoning, linkages, and tax abatements. A framework for understanding the constraints and opportunities of past and future policies is established by looking at the economic, legal, and political implications of these exactions and incentives. The interplay of the three forces has affected and will continue to shape the policies that cities are able to implement. Two cities, Boston and New York, each with hot real estate markets, large shortfalls of affordable housing, and sophisticated public policy makers are studied in detail within the overarching framework.

Generally, it is argued that effective policy implementation depends on strong market values for residential and commercial real estate, specific legal authority or a grant of broader municipal autonomy from the state, and active political coalitions of affordable housing advocates and developers with a receptive political administration. While it is ideal to have alignment of these economic, legal, and political conditions, policies need only two of the three legs to begin to walk. The thesis elaborates on how cities can parlay their particular strengths into effective policies. Additional lessons and implications are also identified and the most promising policies are outlined, with special attention paid to how they could be structured and advanced further in the case study cities and for the first time in other municipalities throughout the United States. The thesis seeks to help municipal policy makers, housing advocates, and private developers understand the array of policy options and the forces that influence their viability.

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CHAPTER 1: INTRODUCTION

Purpose

The central question underlying this thesis is, "How do cities use private developers to promote their affordable housing agendas and to what extent do such strategies represent viable options for creating affordable housing in the contemporary political-economic context?" Within this overarching subject are four important sub-questions:

1. What are the incentive and exactions policy alternatives to promote affordable housing development?
2. Which factors contribute to viable policies?
3. How can incentive and exaction policies be designed to promote public and private interests?
4. Which policies should be advanced and how?

In other words, this thesis studies municipal strategies for promoting affordable housing by investigating a continuum of options, from incentives to exactions. By analyzing best practices, limitations, and necessary conditions, it will be possible to better understand the desirability and viability of new housing and land use initiatives. Examining progressive cities such as Boston and New York, each with sophisticated affordable housing advocates and hot real estate markets, will allow for a better understanding of how exactions and incentives have been and can be structured. Investigating the current and increasingly popular use of exactions and incentives more broadly will provide a means of addressing the viability of similar measures in other jurisdictions throughout the United States.

A framework for analyzing policies on the incentive-exaction continuum will be built by studying the political, economic, and legal forces that shape such policies. Moving forward with this understanding of best practices and analytical dimensions, this thesis aims to identify whether incentives, exactions, or a combination of both, represent viable strategies for cities to pursue their social and economic policy objectives and, if so, how such policies should be advanced. The findings should be useful to municipal decision-makers, affordable housing advocates, think tanks, state legislators and private developers looking for better policies. While the risks and downsides of each tool are identified, the objective of this thesis is to find win-win solutions to municipalities' affordable housing problems that promote both public and private interests.

With that in mind, this thesis focuses only on municipal policy vis-à-vis affordable housing development on private land by private actors. As such, it does not concern itself with the disposition of city owned land to private developers. Likewise, it focuses only on the direct provision of municipal subsidies for affordable housing when those funds have been raised through land use policies specifically designed for the promotion of affordable housing. These constraints are practical given the large scope of local housing policy without them, but are also topically significant. Generally, cities do not hold large amounts of land, have disposed of much of their land within the last few decades, or have been increasingly turning to other regulatory techniques to promote their social, political, and economic objectives. Indeed, the lack of additional public land to dispose of for affordable housing development has forced cities to confront their future role in housing policy. Thus, the focus will be on municipal tools for promoting affordable housing on private land, such as: inclusionary zoning, linkages, impact fees, and tax abatements.

Methodology

This thesis synthesizes current economic, legal, and political theory with recent case law and empirical data. Other historical references and literature on policy best practices are used as well. A variety of land use experts and housing policy-makers were also interviewed and their insights are reflected throughout. Additionally, demographic and housing data from Boston and New York are analyzed to paint a picture of each case study city. These data facilitate a more sophisticated understanding of market trends in each city, which is critical in creating new policies that adjust over time.

Summary

Chapter 2 introduces the context of affordable housing as a municipal policy problem. It cites national and city-level data on the gap between affordable housing supply and demand. Normative policy goals are introduced and the effects of limited housing opportunities are examined socially and economically, in terms of moral imperatives and effects on the economy. The challenges faced by cities with hot real estate markets are introduced along with the two categories of possible municipal level responses: exactions and incentives. The section defines and contextualizes the different types of exactions and incentives, including impact fees, linkages, inclusionary zoning, and real estate tax abatements.

Chapter 3 begins by examining the history of affordable housing exactions and incentives. While the usage varies between cities, broad trends and influencing factors are discussed. The overarching lesson from observing exaction and incentive policies over time is that cities have, by and large, gained additional power to use these tools, but have used them towards differing ends.

From the history and context, three analytical lenses are introduced in *Chapter 4* that help to better understand the constraints and opportunities of such policies. These three forces, economic, legal, and political, build a framework for understanding the implementation of past policies and the potential for new initiatives. The pressing economic questions are how hot does a real estate market have to be for different types of policies to be effective and what impacts do such programs have on developers, consumers, and the market overall. Legal issues revolve around the constitutionality of these measures at the federal level as well as the authorizing relationship between cities and their states. Political dynamics look at interests groups, power relationships, moral imperatives, and the affects of affordable housing policies on the municipal economy. As is explained in the chapter, these three forces interact with each other and depending on their alignment in a particular time and place, shape the possible policy outcomes.

The case studies of Boston and New York City in *Chapters 5 and 6* allow for a better understanding of the manifestations of various exactions and incentives within specific contexts. Using the lenses of economic, legal, and political forces demonstrates how the cities have implemented creative policies in the past. The situations, challenges, and opportunities of each city are presented quantitatively before studying present and proposed policies.

Chapter 7 looks at the lessons and implications from the two case studies. It also uses current data and trend analysis in light of the three forces to remark on policy alternatives. Implications for other cities throughout the United States are also extrapolated. While Boston and New York City are very unique, there are still significant lessons for other cities that may soon face similar economic and political situations as the case study cities did decades ago. Other cities can also learn, despite looking very different from Boston and New York City, that judiciously analyzing and leveraging their economic, legal, and political positions can facilitate the implementation of not only new and creative affordable housing policies, but also the creation of a substantial number of units.

Conclusions and recommendations are also offered in the chapter. They revolve around the premise that affordable housing is important for social justice as well as local economic development and that while there is reason to believe that overall deregulation could bolster total production rates, there is more that should and can be done by cities to promote affordable housing development in particular, along with its social policy benefits. There are a variety of tools available to cities, ranging from exactions to incentives, that can be used with differing degrees of success depending on the unique economic, legal, and political contexts of that city. However, the weakness of one leg of the policy's tripod foundation can be bolstered by the other two. While exactions and incentives both utilize hot real estate markets, effective policy implementation depends on active political leaders backed by organized bridging institutions as well as a legal relationship of relative authority to both implement the policy in the first place and help it evolve over time. Though not utilized, there are also many benefits in tying policies to dynamic market indicators.

CHAPTER 2: BACKGROUND ON AFFORDABLE HOUSING EXACTIONS AND INCENTIVES

Problem

While most Americans still pay a reasonable share of their income on housing, affordability problems are worsening. Nationwide, increases in the cost of housing have outpaced incomes of mid- and low-income wage earners[1] and most extremely low-income households today are under-housed, rent burdened, or living in substandard or overcrowded housing.[2] The National Low-Income Housing Coalition estimates that five million households that are eligible for housing subsidies do not receive them.[3] As shown in Figure 1, the federal minimum wage is only $5.15, but the national housing wage, calculated based on fair market rents and average households paying 30 percent of their income on rent, is $16.31. California, New York, and Massachusetts have wages of $22.86, $20.7, and $22.65 respectively, but the minimum wages in these states are only $7.50, $7.15, and $7.50. While these state-wide abstractions are not very sophisticated ways of measuring housing affordability, they emphasize two points: (1) housing affordability is both a supply and demand problem, (2) wages are not keeping up with housing costs. While this thesis deals with increasing the supply of affordable housing, it is useful to remember the demand dynamics are always at play in the background.

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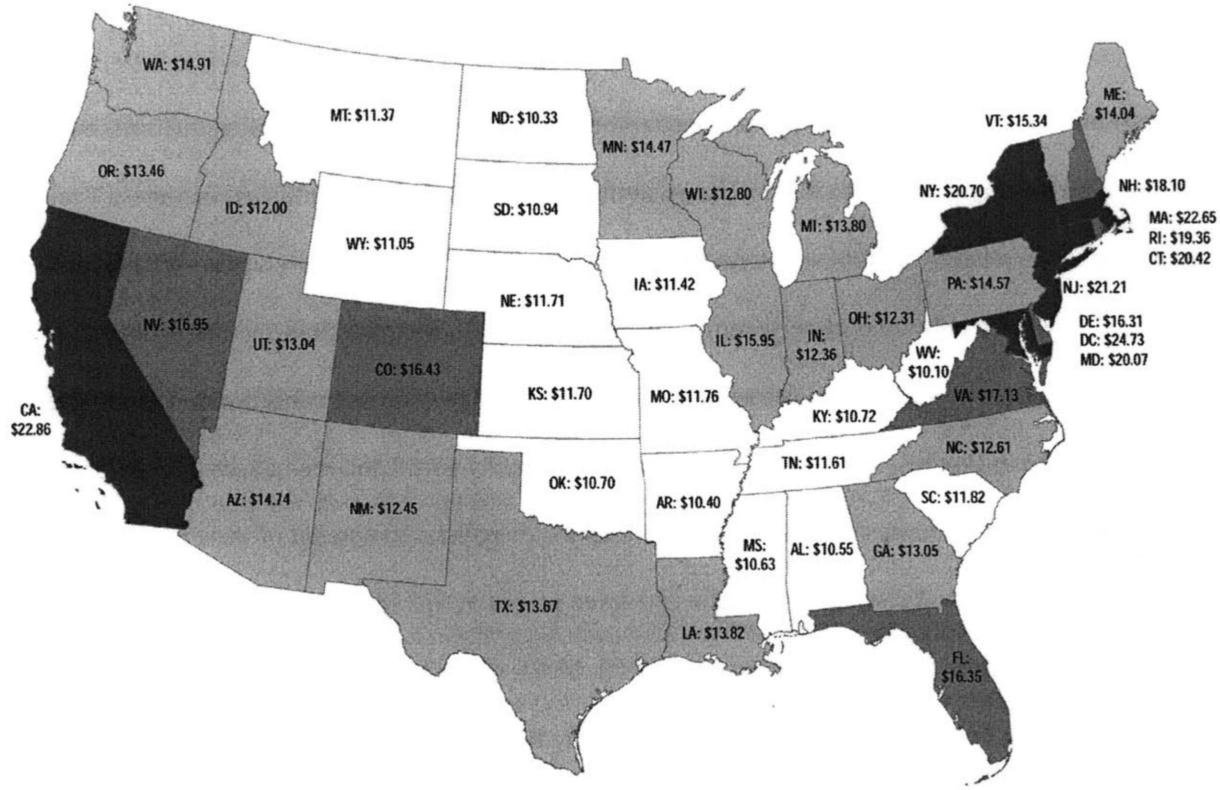
[1] Katz, Bruce, et all. "Rethinking Local Affordable Housing Strategies: Lessons from 70 Years of Policy and Practice." 2003. p. 8.
[2] Ibid, 16.
[3] Ibid.

Figure 1. Map of Housing Wages, 2007. National Average: $16.31[4]



At the national level, 70 percent of very low-income households, those earning less than 60 percent of their area's median income (AMI), pay unaffordable rents, such that more than 30 percent of their income is devoted to rent.[5] From 2001 to 2004, the number of households paying more than half of their incomes on housing increased by 1.9 million.[6] With this increase, 15.6 million low- and middle-income households have severe cost burdens.[7]

The problems are especially acute in American cities. Indeed, the most expensive cities over the past five years have included the cast study cities, Boston and New York, as shown in Figure 2. Such high costs are relatively ubiquitous throughout the market. In many communities the housing costs are so high that it is difficult even for police officers, firefighters, teachers, nurses, and other key workers to live

[4] National Low Income Housing Coalition. "Out of Reach 2006." 2006. p. 8.
[5] Ibid.
[6] Joint Center for Housing Studies, Harvard. "State of the Nations Housing 2006." 2006. Executive Summary.
[7] Ibid.

in the communities they support. When families live further from their jobs they spend more of their time and money on transportation and lose the ability to participate in community life. Other families may be only one paycheck away from foreclosure or eviction, or may have insufficient funds to afford food, health and education expenses.

Figure 2. Ten most expensive cities to rent (2005).[8]

Rank	City	$/sq. ft
1	New York	$26.04
2	Boston	$24.33
3	Honolulu	$23.27
4	San Francisco	$22.48
5	N. New Jersey	$22.35
6	Stamford, Conn.	$21.76
7	Nassau-Suffolk, N.Y.	$21.05
8	Los Angeles	$20.34
9	San Jose, Calif.	$20.23
10	Orange County, Calif.	$19.54

In addition to the moral imperative of ensuring that citizens have fair and decent housing, there are also significant economic development consequences for cities that have a dearth of affordable housing. As described by Neal Peirce and Curtis Johnson in their Greater Boston in the 21st Century report: "There's already a single crisis glaringly poised to have a devastating impact on the region: stratospheric housing prices that drive away young professionals and seasoned workers alike, including some individuals at highly professional or M.D. levels – people critical to building and maintaining a strong economy."[9] Research by Barry Bluestone and other regional economists has shown that in high cost areas such as Massachusetts, the "high price of housing is indeed a significant factor in the decline in employment and population."[10] With high housing costs, employers are forced to pay higher wages. As such, many employers have opted for low cost, low tax areas such as Raleigh, North Carolina, where they can pay their employees less due to substantially lower costs of living. As shown in Figure 3, the total

[8] National Real Estate Index *Price for 'Class A' apartment, top quality buildings maintained well. 2005.
[9] Peirce, Neal and Curtis Johnson. "Greater Boston in the 21st Century." http://www.tbf.org/tbfgen1.asp?id=1904. Last accessed April 1, 2007.
[10] Bluestone, Barry. "The Massachusetts Housing Challenge." December 2005.

cost of living for an equivalent lifestyle in Boston versus the Raleigh-Durham-Chapel Hill area is approximately $20,000 different, which has direct consequences on employers' personnel costs.

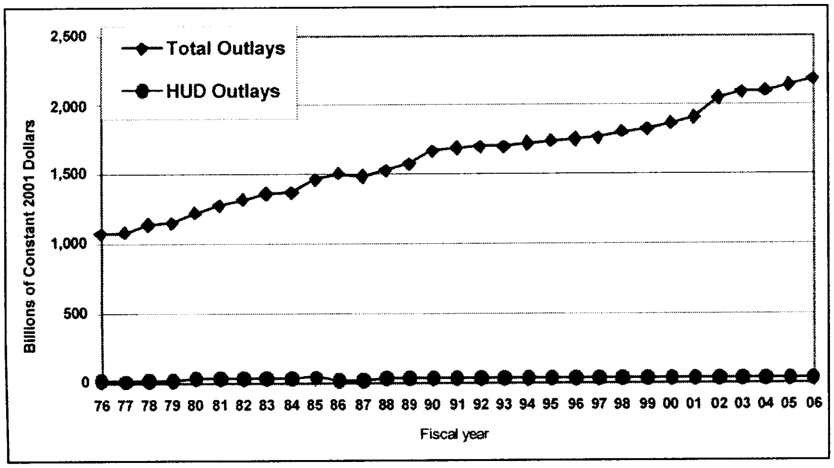
Figure 3. Comparison of Typical Family Budgets.[11]

Monthly Cost	Boston	New York	Raleigh-Durham-Chapel Hill
Housing	$ 1,266	$ 1,075	$ 779
Food	$ 587	$ 587	$ 587
Child Care	$ 1,298	$ 1,195	$ 866
Transportation	$ 321	$ 321	$ 358
Health Care	$ 592	$ 514	$ 368
Other Necessity	$ 500	$ 449	$ 369
Taxes	$ 824	$ 747	$ 350
Total	$ 5,388	$ 4,888	$ 3,677
Annual Total	**$ 64,656**	**$ 58,656**	**$ 44,124**

While the demand for affordable housing has increased dramatically, federal resources have not kept pace. Federal housing assistance budget authority has decreased by 48 percent since 1976, from $56.4 billion to $29.2 billion in 2004.[12] In terms of housing related outlays as a percentage of the federal budget, HUD outlays represented 2.07 percent of total federal outlays in 1976, and 1.99 percent in 2004.[13] As shown in Figure 4, total HUD outlays have simply failed to keep pace with other federal spending priorities.

[11] Economic Policy Institute. Family budget calculator. Data from 2005, assuming 2 parents and 2 children.
[12] National Low Income Housing Coalition. "Changing Priorities The Federal Budget and Housing Assistance 1976 – 2005." October 2004.
[13] Ibid.

Figure 4. HUD and Total Federal Outlays, 1976-2006.[14]



While there is clearly a need for additional federal funding, federal action alone would not be able to solve cities' housing problems. Decentralized decision-making is intrinsic to American government, and the nature of housing and land use policies in particular make them context specific and heterogeneous. As such, local action can not only help to fill the gaps in federal policy, but is also critical in its own right and can respond more appropriately to local needs. This is not to let federal or state policy-makers off the hook, but rather to emphasize the opportunities for action at the local level.

Solutions

Taking matters into their own hands, many cities have been developing innovative ways to create more affordable housing. In addition to utilizing city-owned land and existing federal resources such as the Low Income Housing Tax Credit (LIHTC) and HOME and Community Development Block Grant (CDBG) programs, cities have increasingly been looking to other ways of leveraging private actors to provide the public good of affordable housing. With government no longer directly building housing, stagnant and decreasing national resources for housing, and a booming demand and social need for affordable housing throughout many American cities, policy-makers have sought new policy alternatives. As shown in Figure 5, these local policy tools can generally be summarized into six categories: expanding

[14] Ibid.

the availability of sites, reducing regulatory barriers, generating additional capital, preserving resources, empowering residents to purchase market-rate homes, and harnessing strong markets.[15]

Figure 5. Municipal level policy alternatives for promoting affordable housing

Strategy	**Methods**
1. Expand available sites	Collect and dispose of publicly owned land, upzone or rezone for residential, facilitate use of abandoned or tax delinquent properties.
2. Reduce regulatory barriers	Modify building codes, expedite permitting and review processes, change impact fees, ensure that zoning supports different housing types.
3. Generate capital	Issue housing bonds, maximize usage of the federal LIHTC, provide predevelopment financing.
4. Preserve resources	Focus on preserving existing affordable units.
5. Empower residents	Educate and counsel first-time homebuyers, help avoid foreclosure, and protect against predatory lending.
6. Harness strong markets	Use incentives and exactions, such as inclusionary zoning, tax abatements, linkages, and trust funds.

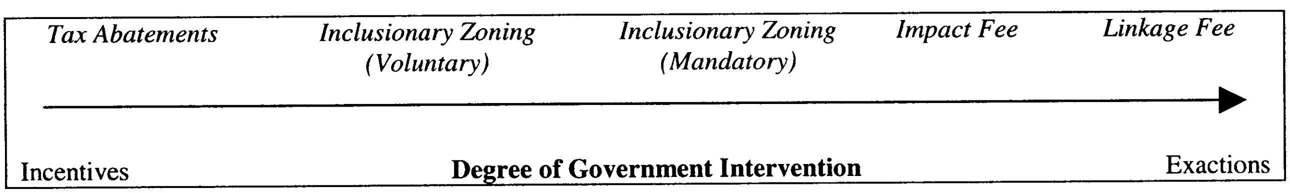
While each of these six strategies are important, this thesis focuses specifically on tools that promote private development on private land. Expanding available sites (Strategy 1) typically involves the collection and disposition of public land. On the other hand, as will be discussed in the case studies, rezoning also expand available sites and can be used to implement new affordable housing programs, be they inclusionary zoning or real estate tax abatements. This thesis will not tackle all of the regulatory barriers (Strategy 2) that limit affordable housing production, but this area is incredibly significant and overlaps with the policy tools of interest vis-à-vis the manifestation of certain incentive and exaction policies as such barriers. Strategy 3, generating capital, will not be discussed explicitly, except to the extent that municipal land use and housing policy programs can change the affordable housing finance dynamics. Preservation of existing affordable housing (Strategy 4) and the empowerment of residents (Strategy 5) are not of direct concern here given this thesis' emphasis on the development of new affordable housing. Instead, the focus will be predominately on the sixth strategy of harnessing strong real estate markets to promote affordable housing development. While some of the strategies are closely

[15] Center for Housing Policy. "Increasing the Availability of Affordable Homes: A Handbook of High-Impact State and Local Solutions." January 2007.

intertwined, as indicated above, it is precisely strong real estate markets that pose the greatest threats to affordability, but also create new opportunities for action.

As cities have faced an economic renaissance over the past fifteen years, they have been grappling with how their hot real estate markets can be leveraged to promote affordable housing or at least mitigate the negative effects of increasing rents. In pursuit of these ends, municipal policy-makers have used their discretion over local land uses and real estate taxes as both sticks and carrots, or exactions and incentives. As shown in Figure 6, there are five policy options at different points in the continuum of government action, from incentives such as tax abatements and inclusionary zoning density bonuses to exactions like linkages and impact fees. It should be noted that all government actions, be they rules of the game, incentives, or exactions, have direct effects on the market and can be seen as interventions, but the spectrum highlights different types of relationships between the government and private actors. The appropriateness of which tool to use when will be analyzed through the case studies, after introducing the universe of exaction and incentive policies more broadly.

Figure 6. Continuum of Intervention



Strong real estate markets generally enable exactions, but also increase the value of municipal-level incentives. Thus, a strong market may expand the policy options, but choosing the right balance of policies or the details of a particular policy depends on a fundamental understanding of exactions and incentives.

Exactions

Exactions are local government mandates that real estate developers, as a condition for receiving permits or land use rights, expend resources for the provision of public facilities or services. One goal of exactions is to shift to the developer, the owner, or the consumer, the costs of the public infrastructure that the development requires or imposes. These can serve to mitigate costs from direct sources such as physical improvements or traffic congestion, or secondary effects such as increased housing prices. In either case, the goal is to internalize the full costs of the harms caused by the development.

Other terminology to describe exactions includes impact fees, development fees, and linkages. The difference between exactions and traditional land use regulations are that the former specify a cost to be paid by private developers in return for development permissions whereas the latter traditionally focus on restricting permissible uses. While there is no exactions lexicon consensus, the following definitions help to identify some of the typical differences between them vis-à-vis affordable housing. Exactions are mandatory impositions on developers that may be paid either in-kind or in-cash for the right to develop. Likewise, impact fees are typically exactions paid in-cash for primary, physical costs. Linkage programs require developers of non-residential real estate to pay either in-kind or in-cash, for the secondary costs they impose. The underlying rationale of linkage fees is typically that new office space generates employment growth, which in turn increases the demand for new housing that imposes higher costs on existing community residents. Impact fees have a similar, yet more straightforward logic, in that they force developers to pay for the direct cost that their projects impose on the municipality. The differences between the various types of exactions are subtle, yet significant. That said, the focus will be on three tools in particular, impact fees, linkages, and mandatory inclusionary zoning.

An increasing number of municipalities throughout the United States have begun to use exactions on private developers to provide a variety of public goods, including affordable housing. In particular, these land use exactions have boomed in usage within the last twenty years. According to Alan Altshuler, the surge in exactions usage nationwide can be attributed to many factors, including: (1) rising neighborhood-based activism, (2) growing influence of environmentalism, (3) income stagnation, (4) cutbacks in federal aid, (5) growing concern about infrastructure shortfalls, (6) proliferation of expensive federal and state mandates, and (7) progress of fiscal impact analysis in land use decision making.[16] As of 2004 approximately 60 percent of U.S. cities with more than 25,000 residents imposed impact fees to fund infrastructure needed to service new housing and other development.[17]

The most common types of "public goods" required by land use exactions are dedications for streets, sidewalks, sewers, schools, parks, and open space. Thus, the fees are generally physical infrastructure improvements that are fiscally rather than socially determined. In many cases, the impact fees lead to higher overall housing costs and tend to have a negative impact on affordability by increasing development costs. However, they can also promote greater market efficiency by appropriately forcing the developer, and through them the consumer to internalize the costs they are imposing. As will be elaborated in the economic considerations section, such efficiency can promote affordable housing in the long-run by leading to greater housing production. Nevertheless, on a less macro-economic level, affordable housing can be directly supported through these exactions mechanisms. Impact fees can be exempted for affordable housing development or fees can be levied for trust funds dedicated to subsidizing affordable housing development.

In summary, well-crafted exactions policies can generate municipal revenues to fund public improvements and services as well as leverage private actors and hot real estate markets, while promoting affordable housing, mixed-income communities, and other normative goals.

Incentives

Unlike exactions, local incentives for affordable housing development can be used in weak or strong markets and give up something more explicit in return for affordable housing production. Such

[16] Altshuler, Alan and Jose Gomez-Ibanez. *Regulation for Revenue: The Political Economy of Land Use Exactions.* Cambridge, MA: Lincoln Institute of Land Policy, 1993. p. 20.
[17] Been, Vicki. "Impact Fees and Housing Affordability." The Furman Center, New York University. February 2005. Executive Summary.

incentives can take the form of direct subsidies, expedited permitting, reduced regulatory barriers, the provision of additional development rights, or foregone local revenue through real estate tax abatements. This thesis will focus on the latter two strategies, development rights and tax abatements. The most popular policy has been the provision of additional development rights through inclusionary zoning (IZ). Generally, IZ refers to the provision of affordable housing by developers of market rate housing that can be mandatory or voluntary and paid in-kind or in-cash, on- or off-site. When mandatory and not offset with any incentives it is a strict exaction, however both mandatory and voluntary programs typically give density bonuses or extra development rights, expedited permitting, or zoning variances, in exchange for the provision of affordable housing. Other cost-offsets include unit size reductions, design flexibility, fee waivers, fee deferrals, and relaxed parking requirements. As such, IZ can be seen as predominantly an incentive or an exaction depending on the details of the particular policy and the changing value of the density, or other bonuses over time. Each IZ ordinance or bylaw defines the scope of the policy, the percentage of units that must be set aside as affordable, how affordable they must be, and whether cash-out fees or building the units off-site will be allowed.

The second most common type of affordable housing incentive is the provision of municipal level real estate tax abatements, such as New York's 421-a program. Tax abatements, also known as exemptions, are closer to a pure incentive than exaction. They involve relinquishing expected future tax revenues for a specific period of time to stimulate development. Tax abatements can be applied citywide or to specific properties on a case-by-case basis. Abatements can be applied by freezing the property's prior assessed value or by taxing the property at a lower rate than normal. The tool can be used to incent residential development overall, or can require affordability as a condition of the abatement. These types of tax abatement policies generally allow a developer to avoid paying local real estate taxes for a period of time if they build affordable housing or contribute to the construction of affordable housing off-site. While not typically thought of as a method of land use or zoning control, such tax policies have the same goal and affect. Though the foregone tax revenue, just like foregone impact fee collection, is more easily quantified than other incentives such as additional development rights, all three are giving up something for the promotion of affordable housing development. Explicit exactions policies through linkage fees or mandatory inclusionary zoning without bonuses, are seeking similar ends but lay on a different part of the interventionist continuum. Figure 7 summarizes some of the key differences between the four policies.

Figure 7. Comparisons between exactions and incentives. Exactions → Incentives

	Linkage Fee	**Impact Fee**	**Inclusionary Zoning**	**RE Tax Abatement**
Direct Burden on	Office Developers	Office and Housing Developers	Housing Developers	Local government
On or Off-Site	Off	Off	Either	On
Exaction	Fee	Fee	Fee or Affordable Units	None or Affordable Units
Incentive	None	None	Density bonus	No tax payment
Cost Based per	Square foot	Square foot	Proposed units	Assessed value

Choosing the appropriate policy for a particular city at a specific time depends on evaluating the conditions faced by that city in relation to the municipality's objectives. As will be discussed below, the choice of which policy to implement involves understanding the city's history as well as its economic, legal, and political context. These forces influence the viability of policymaking and implementation.

CHAPTER 3: HISTORY

In order to understand the general matrix of policy options, it is necessary to examine the history of events that have led to the development of each tool. The origins of each tool indicate a trend toward greater municipal flexibility to use incentives and exactions. Since where a city lies on the incentive-exaction continuum is largely due to external forces, a historical analysis also sets the stage for examining how cities can change the forces and parlay particular strengths. Moreover, beyond the existing tools, a historical analysis helps to identify the conditions under which future policies may emerge.

History of Exactions

Exactions have been around for quite some time. Since the Standard Planning Enabling Act of 1928, a condition of subdivision approval required that streets, water and sewer lines, and other utility infrastructure be provided by the developer.[18] Before using exactions to require property owners to provide payment to mitigate the negative effects of growth, cities paid for off-site infrastructure through general obligation and revenue bonds. If this were infeasible, developers would construct the infrastructure directly. However, exactions are a method for cities to pass a portion of the costs of the development on to the developer, rather than waiting until tax revenues are collected. As such, exactions began to be used with greater frequency by local governments in the face of increasing financial burdens.

Moving from exactions internal to development to those external to developments, which utilized localities' police powers, did not take off until the 1950s.[19] In the 1970s, with decreasing federal resources to support public facilities, localities increasingly demanded that growth "pay its own way." Federal and state aid was shrinking and localities faced taxpayers refusing to accept increased tax rates to pay for new facilities. For some, this was a way of promoting an antigrowth agenda, but for others

[18] Evans-Cowley, Jennifer. "Development Exactions: Process and Planning Issues." Lincoln Institute of Land Policy. 2006. p. 11.
[19] Ibid, 10.

exactions were a matter of efficiency. In the late 1990s, as affordable housing became a more widespread problem and received greater attention, the concept of exactions evolved under the name of linkages.

Linkage fees are exactions used to pay for secondary effects of development. Typically they collect funds from large-scale commercial, industrial, or multifamily developments to promote affordable housing, job creation, day care, and other social goods. Linkages, like Boston's, typically contribute to locally administered affordable housing trust funds. Such funds provide a flexible means of financing proposed developments. They can be capitalized from linkages as well as from other sources such as real estate transfer taxes, recording fees, and other miscellaneous sources. As of July 2005, there were 293 city-operated housing trust funds nation-wide.[20] Beyond Boston, linkages have been used in Cambridge, Somerville, Detroit, Philadelphia, Seattle, Washington, D.C., San Francisco, and at least fifteen other cities in California and three in Florida. However, the oldest and most significant programs are in Boston and San Francisco.

The general trend has been an increased ability to use exactions for a greater number of 'costs.' Beginning with the purely physical, exactions have become more sophisticated to incorporate secondary and tertiary effects imposed by development. As such, it appears that exactions have expanded conceptually and in usage.

History of Incentives

Like exactions, incentives stem from the 1920s. In 1926 the U.S. Supreme Court deemed constitutional the power of state governments, and through them local governments, to separate land uses into districts. Since this precedent setting case, *Euclid v. Ambler*, zoning use and theory has evolved significantly.[21] Over time, cities have used their zoning and land use powers in new ways and toward a variety of differing ends. In particular, many communities have used zoning to exclude low- and middle-

[20] Center for Housing Policy, 2007. p. 10.
[21] *Village of Euclid, Ohio V. Ambler Realty Co.*, 272 U.S. 365 (1926).

income households, and thus also minorities, by not allowing for multifamily development, having large minimum lot sizes, and a variety of other techniques.[22]

In response to exclusionary zoning, and increasing challenges of providing enough affordable housing, cities began investigating the possibility of inclusionary zoning. In 1974, Montgomery County, Maryland, passed the first successful inclusionary zoning ordinance, known initially as "incentive zoning," that included a density bonus to compensate developers for the loss of income. Throughout the 1970s and 1980s, municipalities and counties throughout California adopted similar ordinances. This period coincided with high inflation and interest rates, which created additional pressure for governments to take action to provide for affordable housing. However, inclusionary zoning did not expand much beyond California and the Washington, D.C. area through the 1990's, with the exception of the Boston and Denver areas. As of 2005, 17 percent of the jurisdictions in the 50 largest U.S. metropolitan areas, or over 600 cities or towns, had an incentive-based affordable housing program of some kind, most often in the form of density bonuses.[23] In comparison, only about 300 jurisdictions (5 percent) had any type of mandatory inclusionary zoning ordinance.[24]

While IZ is rooted in using housing development and market activity to cross-subsidize affordable housing, the origins of other housing development incentives lay in weaker, under performing markets. As will be discussed in more detail in the New York City case study, real estate tax abatements emerged in the 1970s and '80s as many American cities faced abandonment and disinvestments. New York City's 421-a local real estate tax abatement is representative of why tax abatements came about and how they can be structured. Such programs have been extremely influential in the history of development in cities like New York.

In summary, over the past two decades, cities have become increasingly sophisticated, have gained additional authority, and have used local zoning and land use powers to explicitly affect housing in

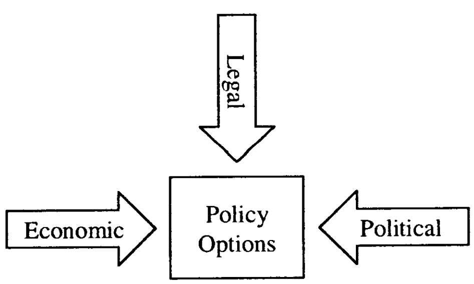
[22] Glaeser, Edward, Jenny Schuetz and Bryce Ward. "Regulation and the Rise of Housing Prices in Greater Boston." Rappaport Institute of Greater Boston. January 5, 2006.
[23] Pendall, Rolf. "From Hurdles to Bridges: Local Land-use Regulations and the Pursuit of Affordable Rental Housing." Working paper, 2006. p. 12.
[24] Ibid, 13.

their communities. However, while there have been more tools to use, they have been used both to promote and hinder the development of mixed income communities and affordable housing.

CHAPTER 4: THE TRINITY OF POLICY FORCES

To fully understand the progression of exaction and incentive policies and their future potential it is important develop a mechanism of analyzing and comparing different policies. In particular, the evolution of incentives and exactions has been determined by the interaction of three forces: economic, legal, and political. These three forces shape how new policies are created, but can also be used to evaluate the constraints and effectiveness of existing exactions and incentives. The major economic issues revolve around the strength of the local real estate market and understanding the risks involved in either over-exacting or over-incentivizing. Other economic questions, such as what constitutes a fair rate of return, tie directly to legal issues in terms of what constitutes a taking, as well as the power of cities to implement new laws vis-à-vis the federal Constitution and state authority. There are also key political issues at play, from both instrumentalist and institutionalist perspectives. Thus, understanding the evolution of exactions policies and creating new ones depends on recognizing the policies' economic, legal, and political consequences.

Figure 8. Considerations that affect implementation



Economic Considerations

The central economic question is whether it is possible to utilize a strong real estate market to promote affordable housing development. Addressing this question depends on understanding the impact of exaction and incentive policies on developers, consumers, landowners, and the market. It is also critical to analyze the risks in using these policies at the wrong times or in calculating flawed policy terms and details. The primary risk of exactions is that they could end up thwarting the market and thus reduce housing supply and in turn, overall housing affordability. The risks of incentives are in developing an insufficient incentive or in over-incenting, which could end up subsidizing luxury development. While the focus of the section will be on these dynamics of exactions and incentives, it is worth reviewing some of the broader economic rationales on which such policies rest.

Housing and the Local Economy

As discussed above and detailed in the case studies, housing has numerous effects on local economies. It is a key consideration for employers and impacts their locational choices, as areas with higher housing costs typically require higher wages. Housing also has a direct effect on local economies in terms of the jobs and benefits created by construction. The housing industry is also a tremendous economic stimulus and is one of the best examples of multiplier effects of public dollars. Each housing development typically benefits a land seller, architects, engineers, developers, contractors, subcontractors, material manufacturers, suppliers, equipment renters, truckers, lawyers, lenders, insurance companies, and sales agents. The National Housing Conference estimates that the construction of 100 units of multifamily housing generates, on average nationwide, $5.3 million in new income to local businesses and workers in the first year of construction and $2.2 million every year thereafter.[25] They estimated that the development creates 112 jobs in the local community during the first year of construction with 47 jobs each year thereafter.[26] These 100 units also typically generate $630,000 in local taxes and fees in the first year of construction and approximately $400,000 per year thereafter.[27] Affordable housing in particular also has local economic effects on other parts of municipal and state budgets. As Jim Stockard argues,

[25] National Housing Conference. "Statistics Fact Sheet." February 2003.
[26] Ibid.
[27] Ibid.

"Promoting affordable housing will pay us back as a society with reduced costs in many other areas of our budget."[28]

Hot Real Estate Markets

In strong real estate markets construction costs remain relatively fixed, but rents and sales prices escalate. At the same time, development rights and density bonuses, both powers held by the public-sector become more valuable. As such, there is an opportunity for public policy to create and capture some of the developer's returns in the form of affordable housing production or dedicated cash set-asides. Such markets can also create win-win situations whereby developers make higher profit from additional development rights while also providing affordable housing and other public goods. Overall, strong real estate markets increase the viability of exactions and the value of incentives. Besides density bonuses, other incentives that my have been implemented to spark a weak market can be adjusted as needed by adding additional provisions. For example, a real estate tax abatement with no conditions may be implemented in a weak real estate market as a way of lowering operating costs and thus increasing developer returns. However, when that market or sub-market begins to thrive, the incentive can be adjusted to require affordable housing.

The tool to determine the appropriateness of a particular exaction or incentive is the real estate pro-forma. The pro-forma, or financial model, depends on understanding the costs of construction and operation, but also on the market-based rents achievable in the area. The difference between the market rent and affordable rent (based on 30% of a particular percentage of AMI such as 80%) is the developer's opportunity cost for each affordable unit. However, when the units are priced below 60 percent of AMI and eligible for LIHTCs, the opportunity cost to the developer is the difference between the capitalized market rent and the sum of the LIHTC equity per affordable unit and the capitalized market rate rent of that unit. By changing the degree of affordability or number of affordable units in an otherwise static

[28] Stockard, James. "The Affordable Housing Imperative for America's Cities: Can Government Solve It?" October 2005.

financial model, one can understand the effects of a particular policy requirement on the developer's return, measured either by internal rate of return (IRR), return on equity (ROE), or return on cash (ROC).

Assuming an adequate return, the policy can use a combination of exactions and incentives to get the greatest amount of affordability while maintaining the minimal level of required profit margin for a developer. However, the expected return should be commensurate with the risk factors of each project. If designed properly, exactions and incentives can actually help to mitigate some of these risks. Affordable housing by nature limits the market risk since the demand for affordable units is high and stable. The permitting risk can also be ameliorated if the policies are transparent and non-discretionary. The details of various policy implementation alternatives will be explored further below. These issues aside, the response to the question of "How hot does a local real estate market have to be to be able to leverage affordable housing?" can be answered on a case-by-case basis by modeling the financial performance and returns of particular projects.

Cost of Development

Exactions policies depend theoretically on the idea that development imposes costs on cities or society that are not otherwise accounted for. However, the degree to which these types of externalities occur and are internalized by the developer or consumers is not clearly understood. Nevertheless, there appear to be two broad categories of costs, those directly imposed by the development, such as infrastructure, and those secondarily influenced by the development, such as increased real estate prices in the region.

In terms of direct, primary costs, Alan Altshuler argues that, nationwide, land development tends to be a less important cause of rising infrastructure demand than other forces, such as rising incomes or stricter infrastructure service standards.[29] However, in communities experiencing rapid growth and in built up communities where new development requires retrofitting existing infrastructure, development is a major cause of local infrastructure demand. In other words, development generally brings in less

[29] Altshuler, 1993. p. 45.

revenue for local governments than the price of servicing it. As such, cost burdens of providing infrastructure have shifted to developers through the use of exactions. Initially the fees were most commonly used for sewers, water lines, roads and parks. A 2001 study of 89 jurisdictions in California found that 99 percent imposed fees for school construction, 97 percent for sewers, 91 percent for water, 87 percent for parks, 80 for traffic mitigation, 60 for storm drainage, 55 for fire service, and between 10 to 30 percent for impacts on watersheds, regional traffic, police service, open space, and affordable housing.[30] However, as Vicki Been writes, "Not enough is known about the kinds of local governments that are adopting fees, or the circumstances that appear to motivate them to do so."[31]

To the extent that development imposes externalities on taxpayers, neighbors, or future generations, it also imposes costs on low-income populations in the housing market. Research has shown that market-rate housing and office developments demand a variety of costly services from the city and impose secondary effects such as driving up housing costs.[32] In a study by Jerold Kayden on the relationship between office development and local housing prices in Boston, he found that, "one new resident employee arrives for every 3,103 square feet of office space and that new resident employees increase rental housing costs in the City two percent, or $11.28 for each square foot of downtown office space developed."[33]

However, measuring the costs imposed by development is a challenging task and the outcomes vary case by case. Deciding which factors to internalize in the cost-benefit analysis and assigning value to them quickly becomes complicated. Impact fees attempt to internalize these externalities and linkage fees attempt to collect funds necessary to mitigate the secondary effects of certain types of development on the housing markets. Either strategy may be economically rational, if supported by studies. However

[30] Landis, John. "Pay to Play: Residential Development Fees in California." Report for the California Department of Housing and Community Development. October 2001.
[31] Been, 2005. p. 5
[32] Kayden, Jerold. "The Linkage Between Office Development and Housing Costs in the City of Boston." Report Prepared for the Boston Redevelopment Authority. 1986.
[33] Ibid, 1.

such studies alone are not sufficient to allow for exaction policy implementation. There are also other crucial economic questions to be answered, as well as legal and political considerations.

Impact on Developers

Even if a cost-benefit analysis can show a direct and negative relationship between development and municipal expenses, it is not necessarily clear that the developers should be or will be the ones to bear the additional costs. In terms of fairness, should developers be charged the marginal or average costs? If average, why should they pay when past developers did not? For example, if a new building will bring children to the neighborhood that need to go to public school, but the school is at capacity, should the developer be forced to pay for an entirely new school? More broadly, to what extent should developers be the ones who bear the cost of affordable housing development? They will argue that they are being singled out to solve a broader social problem, despite risking their own capital to provide office-space or increase the overall housing supply.

Even if it is determined that developers should pay, the economic system will not necessarily work that way since developers can pass forward costs to land owners and consumers. Developers calculate land value residually, after factoring in the costs of development and income streams over time. As Ron Terwilliger of Trammell Crow Residential, one of the nations largest housing developers, has said, "Inclusionary zoning doesn't hurt me, I'll just pay less for the land."[34] Indeed, impact fees, linkage fees, or mandatory inclusionary zoning requirements are all treated similarly in that the developer will try to charge higher rents to the extent allowed by demand, but will ultimately bid less for the land. Nevertheless, the implementation of these policies still pose a variety of risks, as discussed below, both to developers and the market overall.

[34] Ron Terwilliger, CEO, Trammel Crow Residential. Personal discussion with Ari Goldstein at the "HBS Real Estate Symposium." January 21, 2007.

Impact on Consumers

There are two types of consumers in relation to the economic consequences of exactions and incentive policies: consumers of the market rate units and those of the affordable units. Will the higher income people end up paying more so that lower income people can pay less? It depends on the elasticity of the market to some extent. In general, impact fees promote efficiency and transparency, which may provide for greater certainty and increase overall supply. The latter category is relatively easy to understand. The recipients of the affordable units receive a benefit at a cost to either the public or private actors. However, impact fees can also hinder affordable, mixed-income communities when used as another means of social exclusion. As Baden and Coursey claim, "If buyers of expensive homes are less sensitive to marginal increases in the price of their purchases, then developers have an incentive to build higher priced houses. This ... price[s] low-income people out of suburban neighborhoods."[35]

These effects can be mitigated or reversed by waiving fees for affordable housing, providing grants to cover the amounts of fees to moderate-income buyers, and assessing fees specifically to fund affordable housing. In the Landis study of 89 communities in California, 37 percent waived or reduced fees for affordable housing.[36]

Risks: Market and Subsidy

Exactions and incentives can be used to promote housing development in general and affordable housing in particular. However, they also pose risks that public officials must consider and attempt to mitigate. In particular, exactions run the risk of thwarting the market overall by acting essentially as an additional tax. Incentives, on the other hand, may be in jeopardy of subsidizing the wrong types of projects, such as luxury development.

If the calculations are not done carefully, exactions are effectively taxes that increase the cost of development, thus limiting overall supply, and driving up prices in the long term. This is especially risky

[35] Been, 2005. p. 12.
[36] Landis, 2001.

in the real estate industry where developers typically face heavy tax and regulatory burdens. On the other hand, government already influences development by the rules it has established. Under the existing rules, development tends to add to economic segregation and developers often have relatively unlimited upside. Thus, the risk of weak exactions or none at all, is that the benefits of development are not distributed, few affordable housing units are built, and opportunities to promote social and economic objectives are lost.

In terms of effects on the market, there have been few empirical studies, but there are many academic theories. Nevertheless, one empirical, twenty-year study of 28 cities in California with and without IZ found no correlation between a city's adoption of IZ and reduced housing development.[37] There are three likely reasons for this. First, land prices typically adjust downward to reflect the IZ requirement, thus leaving unaffected the economic viability of what gets built on it. In other words, developers will be willing to pay less for land as stated above. Secondly, many IZ programs have been adopted in fast-growing real estate markets where high market rents cross-subsidize affordable units. Thirdly, many IZ programs offer compensation, often in the form of density bonuses, which offset any negative impacts. However, in the short term, IZ can have more dramatic effects, as it will take time for the land market to adjust, thus potentially slowing development. This emphasizes the need for clear, stable, and long lasting policies. Landowners need to adjust their value accordingly, but will only do so if they don't believe the next political administration will overturn previous policies. Another implication is that because these exaction and incentive policies tend to effect land owners at least as much as developers, the legal issues are of utmost importance.

Incentives pose their own set of risks. As with any subsidy, be it direct or provided through foregone revenue, it should be necessary, sufficient, but not excessive. On the one hand, if the incentive is not strong enough, affordable housing may not be built at all. On the other hand, if the incentives are too great, are applied in geographic areas where they are not needed, or are otherwise unnecessary, the public-sector runs the risk of subsidizing luxury development and of not collecting tax revenue that could

[37] Rosen, David. "Inclusionary Housing and its Impact on Housing and Land Markets." February 2004.

have been dedicated to affordable housing or other public goods. Understanding the dynamics of the market and adjusting to them are critical in achieving sound exaction- or incentive-based affordable housing policies.

Figure 9. Flow of exactions and incentives

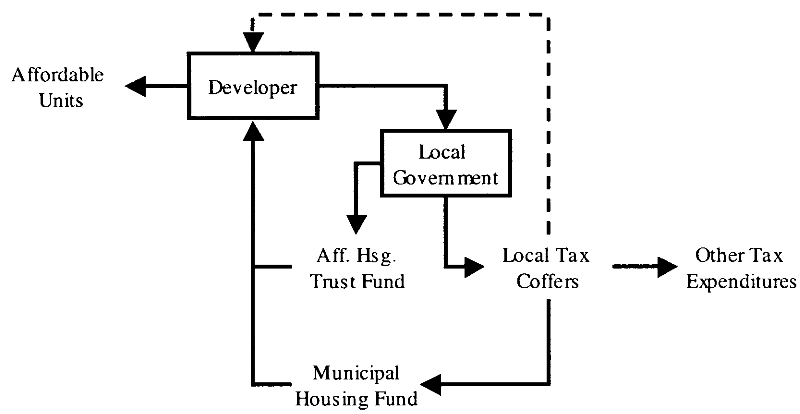


Figure 9 summarizes the flow of cash or subsidy between the various players and pools of money involved in exaction and incentive policies. An IZ ordinance would require that the developer provide the affordable units directly. An impact fee would have cash flow from the developer to the local government to general tax coffers, from where a portion of the funds would flow towards the city's various affordable housing subsidy programs. A linkage program is similar in terms of cash flows, but would allow the developer to either provide the units or give funds to the local government for a dedicated affordable housing trust fund that would eventually flow to that developer or another developer to build affordable units elsewhere. In the case of real estate tax abatements, the developer is required or not required to build affordable units, as the case may be, and in return is given an indirect subsidy (represented by the dotted line) of foregone tax revenue that would otherwise be part of the local government's general tax coffers. Besides issues of economic efficiency, the different potential flows of money should also emphasize the political and social concerns of where affordable units are built and how funds can be general or reserved for specific purposes and populations.

Legal Considerations

Exactions and incentives raise a variety of critical legal questions regarding constitutionality, authority, and autonomy. The central issue from the perspective of the city is how far they can push the legal concepts to achieve their goals. In examining a potential exactions policy a municipality must determine if it would constitute a taking of private land, what the economic consequences of that action would be, and whether the policy is fair. Beyond constitutionality, a municipality must ensure that it has the power and legal authority from the state to implement new land use or tax regulations.

Constitutional

Legal issues regarding exactions are rooted in the Tenth, Fifth, and Fourteen Amendments of the U.S. Constitution. The Tenth Amendment gives states powers that are not specifically mentioned in the Constitution, while the Fifth Amendment states that no person shall be "deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteen Amendment provides for due process, equal protection, and the protection of private property to the states.

The constitutional considerations surrounding exactions on private land owners were recently outlined by Justice Sandra Day O'Connor in a primer on takings law as part of *Lingle v. Chevron U.S.A., Inc.*, 125 S.Ct. 2074 (2005). While *Lingle* redefined aspects of the constitutional takings jurisprudence, the opinion of the Court also served to outline other relevant rules and cases. Generally takings law relies on the just compensation clause of the Fifth Amendment as stated above.[38] In her opinion, Justice O'Connor outlined four categories of such government activity that qualify as takings of private land. The first case is physical taking, which always requires the payment of just compensation and was recently revalidated by *Kelo v. City of New London*, 125 S.Ct. 2655 (2005). The remaining types of

[38] Fifth Amendment to the United States Constitution: no person shall be "deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

takings are regulatory in nature, whereby government regulations affect the value of the land. Under the *Lucas* (1992) takings rule, complete deprivation of land value clearly constitutes a taking.[39] However, under the *Penn Central* rule (1978), a taking may be triggered without the complete deprivation of land value depending on the character of the government action and its economic impact.[40] Thus the *Penn Central* rule factors in the impact of the regulation on the property owner rather than focus on the underlying intent of the regulation. The last category of takings covers situations where government requires an exaction as a condition for receiving some benefit, such as development rights. These situations are guided by *Nolan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dollan v. City of Tigard*, 512 U.S. 374 (1994), which established the following two rules:

> (1) there must be a nexus between the government-imposed exaction and the impacts created by the proposed development, and
>
> (2) the exaction must be roughly proportionate, in both nature and extent, to the impacts of the proposed development.[41]

While these two rules, known as *Nolan* and *Dollan*, continue to shape the legal boundaries of land use policy, the recent *Lingle* case reduced the burden on cities. *Lingle* rejected an alternate case, *Agins v. City of Tiburon*, 447 U.S. 255 (1980), that had deemed unconstitutional, regulations that do not substantially advance legitimate government interests. In doing so, the Court established that reviewing the motivation of a law or regulation that effects property rights is no longer relevant. As such, cities now have broader discretion to enact regulations that limit property rights. In terms of policies such as mandatory inclusionary zoning, landholders can no longer argue against a regulation on the basis of its public fairness, but must rely on proving that it poses an undue economic hardship.

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[39] *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).
[40] *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).
[41] Friedlander, Daniel. "Kelo and Lingle: Two Landmark takings Decisions Courtesy of the U.S. Supreme Court." Orange County Planner. October 2005.

In summary, the major legal considerations at the federal constitutional level indicate that a particular land use policy must have a rationale nexus between what it is imposing and the impact of the proposed development and that the exaction charged to compensate for the difference must be roughly proportionate to the impact. For example, in the case of IZ, one argument may be that the development of market rate housing creates a need for workers who can only afford below market rate housing.[42] A broader argument would be that a community's desire for a diverse population may be threatened by the construction of market rate housing.

However, the city does not need to follow a prescribed calculation nor do they need to prove that a particular policy is fair. They need only think about the economic relationship. Nevertheless, since there is no strict rule and the legal grounding and case law on land use regulations are less than they could be, a city would be well advised to think and study before enacting particular ordinances so that they can understand both the economic and legal risks and rewards. As Jerold Kayden notes, "...without clearly stated assumptions, and solidly prepared economic analyses, inclusionary zoning ordinances will run the risk of failing to satisfy constitutional demands."[43]

While the section below will talk about the legal issues with regard to the state-city relationship, it is worth noting that the Nolan/Dollan tests apply only to ad hoc fees and dedications of land and not to legislatively enacted fees at the state level.[44] This is especially significant in the case of linkages, as will be discussed in the case studies.

Authority

The second legal issue, in addition to constitutional considerations, is whether the city has the legal authority from the state to enact exaction or incentive policies. In the United States, cities are not mentioned in the Constitution, nor do they have inherent legal powers. Instead, they are creatures of the

[42] Kayden, Jerold. "Inclusionary Zoning and the Constitution." December 2001. p. 13.
[43] Ibid.
[44] In 1996 the California Supreme Court clarified the Nolan/Dollan rules in *Ehrlich v. City of Culver City*. Other states have typically used the same interpretation.

state, known as public corporations. However, these public corporations have a complex relationship with their creators vis-à-vis the division of discretionary power and autonomy and between theoretically local issues and those that affect the entire state. As argued by Gerald Frug, a leading local government law scholar, there are no purely local laws because they all have an effect on the larger region. Nevertheless, some states operate on the basis of "Dillon's rule," whereby they must ask for permission from the state before implementing any new policies. Other states have granted greater degrees of autonomy to their cities, typically through "Home Rule" statues or amendments to the state constitution. In examining the legal power of a city, the underlying question as Frug sees it is, "does its legal structure permit it to act in a way that may alleviate its affordable housing and economic development crisis?"

A key legal test is to determine if the local government has the statutory authority to impose the exaction or incentive. This authority is typically granted through specific enabling legislation or through general grants of autonomy, or home rule statues. As will be described below, the degree of legal authority between comparable cities can differ substantially. The power to levy taxes, design governmental structures, and establish new policies without explicit state authorization or preemption, as well as the reasons needed for such preemption, vary significantly from state to state and to some degree between major cities and smaller towns within a state. The specific legal powers of Boston and New York City, in relation to the Commonwealth of Massachusetts and State of New York, will be discussed as part of the case studies in Chapters 5 and 6.

Political

It is no surprise that the cities with some of the most robust exaction and incentive policies are Boston, San Francisco, and New York. Indeed, these cities are known for not only their expensive and booming real estate markets, but also for their progressive politics. Even if exactions policies were economically and legally foolproof, they still depend largely on proactive elected officials and organized affordable housing advocates. Given the complicated economic and legal liabilities, effective policy implementation is especially dependent on political actors.

A political analysis can fill in the gaps to questions unanswered by the legal and economic perspectives alone. For example, it may not be fully possible to determine the fairness of who should pay an exaction or how much they should pay. However, it is easier to understand the political feasibility of a particular policy to pass through the approval processes and galvanize the requisite interest groups. As such, it is critical to evaluate the political forces involved in typical exaction- and incentive-based affordable housing policies. This involves examining the approval processes, as well as the relevant stakeholders and their underlying interests. It is also important to consider that the political environment's prevailing ideology can impede or facilitate the city's exploration of new policy measures and the approval of any specific initiatives, regardless of favorable economic research or legal precedents.

Actors and Institutions

Affordable housing policies, like many other local issues, can stem from a variety of sources. In some cities, like Chicago and to some degree New York, local affordable housing advocacy organizations have spearheaded inclusionary zoning and other initiatives, taking on local governments as opponents. In others, like Cambridge, Massachusetts and Montgomery County, Maryland, the ordinances stemmed from the planning departments themselves. In other cases, such as Massachusetts' Chapter 40B law, state legislatures have mandated the provision of a certain threshold of affordable housing in each city while urging local governments to adopt their own incentives. Other affordable housing policies, such as the infamous cases of Mount Laurel I and II, have been implemented by the courts.[45]

However, as is more often the case, the policy creation process involves iterative dialogue between stakeholders and decision-makers. Typically, a proposed zoning ordinance will have to undergo public hearings, and review by the city's planning department, City Council, and Mayor. Unless spearheaded by the city executive, with support from the state if needed, new affordable housing policies tend to fail without an alignment of civil-sector interest groups. Some cities, like New York and Boston,

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[45] Mount Laurel decision, *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 67 N.J. 151 (1975); *South Burlington Count N.A.A.C.P. v. Township of Mount Laurel*, 92 N.J. 158 (1983) (Mount Laurel II)

have numerous of affordable housing advocacy organizations, often neighborhood based. However, successful policy implementation typically depends on bridging with other interests. Generally, the interest groups, or stakeholders, can be divided into three categories, the business community, affordable housing advocates, and other civil-society organizations. As will be discussed in the case studies, both Boston and New York have unique "Bridging Institutions," as shown in Figure 11 that have facilitated communication and mutually beneficial consensus building across multiple interest groups.

Regardless of quantified research, political force and ideology can dominant policy formation. These ideologies can be especially divergent with regard to the use and impact of zoning to produce normative social outcomes, as well as the value of diversity and ownership rights. However, it is the City's job to deconcentrate poverty, boost the economy, and ensure the residents can afford safe and decent housing in neighborhoods that allow for quality education, health, and employment opportunities.

Figure 10. Decision-makers and stakeholders

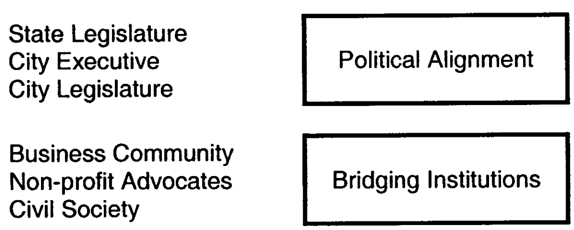
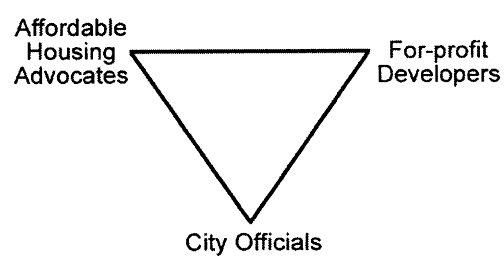


Figure 11. Typical policy negotiation parties.



Political Support

Each city has different relationships between local government, affordable housing advocates and developers, as shown in Figure 11. Typically, developers are large contributors to local election campaigns and find receptive ears of local officials. The situation with housing advocates or neighborhood-based groups is more varied. As Margaret Weir describes in "Power, Money, and Politics in Community Development, " there are three types of possible relationships between these two groups: (1) "Elite-dominated" cities, where there is little history of neighborhood mobilization, (2)"Patronage politics" cities that have co-opted local groups to vie for favor by the local administration, thus thwarting their ability to mobilize, and (3) "inclusive cities," where neighborhood organizations exercise independent power because they are useful allies to the city.[46] In these situations, community groups and local officials work together to develop their skills and capacities. As will be discussed in relation to the two case study cities, the type of relationship largely shapes the political agenda, but also the effectiveness of different policies.

Developers and affordable housing advocates can form partnerships, though sometimes tenuous, to lobby for new affordable housing policies. Developers generally want expanded tax abatements and greater density bonuses, while the advocates care about affordable units and neighborhood diversity. While there are many opportunities for win-win outcomes, disagreements between developers and advocates often become evident over time, especially because developers want to develop off-site affordable units without geographic constraints. In more sophisticated cities there are many alliances between these groups and official bridging institutions. Nevertheless, it is the job of the City to find areas of mutual gain and put forward the most beneficial policy.

As discussed in the Introduction, there are a number of reasons why exactions and incentives should be favorable to local governments. Firstly, the tools provide new ways of supporting the political goals of deconcentrating poverty and providing affordable and decent housing for the city's populace, especially since other tools such as city owned land and federal and state funding are generally shrinking. As a City Council member from Cambridge, Massachusetts, said, "Inclusionary zoning is a compromise that I support to ensure that more housing is closer to places of employment, social services, and public transportation; allowing certain privileges in return for affordable housing will enable local business to prosper while awarding residents with these advantages."[47] Similar statements could be made for impact fees, linkages, and tax abatements.

Others argue that place-based subsidies or the provision of limited affordable units are ineffective ways to provide affordable housing. They often claim that such subsidies are inferior compared to

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[46] Weir, 1999. p. 139.
[47] Burchell, 2000. p. 3.

transportable subsidies and that the problems should be addressed by helping the demand, rather than supply side of the equation. Some contend that many of these policies only benefit a few households. Meanwhile, some affordable housing advocates believe that these policies rely too heavily on partnerships with for-profit developers and worry that most of the units are targeted for moderate- versus low-income families. Thus, while the overall trends are toward cooperation between multiple interest groups, there are subtleties and disagreements within each generalized group.

Political Creativity

To an increasing degree, the political and practical challenge for the public sector is to translate their policy goals into fair, quantifiable business terms under which they can secure public benefits from private developers. Cities used to use city-owned land to engage in public-private development projects and achieve such benefits. Now that many cities have already disposed of much of their land, the remaining options revolve around creative exactions and incentives. In other words, as land becomes scarcer, development rights are becoming the new gold. As such, it is critical to understand what it takes for cities to leverage this gold creatively. Does this require cities to take additional risks or can they manage their own financial and political positions to push the market to deliver what they want?

One way to think about the different policy alternatives, as outlined by the broad categories of incentives and exactions is through the lens of bargaining frameworks. Indeed, public actors seek benefits from private developers under this continuum of policy intervention strategies, from passive regulation to active development. As argued by Lynn Sagalyn in her work on *Negotiating for public benefits: The bargaining calculus of public-private development*, there has been a general shift "from a quid pro quo to incentive to investment policy posture."[48] Sagalyn's study of two public-private development projects undertaken by San Francisco and Los Angeles in the 1980s concludes that a key difference in the approaches of the two cities can be explained by their different attitudes toward risk

[48] Sagalyn, Lynn. "Negotiating for Public Benefits: The Bargaining Calculus of Public-Private Development." Urban Studies, Vol. 34, Iss. 12. December 1997.

taking and control, attitudes she attributes to the political culture. She finds that three elements shaped the negotiating dynamics of public-private development projects in the 1980s: (1) the strength of the real estate market, (2) the investment risk of the public sector's desired benefits and the financial strategy to secure them, and (3) how the public sector manages the risk of capturing benefits.[49] She finds that expertise matters and that public-sector proactive entrepreneurialism can be a key ingredient in creating successful policies and developments.

However, such public sector activism clearly has its obstacles and risks. The first obstacle is achieving the necessary power to implement new policies. As described in the legal section, this typically requires either getting explicit statutory authorization from the state legislature or a broader grant of home rule authority without state preemption. However, as will be shown in the Boston case study, political capital can transcend legal restraints if used properly. After gaining state authority, the city's executive and legislative branches may need to agree. In "strong mayor" cities such as Boston and New York, the City Council may not be required for ratification. However, in most other, newer cities, the power is less concentrated in the executive branch. There are also department level initiatives at play. Land and land regulation are off-budget means of financing important pubic goods for a city, as are development rights and foregone tax revenue. As such, these mechanisms have proven effective and desirable for municipal agencies that often compete with each other for resources.

Implementation: Mandatory, Discretionary, Geographic?

Given the economic, legal, and political forces there are a number of different ways in which exaction and incentive policies can be implemented. In particular, there are three major choices that need to be made in considering an implementation strategy. Will the policy be mandatory or voluntary, discretionary or prescribed, and citywide or neighborhood-by-neighborhood? The pros and cons of each alternative will be analyzed below in light of the economic, legal, and political forces, as well as overall feasibility.

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[49] Ibid.

Choosing between a mandatory and voluntary program is only applicable to policies that can lie on either the exaction or incentive portions of the policy continuum. The central concern for a mandatory program is that it be designed to minimize the risk of diminishing the total amount of housing that would be built. With this in mind, mandatory programs have a burden of setting program requirements that are financial feasible and only after carefully analyzing the impact of market rate development on a particular community's supply of, and demand for, affordable housing. As such, mandatory programs are generally better suited for implementation on a neighborhood-by-neighborhood basis, rather than citywide, with affordability requirements attuned to local market conditions. However, the Boston example proves the exception to the rule. While both mandatory and voluntary programs should have safety valve provisions that trigger an automatic modification of the affordability requirements or bonuses if market conditions (e.g. construction costs, market rents, interest rates) change by a certain amount, the consequences of not getting this safety valve right are more dire in the case of mandatory programs. The final major economic consideration with regard to mandatory programs is that they make clear to landowners that the program will remain in effect for the long term, at least ten years, to encourage land prices to adjust.[50]

When designed as voluntary, the program must be an incentive, or it will never be used. However, a voluntary program then allows communities that want to use the program to take advantage of it, while other areas can disregard it if inappropriate. Legally, voluntary programs ameliorate the "rational nexus" takings questions, since the developer is not being forced into compliance and private land is not being economically burdened on a systematic basis. In some cases, when as-of-right zoning does not allow for economically viable developments, "voluntary" programs can be mandatory by *de facto*. However, no matter whether the City is giving an incentive or requiring an exaction, it must still contend with issues of state legal authority. Politically, mandatory programs can be very difficult to achieve because they also tie in directly with underlying political ideologies and objectives.

[50] Salama, Jerry, Michael H. Schill, and Jonathan D. Springer. "Reducing the Cost of New Housing Construction in New York City: 2005 Update." Furman Center for Real Estate and Urban Policy. 2005. p. 138.

The second major implementation decision is whether the program's details will be negotiated on a discretionary basis or tied more strictly to set benchmarks. Many exactions are already negotiated through normal permitting processes. The economic benefits of this approach are that the particular incentives or exactions can be tailored to the specifics of the proposed development. If the proforma demonstrates a financial hardship on the developer, the requirements can be lowered until the project is financially viable. However, this may be optimistic, since developers will often claim that they are "losing their shirt" on a particular deal and the actual costs and required returns are rarely revealed in full. A negotiated approach can also contribute to economic inefficiency by hindering competition for sites between developers and facilitating an approval process that hinges more on political clout than the total public benefits creatable by a particular proposal. As-of-right, transparent incentives and exactions allow developers to not only bid appropriately for land, but also to navigate through the approval process with less risk, thus requiring less return. However, like voluntary programs, negotiations typically mitigate the constitutional takings questions since the developer is entering into a binding contract, but is not being forced by regulation. For these reasons and because negotiations allow for greater control, discretionary implementation schemes generally have greater political support.

The third issue is whether the policies will be implemented citywide or in neighborhood sub-markets. Many cities and towns are not large enough in land area for this question to be of main concern. However, in some cities, the debates continue to rage. If implemented neighborhood-by-neighborhood the policies can be tailored specifically to the economic conditions of that area, as well as to the tolerance of the community to height or other incentive ramifications. Because real estate prices are very localized this approach can allay the concerns of policy-makers concerned about implementing an exacting policy on an already struggling area. Likewise, it facilitates ratcheting up the exactions or conditions for incentives in especially hot sub-markets or through specific area rezonings. However, there are pros to citywide policies as well. When implementing mandatory programs, there are legal concerns if the policies are seen as being applied selectively. Additionally, if designed properly, citywide policies should be able to generate more affordable units. By using a slide scale or having a safety valve provision, the inclusionary zoning, linkage, or tax abatement program can be implemented citywide while adjusting depending on the specifics of the proposed development and local market conditions. Using such dynamic indicators will be discussed in Chapter 7.

In summary, Chapter 4 has focused on establishing a general framework to understand the differences between and factors involved in deciding between the various exaction and incentive policies. Chapters 5 and 6 will use the framework to evaluate two case study cities, Boston and New York. After examining how the policies play out, Chapter 7 will look at implications and methods of changing the rules of the game.

INTRODUCTION TO CASE STUDIES

This section will evaluate housing incentive and exactions policies, both past and present, in Boston and New York City. References will be made to other cities where appropriate, but the focus is on using these two cities to understand what options cities have, and how they can implement effective affordable housing policies. As such the case studies have three main goals: (1) to demonstrate what can be done in hot housing markets with proactive municipal officials, (2) to highlight dilemmas of practice still faced by the case studies and likely faced by other cities interested in similar paths, and (3) to show how incentives and exactions can achieve affordable housing objectives.

Both Boston and New York are cities whose current challenges stem from being victims of their own success. Though the stories of each city are unique, they share a common history of disinvestment and abandonment and a contemporary struggle to continue their economic competitiveness, while also addressing the new challenges of affordable housing. Given the history, political sophistication, and current market conditions in each city, they are especially useful to learn from. They have also each used innovative affordable housing policies in the past and continue to grapple and experiment with how their policies should adjust over time. As such, the case studies allow for a broad understanding of policy options, including, but not limited to linkages, inclusionary zoning, and tax abatements. Each case study will be presented independently by using the previously established economic, legal, and political framework as well as addressing specific policies. Lessons and comparisons will follow, but as both cities demonstrate, having a hot real estate market is not enough on its own to create effective policy. As will be shown, it is the synergistic interaction between the economic, legal, and political forces that have shaped policy successes.

CHAPTER 5: BOSTON, MA

Boston is a relatively small city, only 48 square miles, with a dense population of nearly 600,000 people, as shown in Figure 13. It is also at the center of a much larger metropolitan area, with over four million people. Boston is the university capital of the nation and houses more 20 to 24 year-olds than any other age group while possessing one of the highest rates of bachelor's degree attainment among U.S. cities. It is also a large gateway for international immigrants from many areas, including the Caribbean, Southeast Asia, South America and Africa. Through the 1990s, immigrants sustained Boston's population growth, as the city lost white residents. Today, non-white minorities comprise more than half of Boston's populace.[51] According to the 2000 Census, Boston's economic profile is healthy, as shown by high levels of education and low unemployment. However, recent trends indicate troubling differences by race and ethnicity. Black and Hispanic residents of Boston lag whites in college degree attainment, income, and homeownership. Likewise, poverty remains high among Asians and Hispanics, as well as the elderly. Additionally, as described by the Brookings Institution's Living Cities summary of 2000 Census data, "Housing costs inordinately burden a disturbingly high share of low- to moderate-income renters in Boston, many of whom are minority families. It could be that the future of Boston's middle class, the size of which stagnated in the 1990s, hinges on the progress of these struggling groups in the coming decade."

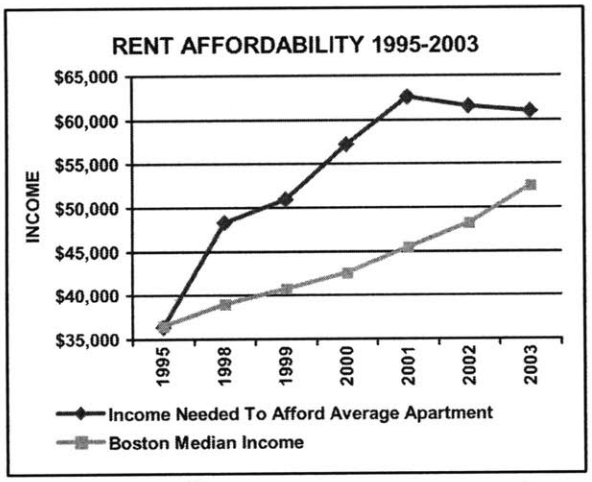
Figure 12. City of Boston Data

Boston, MA	2000
Metro Population	4,391,344
City Pop. as % of Metro	13%
HH Income in City as % of Metro	72%
City Working Pop.	278,463
Percent Working in City	66.40%
Total Renters	162,118
30%+ of Income on Rent	40.20%
Total Units	251,935
Percent Multifamily	42.60%
Unemployment Rate	7.70%

[51] 2000 U.S. Census.

Housing in Boston

A study by Northeastern University completed in 2005 found Boston to be the most expensive city in the country.[52] In 2004, Boston's median household income was $45,892 but a family of four required an income of $64,656 to cover basic needs.[53] The problem remains especially acute for renters



who comprise 60 percent of Boston's housing market. Renters earn an average of $34,800 annually, thus allowing for an average monthly housing payment of $870.[54] However, the average apartment in 2004 rented for $1,475. As of 2005, more than half of all renters in the region were paying more than 30 percent of their incomes for rent and 21 percent were spending more than half.[55] Greater Boston also remains one of the most expensive home buying markets in the nation with a median selling price of nearly $382,000.[56]

Figure 13. Population and Housing Data in Boston Over Time[57]

Boston, MA	1990	2000	Change ('90-'00)	2005	Change ('00-'05)
Population	574,283	589,141	2.59%	596,638	1.27%
Median HH Income	$39,205	$39,629	1.08%	$ 46,392	17.07%
Homeownership Rate	30.90%	32.20%	4.21%	34%	5.59%
Median Gross Rent	$823	$803	-2.43%	$ 1,500	86.80%

[52] Center for Urban and Regional Policy, Northeastern University. "The Massachusetts Housing Challenge." December 2005.
[53] Ibid.
[54] Assuming 30 percent of income devoted to rent per month.
[55] By the end of 2005, Reis.com, used by the Housing Report Card, put median effective rent at $1,499.
[56] Ibid.
[57] 2000 U.S. Census; City of Boston,."Real Estate Trends 2005."

To look forward at housing cost trends it is useful to examine data on vacancy rates and building activity. Vacancy rates are the best indicator of the relationship between housing demand and supply. By the end of 2005, rental vacancy rates dropped to 5.1 percent, and stood at 4.3 percent in mid 2006.[58] With high pent-up demand, Boston permitted 1,156 new housing units in 2005.[59] Showing positive signs, building permits for new housing units were up for the third straight year in 2005, rising 18 percent above 2004's level. Overall housing production in 2005 represented more than 91 percent of the target for that year, as established in the Center for Urban and Regional Policy's New Paradigm report of 2000.[60] The report estimated how much housing would be needed in Greater Boston to bring supply and demand into alignment so that prices would not rise appreciably faster than general inflation.[61] The number of units in the pipeline that will be coming on the market over the next few years suggest that rents may not increase much above the current level, but even then Greater Boston will remain one of the nation's most expensive rental markets.[62]

Boston Economy

As summarized by the Boston Redevelopment Authority:

> Today, Boston is the center of New England's economy, its importance to the region shown by its role as a generator of jobs and tax revenues. Although Boston accounts for only 9.5% of the state's population, Boston accounts for 17% of the state's jobs, 22% of total goods and services in the state, and nearly 18% of the state's tax revenues. Similarly, the city's economic impact is felt throughout the region as nearly one out of every 13 jobs in New England is in Boston. As home to so many of the region's important public and private institutions and agencies, Boston also serves as the educational, medical, cultural, and governmental center of the region. Clearly, Boston is a sizable portion of the regional economy and contributes substantially to that of the nation's.

Housing is also a critical economic development issue for Boston. Barry Bluestone's research has shown that the "high price of housing is indeed a significant factor in the decline in employment and

58 Bluestone. "Housing Report Card." 2006.
59 Ibid.
60 Bluestone, Barry, et all. "New Paradigm for Housing in Greater Boston." Center for Urban and Regional Policy, Northeastern University. Revised Edition: February 2001.
61 Ibid.
62 Ibid.

population in Massachusetts."[63] Central to Bluestone's finding is that employers can pay employees less in other cities because of lower housing costs. As discussed in Chapter 1, and shown in Figure 3, a typical Boston family's budget is $20,000 more than if they lived in a region such as Raleigh-Durham-Chapel Hill. A 2006 Donahue Institute study found that 36 percent of Massachusetts residents or their immediate family reported to "have seriously considered moving out of Massachusetts because of the cost of housing."[64] The Donahue Institute survey also found that housing costs are a concern for 66.4 percent of Massachusetts' residents, surpassing public education (51.9 percent) and access to health care (50.2 percent). A similar proportion of Massachusetts' residents, 66 percent, also expressed concern that high housing costs hurt the local economy.

Legal Context in Boston

> "Boston's legal authority to promote new development and provide affordable housing inevitably affects its ability to become a world leader in innovation. Development and affordable housing attract the knowledge-based industries on which global cities depend."[65] – Barron and Frug.

The City of Boston lacks the legal power and authority that many other major American cities, including the City of New York, enjoy. As such, Boston has less of an ability to make choices about its own future. As described by Gerald Frug and David Barron in a study of municipal legal power that compared seven major cities, "Boston has less power than New York, Chicago, Atlanta, Denver, Seattle or San Francisco to control its own destiny."[66] They argue that Boston's abilities are restricted in three ways: (1) its limited home rule powers, (2) the current legal structure that constrains local fiscal discretion, and (3) legal limitations on the city's power to be creative in its approach to economic development.[67]

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[63] Bluestone, 2001.
[64] Donahue Institute. "Housing Poll 2006." 2006.
[65] Barron, David and Gerald Frug. "Boston Bound: A Comparison of Boston's Legal Powers with Those of Six Other Major American Cities." February 2007.
[66] Ibid.
[67] Ibid.

Boston, unlike other cities, does not have the power to levy new taxes without state permission, design its own governmental structure for zoning and redevelopment without state legislation, or establish linkage or inclusionary zoning policy without state authorization.[68] The Home Rule Amendment to Massachusetts' Constitution exempts from its authorization a variety of powers, including borrowing, taxing, and the regulation of civil affairs. Other cities, like New York and Chicago have the power to tax, borrow and "regulate for the protection of the public health, safety, morals, and welfare..."[69] Massachusetts also has more power, compared to other states, to preempt local laws. The Home Rule Amendment allows the state to preempt local laws without even demonstrating a clear conflict.

Massachusetts, as compared to other states, has also taken a proactive role in shaping the state's affordable housing policies, through measures such as Chapter 40B (1969), and more recently, Chapter 40R (2006) and 40S (2006). Given the historic value of affordable housing as a state policy issue, Boston has been able to leverage political capital for many initiatives, despite the city's relative legal weakness.

Political influence and in particular, a city's ability to shape state law, is hard to measure, but plays a critical role in helping or hindering a city's ability to take initiative. In Boston, the influence can be measured in part by the number of state representatives in positions of leadership that are represented by the city. In Massachusetts, 17 state representatives (11% of the House) represent at least a portion of Boston and in the Senate there are six senators (15% of the Senate) from areas partially including Boston. Compared to other cities, and to New York, these figures give Boston a relatively low amount of influence. In Massachusetts, the Speaker of the House and Senate President both represent parts of Boston, but this has only occurred for ten years in the past century.

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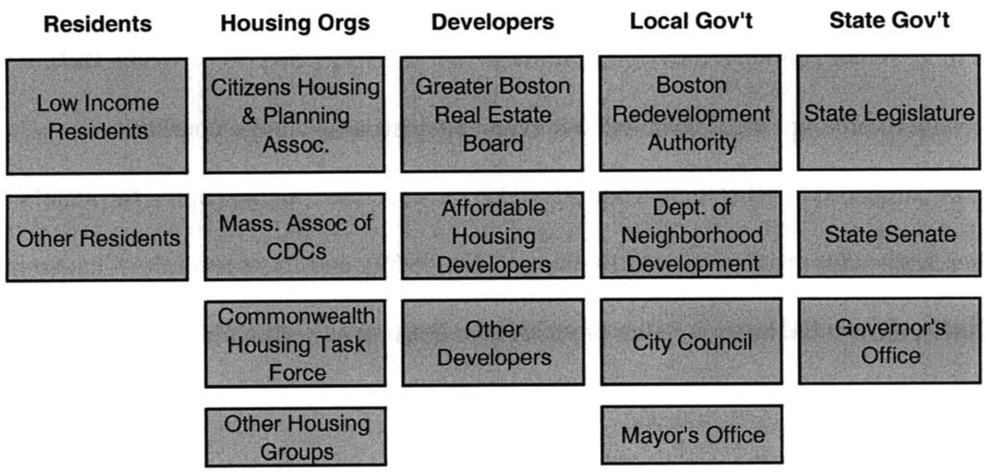
[68] Ibid, Conclusion.
[69] Illinois Constitution Art. VII § 6(a).

Political Environment in Boston

Boston's political environment includes stakeholders and decision-makers that can be broken down, as shown in Figure 14, into five major categories: residents, housing advocacy organizations, developers, local government, and state government.

Figure 14. Boston Housing Policy Stakeholders



Boston has very sophisticated and well organized affordable housing advocates as well as a history of proactive mayoral support for housing issues. The main housing lobby in Boston is the Citizens' Housing and Planning Association (CHAPA). Established in 1967, CHAPA is, "the only statewide group which represents all interests in the housing field, including non-profit and for-profit developers, homeowners, tenants, bankers, real estate brokers, property managers, government officials, and others."[70] A true bridging institution, their total membership is 175 organizations, most of which are concentrated in Boston. In 2005, CHAPA's annual meeting drew over 1,300 people. As explained by Jim McGlynn, General Counsel to the Massachusetts Legislature's Joint Committee on Housing, CHAPA has been effective in utilizing grass roots consensus building around affordable housing issues and

[70] Citizens' Housing and Planning Association. http://www.chapa.org/mission.html. Last accessed on April 1, 2007.

specific pieces of legislation.[71] They have monthly subcommittee meetings and build consensus between developers and community groups. This has led them to be somewhat developer oriented, but with a focus on housing for low- to middle- income people. CHAPA also often serves as a research arm for the City, undertaking projects at the request of the local government.

Other significant organizations include the Massachusetts Association of Community Development Corporations (MACDC), which specifically organizes and acts on behalf of 60 CDCs within the Greater Boston Area. McGlynn sees MACDC as similar to CHAPA, but less cohesive. Nevertheless, MACDC has been an entrepreneurial, politically astute organization, led by a former state representative and member of the state community development agency. The many CDCs that the organization represents are also very active and sophisticated. In fact, 66 percent of the new affordable units built in Boston between 2001 and 2004 were done by non-profit affordable housing developers.[72]

According to McGlynn, the influence of different housing groups has waxed and waned over time. In 2000, the Greater Boston Interfaith Organization (GBIO) was very well organized and succeeded in pressuring legislators to approve authorization for $100 million in state appropriations for affordable housing, even when CHAPA pulled back for fear of being attached to an unsuccessful cause. GBIO was known to be confrontational, but enabled the other housing groups to negotiate from a more accommodating position. More recently, the Commonwealth Housing Task Force (CHTF), sponsored by the business community, has tackled and passed key initiatives, such as 40S and 40R, state incentives for affordable housing and smart growth. As McGlynn notes, the CHTF was born from the seeds of guilt after opposing the adoption of the Community Preservation Act in Boston, which deprived the city of matching state funds for affordable housing.[73] The Boston Foundation then helped to facilitate the formation of the CHTF and decided they should do something. While CHAPA and MACDC were resistant, the Boston Foundation and CHTF had direct access to political leadership. They spent a few

[71] Jim McGlynn, General Counsel, Massachusetts House of Representatives. Interview by Ari Goldstein on February 23, 2007.
[72] City of Boston. "Leading the Way II: 2004-2007." 2004.
[73] Ibid.

hundred thousand dollars to ensure the success of their initiatives and continue to find success. Overall, the development community in Boston is relatively well represented through CHAPA and the CHTF, but they also lobby through the Greater Boston Real Estate Board and the Industrial Properties Management Association.

In terms of political leadership at the local government level, Boston is a city where power is concentrated with the mayor. The City Council in Boston is comprised of nine members elected from geographic districts as well as four at-large members. However, the Council has little power to pass new laws without mayoral support. The mayor also appoints the heads of the two relevant zoning and housing agencies, the Boston Redevelopment Authority (BRA) and the Department of Neighborhood Development (DND). By virtue of state law, the BRA controls zoning, planning, and economic development. It is run by a five-person board of directors, one of whom is appointed by the state and four by the Mayor. Its powers include reviewing proposed development projects that are subject to development review, receive public subsidy, or require zoning relief, as well as drafting new zoning measures, and making recommendations to the Zoning Commission.[74]

Boston has elected two consecutive mayors to multiple terms, who have focused their administrations on neighborhood issues. Elected in 1983, Mayor Ray Flynn was an aggressive supporter of neighborhoods, CDCs, and affordable housing. With support from his housing advisor, Peter Dreier, Flynn became a national spokesman for the role of CDCs in supporting affordable housing.[75] Flynn also championed the usage of linkage fees on commercial office development as a means of supporting affordable housing in Boston's outlying neighborhoods. When Thomas Menino took over from Flynn in 1993, he continued the local government's support for neighborhoods and CDCs. In January 1999, Mayor Menino acknowledged housing as a top City priority by appointing a new cabinet level position,

[74] The Zoning Commission must be, by the State Enabling Act, composed of members selected by the Mayor from among candidates nominated by the AFL-CIO, the Greater Boston Real Estate Board, the Greater Boston Chamber of Commerce, the Contractor's Association, and Boston architecture societies; three members have to represent neighborhood associations. The act requires that the Board of Appeal have a similar structure.

[75] Keyes, Langley and Neil Mayer, "City Government's Role in the Community Development System," The Urban Institute. June 2005. p. 18.

Chief of Housing. For the position he strategically chose Charlotte Golar Richie, who had previously co-chaired the state legislature's Joint Committee on Housing during her time as a state representative. Directly under Richie at DND is Sheila Dillon, a former head of a Boston CDC and a respected affordable housing professional. Together, Menino, Richie, and Dillon established development and preservation targets in a three-year report entitled, "Leading the Way I." After meeting these three-year goals in 2001, the City released "Leading the Way II" (LTW II), a four-year plan to develop and preserve more housing.

As stated in the plan, the challenges at the time were, "... a softer economy with rising unemployment, ever-tightening local, State and Federal budgets with cuts in many programs, and an emerging crisis in the Section 8 Rental Assistance Program where Federal cuts are leading to a nationwide crisis in the program."[76] The report realized that Boston's housing market was driven by two dominant factors: limited regional supply and increasing neighborhood quality. It notes, between 1999 and 2004 Boston house values grew by 112 percent while the regional average was only 60 percent. In the affordable neighborhoods, the increases were stronger, 185 percent in Roxbury and 152 percent in East Boston.[77] As of 2003, only a third of listed apartments could be afforded by the average Boston resident while only one in four Bostonians could afford the average-priced home.[78]

The LTW II plan established a goal of producing 10,000 new units of housing, with 2,100 affordable units, between 2004 and 2007.[79] The plan sought to achieve this by building on its existing linkage and inclusionary zoning programs, implementing a demonstration program to increase the city's inclusionary development requirement, using incentive zoning to permit taller buildings in downtown areas, and promoting higher density housing around transit. Additionally, the city planned to use new funds to subsidize affordable housing developments through discretionary grant programs. In particular, the plan established a goal of $25 million in new resources for affordable housing. The city had $7.5 million from the sale of One Lincoln Street, a large office tower, $10 million from Hayward Place,

[76] City of Boston. "Leading the Way II: 2004-2007." 2004. p. 1.
[77] Ibid.
[78] Ibid, 2.
[79] Ibid.

another office tower, and inclusionary development and linkage fees were projected between $1 and $3 million annually, thus totaling between $4 and $12 million over the four years of the plan.[80]

While Boston is concerned with increasing the total supply of housing first and producing specifically affordable units second, the city's policies work to achieve both ends together. Leveraging affordable housing from private developers on private land is only a piece of the overall strategy, but is a significant component.

[80] Ibid, 6.

BOSTON POLICIES

As previously mentioned, Boston aims to accomplish its affordable housing goals by using a variety of incentives and exactions. What follows is an analysis of three policies in Boston that lay on different parts of the incentive-exaction continuum: linkages, inclusionary zoning, and real estate tax abatements. For each policy, the origin, current or proposed manifestation, and empirical or projected results are discussed.

Linkages in Boston

Policy Origin

Boston's linkage program, known originally as "Development Impact Project Exactions," began in 1983 in order "to mitigate the impact of large-scale development on the supply of housing and jobs available to low- and moderate-income people."[81] It sought to do this by, "requiring the payment of a development exaction or an equivalent in-kind contribution, for the creation of affordable housing and project-related job training programs."[82] Specifically, linkage evolved as a concept in Boston throughout the 1970's controversy surrounding Copley Place in Boston's Back Bay. In exchange for political approvals, the developer set aside one-quarter of the one hundred residential units to be developed for low- and moderate-income households. Thereafter, linkage became a major issue of the 1983 mayoral campaign, championed by the eventual victor, Ray Flynn.[83]

Boston's linkage program, adopted in 1983 through Article 26 of the Boston Zoning Code, attempts to balance large-scale commercial development with residential needs. Community groups who advocated for the initial linkage and served on the 1983 mayoral Linkage Advisory Committee found that

[81] Barr, Cynthia. "Boston Zoning: A Lawyer's Handbook," supra note 626, § 8.4. 1997.
[82] City of Boston, Boston Redevelopment Authority. "Survey of Linkage Programs in Other U.S. Cities with Comparisons to Boston." 2000. http://www.cityofboston.gov/bra/PDF%5CPublications%5C/pdr_534.pdf. Last visited April 5, 2007.
[83] Altshuler, 1993. Also see Dreier, Peter, and W. Dennis. "Downtown Development and Urban Reform: The Politics of Boston's Linkage Policy." Urban Affairs Quarterly 26 (3): 1991. pp. 354-75.

they had to continuously push for higher linkage fees.[84] In July 1985, the Boston Linkage Action Coalition launched a citywide campaign to increase the fee, after which Mayor Flynn proposed several modifications.[85] In 1986 Article 26 was officially expanded by creating the Neighborhood Housing Trust (NHT) to manage the housing linkage funds. In 1987 a job linkage was added to the program, managed by the Neighborhood Jobs Trust (NJT). Since Boston never conducted a formal study to justify its policy, a group of developers brought suite in 1987 arguing "that the exaction requirement is both an unlawful condition of zoning approval and an unauthorized tax beyond the authority of the zoning commission of Boston to adopt."[86] In the case, *Bonan v. City of Boston*, the state court ruled against the city, finding that the linkage "more closely resembles a tax than a fee" and that rather than accommodate costs imposed by new development, "its primary purpose is to raise revenues ... to be expended for the common good."[87] Nevertheless, many developers seeking political support continued to provide the payments. The Massachusetts Supreme Judicial Court later overturned the ruling on a technicality.

Seeking to concretize the policy, Boston obtained explicit state legislative authority for the program in late 1987.[88] The authority was provided through a home rule petition to the Massachusetts Legislature that led to Chapter 371 of the Acts of 1987. This resolution allows the linkage program to act as a tax without the burden of proof of exacting only as much as is being quantifiably imposed. In 1996, the linkage was incorporated into Article 80B of the Boston Zoning Code. Most recently, in 2001, a panel of developers and advocates convened by Mayor Menino formulated new recommendations into a home rule petition sent first to the City Council then to the State Legislature.

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[84] Susskind, 1986. p. 210.
[85] Ibid.
[86] *Bonan v. City of Boston*, 398 Mass. 315, 496 N.E.2d 640 (1986).
[87] Altshuler, 1993. p. 44. Also quoted in Donald Connors and Michael High, "The Expanding Circle of Exactions: From Dedication to Linkage," Law and Contemporary Problems, vol. 50. Winter 1987. pp. 69-83.
[88] Ibid.

Current/Proposed Policy

As it stands today, Boston's linkage is a fee exacted from all new large-scale commercial real estate development exceeding 100,000 square feet and requiring zoning relief, including expansion and rehabilitation projects. The 2001 home rule petition increased the affordable housing linkage from $5 to $7.18 per square foot and the employment linkage fee from $1 to $1.44 per square foot, excluding the first 100,000 square feet.[89] The housing linkage requirement can be fulfilled with a cash payment or through direct creation of housing. If a developer opts for making the housing payment it must be made in seven equal annual installments. If they chose to build the units, the cost of the housing creation must be equivalent to the housing payment that they would have made. All agreements, whether payment or production, are detailed in a Development Impact Project (DIP) agreement that serves as a contract between the developer and the Boston Redevelopment Authority. If a developer chooses the housing payment option, the funds are paid into the NHT and awarded on a competitive basis to projects that require "gap" financing and serve households earning below 80 percent of AMI.

Results

Since its inception in 1983, the linkage program has committed over $81 million in linkage funds that have contributed to the creation or preservation of 6,159 affordable housing units in 115 developments throughout the City of Boston.[90] The projects range from the conversion of a school into elderly housing, to the preservation of existing apartments, to the new construction of mixed-income developments. There is no formal adjustment mechanism built into the policy. If the recent past is any indication, the mayor will likely convene an ad hoc task force to review the program every few years.

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[89] City of Boston. "Survey of Linkage Programs in Other U.S. Cities." 2000.
[90] City of Boston. "Neighborhood Housing Trust Report." 2007.

Inclusionary Zoning in Boston

Policy Origin

Boston adopted a version of IZ in 2000, calling it an "inclusionary development policy" (IDP). The policy was established via executive order by Mayor Menino and applied to all housing developments of ten or more units that required any kind of zoning approval. Initially, the policy required that 10 percent of the units be affordable, but the value increased to 13 percent in 2003. Half of the affordable units were to be priced for families earning 80 percent or less of AMI (below $66,000 for a family of four), and the other half for families earning between 80 to 120 percent of AMI ($66,000 to $99,000). The units were to remain affordable in perpetuity. The program was mandatory for those developments that were above ten units and needed zoning relief, but incentives were still offered on a negotiated basis. There were also cash-out and off-site construction options. The cash-out fee was $97,000 per unit for 15 percent of the proposed units and off-site construction likewise had to build 15 percent of the total proposed units.[91]

In early 2006, MACDC issued a report with four major findings regarding Boston's IDP: (1) that it has one of the highest income targets in the nation, thus allowing an eligible family of four to earn up to $99,000, (2) that Boston is the only major city to administer the program through an executive order rather than an ordinance, (3) that the cash out fee of $97,000 is insufficient to cover the subsidy required to build an affordable unit elsewhere, and (4) that the program's non-transparent administration has slowed the efficiency of developers. In response to these findings, MACDC put forth six recommendations regarding the value of the cash-out fee, the process of allocating funds, targeting lower income households, raising the set-aside requirement, codifying the ordinance, and clarifying program rules.

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[91] Penniman, Allen. "Building Better: Recommendations for Boston's Inclusionary Development Policy." MACDC. May 2006. p. 9

Current/Proposed Policy

By May of 2006, many of MACDC's recommendations were adopted in policy changes announced by Mayor Menino. According to the press release, "these changes came following meetings with the non-profit development community, the housing advocacy community, and the private sector to explore ways to better focus this important affordable housing resource."[92] In particular, the changes raised the off-site contribution to $200,000 per unit, up from $97,000. The income targeting also changed and is now be based on the city's median income, which is lower than the metropolitan statistical area (MSA) median income that was previously used. As such, rental units will now be affordable to households earning between $45,000 and $56,400 (54% to 68% of the MSA's AMI) and ownership units will be affordable to households earning between $58,900 and $73,600, adjusted for household size. The changes came after a study by the City's Department of Neighborhood Development that determined households in this income range more accurately reflected those portions of Boston's workforce that were priced out of the housing market.

Boston's Inclusionary Development Policy	
Type of Law	executive order: mandatory
Threshold	10 units, zoning relief sought
Set-Aside Requirement	15% of total proposed units
Income Target	$45,000 (54% of AMI) to $56,400 (68% of AMI)
Terms of Affordability	perpetuity
Incentives	subject to negotiation
Cash-out fee	$200,000 per unit for 15% of units
Off-Site Construction	15% of total proposed units

The new policy also increases the required percentage of affordable units to be produced on-site from 13 to 15 percent. When a developer is unable to include affordable units on-site, they must make a monetary contribution to the Inclusionary Development Fund. While the fund previously had no geographic focus for the projects it subsidized, it will now spend half of the funds on developments in areas that have a smaller percentage of affordable units than the city's average of 20 percent, thereby promoting mixed income communities.

[92] City of Boston. Press Release. "Mayor Menino Boosts Affordable Housing Requirements: New Changes to Inclusionary Development Policies Brings More Resources for Housing." May 1, 2006.

One area that remains unchanged is that the policy stayed an executive order. Because of this, critics fear that the policy could be eliminated by a new mayor or by the current mayor in order to lure attractive developments. For this reason, they have argued that the policy ought to be written into the zoning code. Mayor Menino has resisted this line of argument, claiming that the flexibility of the current arrangement allows for the policy to respond to the housing market and the economy. While keeping it an executive order does allow for greater flexibility, it is only because the mayor can decide at will. A formal adjustment mechanism either triggered by time or market indicators could be part of an executive order or ordinance, but this has not been adopted. Instead, like linkages, the mayor will likely continue to use task forces on an ad hoc basis to inform policy changes.

Results

As of May of 2006, Boston's IZ program had created 665 affordable housing units, 453 of which were created in the last three years. The program is administered through the Boston Redevelopment Authority (BRA) and tracked by the Boston Municipal Research Bureau (BMRB). Of these units, 89 percent, or 539 units, were constructed onsite.[93] In some cases, according to the BMRB, developers provided more affordable units than required in exchange for extra "zoning relief." In addition to setting a higher percentage requirement for off-site units and cash-out fees, BRA director Mark Maloney stated in an internal memo in 2005 that, "It is BRA policy that the affordable units should be presumed to be created onsite."[94] However, the policy does not strictly define the rules of when onsite construction is allowed to be avoided. According to Maloney, "it was intentionally crafted to give us the flexibility to make compromises."[95] As such, developers typically negotiate with the BRA on an ad hoc basis.

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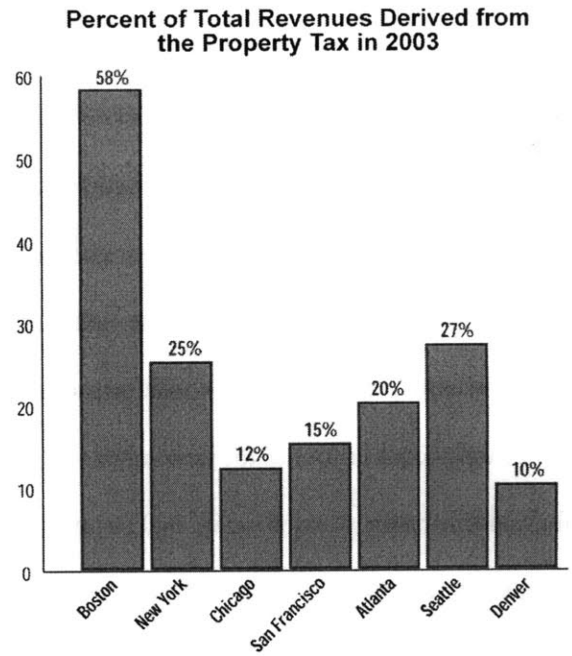
[93] Penniman, 2006. p. 9.
[94] Rezendes, Michael and Beth Healy. "City Tries Closing Gap in Affordable Housing Efforts." Boston Globe. February 14, 2005.
[95] Ibid.

While there is no data yet on developers paying the $200,000 cash out fee per unit, the cash-out fund totals $11.13 million and has been funded since 2000.[96] Similar to the Neighborhood Housing Trust created by the linkage program, the BRA spends these funds on programs that support affordable housing development. For project funding, the BRA requires the funds to be used to subsidize affordable housing development for middle-income households and has expended and committed approximately half of the fund, $5.7 million. In total, this has created 143 affordable housing units.

Theoretically the value of the cash-out should be the difference between a unit's market price and the affordable price, assuming the construction costs would be the same. The subsidy would then be the opportunity cost or loss to the developer. Somerville, a mid-size Boston suburb, structures their cash-out fees on this basis. Boston's $97,000 per unit was increased to $200,000 precisely because the cost required to produce an affordable unit off-site increased as such. However, unlike Somerville, Boston's cash-out fee will not adjust as the gap between affordable and market prices change. Instead, the total cost to the developer would be $200,000 times 15 percent of the total proposed units.

[96] Penniman, 2006. p. 11.

Real Estate Tax Abatements in Boston



Boston has experimented with local tax abatements, but has generally used them far less than other cities, such as New York. This is partially due to the fact that while both cities faced abandonment in the 1970s and 1980s, the situation was much worse and longer lasting in New York. Tax abatements were used there to lower the costs of development for any housing development, not just affordable. New York City was also struggling for office development, whereas during the same period, Boston was able to leverage office development through the linkage program.

Additionally, because abatements depend on the city foregoing direct revenue, they are more feasible in cities less dependent on property taxes. Boston is more reliant on property tax revenues than New York, since a large proportion of the land in Boston is taken up by tax-exempt entities, such as universities and the state. Indeed, only 50 percent of the land in Boston is taxable. As such, taxes on a small amount of land comprise a large proportion of the city's budget. Boston also has fewer local taxes than other cities. In 2003, property taxes in Boston comprised 58 percent of the city's total revenue, in comparison to 25 percent in New York City and 12 percent in Chicago.[97] Thus, the fact that Boston has not used real estate tax abatements as a means of promoting affordable housing can be explained by the city's unique political and economic history.

[97] Barron and Frug, 2006. Executive Summary.

BOSTON CONCLUSIONS

Boston has used incentives and exactions to promote its affordable housing agenda and leverage its hot real estate market. In addition to a having thriving property values, the policies depended on detailed policy design to respond to federal Constitutional issues while also obtaining explicit state authority when necessary. Ultimately, Boston's initiatives revolved around well-organized coalitions of multiple stakeholders and a receptive local government executive. The city's context and policy history allows for insights into the economic, legal, and political dimensions of exactions and incentives in this particular city as well as areas for improvement.

Economic

Boston has used policies that work for the city's particular situation. While real estate tax abatements did not make sense given the city's small proportion of taxable land and history of less abandonment than that of other cities, they have creatively leveraged the city's commercial and residential markets. Indeed, Boston's usage of exactions and incentives to promote affordable housing has expanded over time. Beginning with a tenuous linkage program on limited types of non-residential development, the program has grown in breadth and in value as the city has thoughtfully increased the fee. Even with the recent fee increase that puts the housing linkage at $7.18 per square foot, the office market in Boston is beginning to take off again. As described in the trade publication, *Commercial Property News*, "Tenants and investors just can't seem to get enough of the premium offerings in Boston's thriving office market. Numbers from CB Richard Ellis Inc.'s first quarter 2007 report tell the story. Vacancy rates have reached their lowest since 2001 and rents are going sky high."[98] Likewise, as Boston's residential real estate market has steadily increased over the past seven years, the city's IZ program expanded from 10 to 13 percent and from 13 to 15 percent along with requiring deeper levels of affordability.

[98] Murray, Barbara. "Plummeting Vacancy Rates, Rising Rents on Tap for Tight Boston Office Market." Commercial Property News. April 11, 2007

Additionally, Boston's IZ and linkage programs have focused more attention over time on where the non-on-site units are built. Whether subsidized through a trust fund or built by the same developer off-site, the city is increasingly enforcing a distribution of affordable units throughout the city, thus working against other economic trends that promote concentrations of poverty and wealth.

An additional economic conclusion to draw from Boston's IZ and linkage programs is that the city has succeeded in using what are close to pure exactions. The IZ program is mandatory, citywide, and only provides slight incentives. While the program is not fully discretionary, it utilizes a safety valve system whereby developers must demonstrate financial hardship in order to qualify for off-site or cash-based contributions. The linkage program is a direct exaction on non-residential development, but is structured with flexibility. Given the pay-in period, developers can use project cash flow to pay the fees or can pay up front by discounting the payments at a favorable discount rate. Moreover, while both policies were eventually informed by economic studies, they don't appear to have had a negative impact on the market. In other words, Boston illustrates that exactions can be effective at producing affordable housing units while maintaining effective markets.

How substantial have the programs been? In six years, Boston's IZ policy produced 665 affordable units and $11.13 million in separate funds. In 23 years, the linkage policy helped to produce 6,183 affordable housing units, funded from over $81 million. On an approximate annualized basis this means that IZ has contributed 133 units per year plus $1.8 million. Likewise, the linkage program, if averaged over its lifetime, has contributed to the production of 269 units per year, or over $3.5 million. Totaling approximately 402 affordable units (133+269) per year, this would comprise 77 percent of Boston's current affordable housing objective of 525 units per year or 2,100 units over four years. This is all to say that Boston's IZ and linkage programs have been and continue to be significant producers of affordable housing.

Could the city leverage more affordable units? At what point would the programs hurt development overall, thus worsening the affordable housing problem? It depends on the particular market conditions, proposed development, and willingness of the city to grant density bonuses or development rights. However, whether incentives would be provided or not, the city's job is to use proformas to study the extent to which they can safely require affordability. In strong markets the projects are more likely to pencil-out since market rents are quite high. Additionally, density bonuses and other incentives increase in value, thus increasing the city's resources. In weak markets or especially financially difficult proposals, the onus is on the developer to prove fiscal hardship. Given the subsidies available for many of the low-income units from other sources, the losses to the developers are not necessarily immense. In other words, the burden is less than the difference between the affordable and market rents. Additionally, if structured with incentives, IZ can make development even more profitable.

As for linkages, they can add to economic efficiency by letting developers know up front what the public benefit costs of their projects will be. Additionally, as long as Boston doesn't greatly increase the tax rates on non-residential development, they can stay competitive with other cities in terms of attracting development, while also showing a direct concern for affordable housing. The key for any policy is to structure it aggressively, but with adjustment mechanisms or safety valves that adapt to fluctuating market conditions.

Clark Ziegler, executive director of the Massachusetts Housing Partnership, believes that Boston's IZ program has improved over time. He argues that density bonuses can create proper incentives if done well, but that IZ won't work in every city and that no one every gets the math right the first time.[99] In terms of getting the exactions and incentives mathematically correct, he thinks that indexing is a great idea, but has not been implemented creatively. Suffice it to say that in relation to Boston's usage of exactions and incentives, the economic concerns related to taking advantage of a hot market can be overcome with the proper policy structure. However, this emphasizes the need for appropriate legal and political contexts.

[99] Clark Ziegler, Executive Director of the Massachusetts Housing Partnership. Interview by Ari Goldstein on February 22, 2007.

Legal

Legally, all cities face the same issues to deal with regarding federal Constitutional takings and due process concerns. As described in Chapter 3 through the discussion on the recent *Lingle* decision, the ability of cities to implement exactions vis-à-vis the just compensation clause has expanded. However, the "rational nexus" legal rule must still be considered. What makes Boston unique is that it doesn't answer this legal question by providing density bonuses or other incentives, but rather puts the burden on the developer to prove that a particular project is economically unprofitable given the IZ requirement. If the developer can rise to that burden of proof, the BRA will discuss other options such as off-site production or a cash contribution.

The other main legal issues revolve around the relationship between the city and state. In particular, Boston's legal relationship with the Commonwealth of Massachusetts highlights opportunities for greater grants of autonomy, which would allow the city to both implement new policies and adjust them over time without worrying about state approval. For example, Boston's linkage program ended up having to seek out state authority, but only because of the structure of the state's home rule provisions. In Denver on the other hand, IZ has never been challenged in court, because Colorado's home rule amendment gives cities more discretionary power than Massachusetts gives to Boston. Massachusetts also treats Boston differently than all other cities and towns in Massachusetts, as exemplified in the state's two main zoning statues, the Boston Enabling Act and Chapter 40A, which pertains to all cities except Boston. Given that Chapter 40A has seen broader power added to it than the Boston Act, for policies such as IZ, Barron and Frug conclude that "although Boston's authority to impose an inclusionary zoning requirement may well be defensible, it does not have the definitive kind of authorization available to other Massachusetts cities or other cities across the country."[100] They explain, "Boston's inclusionary zoning policy can be considered as much a condition on zoning approval as the linkage program."[101]

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[100] Ibid.
[101] Barron and Frug, 2006.

Thus, the main legal conclusions are that Boston solves the takings question by putting the burden of proof on the developer, and is constrained in its ability to innovate and adjust over time given the short leash provided by the state. Additionally, as shown in the linkage case, a proactive city can obtain statutory authority after the fact. Hence, a combination of political activism and economic conditions can mitigate issues of legal authority.

Political

Politically, Boston exhibits the characteristics of an "inclusive city," as categorized by Margaret Weir.[102] In "inclusive cities," community groups work cooperatively with government. Just as the community groups rely on local government for resources, so too do the local officials depend on these groups for political support and implementation of policies. In Boston, and other such cities, the local fiscal strains have strengthened this relationship. The housing organizations in Boston that grew out of this history are also sophisticated, well organized, and adept at operating successfully on the political front. Groups like MACDC effectively represent the community development organizations in the Greater Boston area while CHAPA serves as a bridging institution between housing advocates and developers. While linkage came from the top down, neighborhood groups demanded it as a campaign promise and worked hard to increase the fees. Likewise, the city's IZ program evolved with support from the administration, but was catalyzed by the non-profit housing groups who possessed analytical, technical, and political savvy.

In addition to the political dynamics between the myriad stakeholders, Boston also has a history of political leadership that has focused on innovative solutions to affordable housing. The linkage program is the best example. Some like Jim McGlynn believe that Boston's linkage program makes sense economically and is overall a good policy because it makes payments very specific, thus allowing

[102] Weir, 1999. p. 139.

developers to know the costs of doing business.[103] Clark Ziegler is less convinced of the program's economic effectiveness.[104] However, he argues that it makes sense politically, as it explicitly shows the neighborhoods that they benefit from downtown development. He points out that the same argument could be made without linkage, since the funds would flow first to the general tax revenue coffers of the city, but believes that the linkage program has important symbolic value.[105]

The political tool of appointed task forces has also proved useful in Boston. Because there are well-represented parties to argue on behalf of low-income households, neighborhood groups, developers, and other economic development interests of the city, the mayor has successfully used task forces of representatives from each group to work out policy recommendations. A task force recommended the current IZ policy as well as increased linkage fee. See Appendix F for a list of representative task force members.

In summary, Boston's political leaders, at the prodding of well organized coalitions of diverse stakeholders, have adopted aggressive exactions-type land use policies to leverage the city's strong real estate market and promote affordable housing development. Stemming from stable political coalitions, the policies have responded uniquely to economic and legal issues as well as the overall context of the city. Such actions include putting IZ's financial burden of proof on the developers and obtaining explicit linkage authority from the state. However, there are still opportunities for improvement, as will be discussed in Chapter 7.

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[103] Jim McGlynn, General Counsel, Massachusetts House of Representatives. Interview by Ari Goldstein on February 23, 2007.

[104] Clark Ziegler, Executive Director, Massachusetts Housing Partnership. Interview by Ari Goldstein on February 22, 2007.

[105] Clark Ziegler, Executive Director of the Massachusetts Housing Partnership. Interview by Ari Goldstein on February 22, 2007.

CHAPTER 6: NEW YORK, NY

New York City is very large in both land area, 303 square miles, and population, over eight million. New York City has also grown and is expected to continue growing faster than Boston. The city's population is predicted to grow by 1.2 million people over the next 20 years.[106] During the 1990s, New York's foreign-born population increased by nearly 800,000, helping to make the city one of the most racially and ethnically diverse in the U.S. Immigrants from the Caribbean and Latin America account for roughly half the city's foreign-born population. Such inflows have revitalized many of the city's neighborhoods, and, similar to Boston, sustained the city's growth in the 1990s despite large declines in its white population. However, segregation levels in New York remain high, with blacks and Hispanics heavily concentrated in different neighborhoods. The 2000 Census also confirmed that New York's economic profile weakened somewhat over the previous decade. The educational attainment of the city's workers increased, but their median household income decreased. The trend reflects a growing number of workers—especially families with children—earning low-to-moderate incomes, as well as the significant number of adults who are not in the labor force. Black and Hispanic households, in particular, lag whites and Asians in college degree attainment, income, and homeownership. Like Boston, homeownership increased for all groups in the 1990s, but housing costs inordinately burden low-to-moderate income renters in New York City, many of whom are minority families.

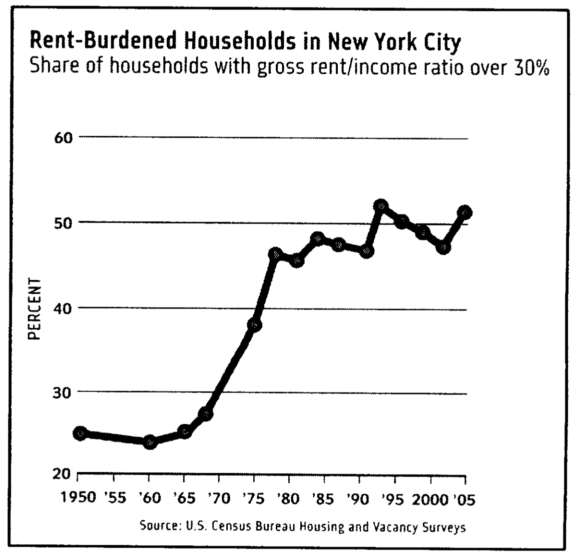
[106] Urbanomics, a consultant to the New York Metropolitan Transportation Council as reported in the New York Times. "Coming Soon, 9 million Stories in the Crowded City." February 19, 2006.

Figure 15. New York City – 2000 Census

New York City	2000
Metro Population	18,323,002
City Pop. as % of Metro	44%
HH Income in City as % of Metro	70%
City Working Pop.	3,192,070
Percent Working in City	91.50%
Total Renters	2,108,538
30%+ of Income on Rent	40.70%
Total Units	3,200,912
Percent Multifamily	60.80%
Unemployment Rate	5.30%

Housing in NYC

As of 2002, nearly half of all New Yorkers paid more than 30 percent of their income on rent and 27 percent of all renter households paid more than 50 percent.[107] On average, a person in New York needs to earn over $18.25 per hour, working 40 hours per week, to afford a two-bedroom unit at New York's fair market rent. This is 3.5 times the current minimum wage of $5.15 per hour.[108] Like Boston, a significant part of the problem is that demand greatly surpasses supply. As Michael Schill wrote in a New York Times OpEd, "between 1990 and 2000, the number of households [in New York City] increased by 205,300. The number of new apartments and homes went up by only 81,000."[109]

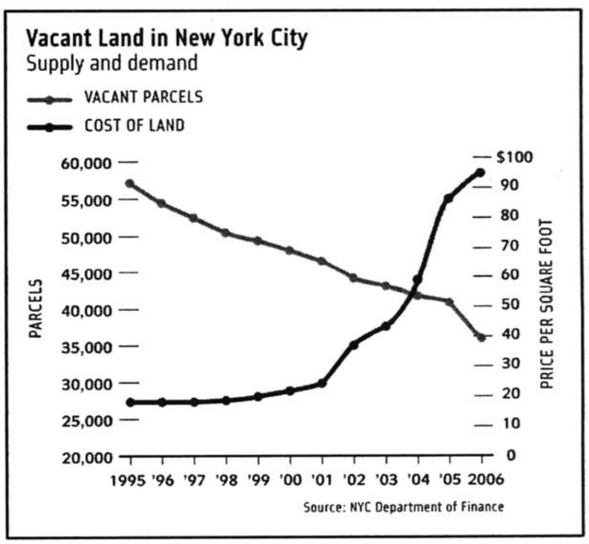


[107] City of New York. "The New Housing Marketplace." December, 2002.
[108] Housing First! "Building for the Future: New York's Affordable Housing Challenge." p. 7.
[109] Schill, Michael. "More Housing on the Map." New York Times. December 18, 2002.

Figure 16. New York City Population and Housing Data Over Time[110]

New York, NY	1990	2000	Change ('90-'00)	2005	Change ('00-'05)
Population	7,322,564	8,008,278	9.36%	8,143,197	1.68%
Median HH Income	$40,069	$38,293	-4.43%	$ 42,000	9.68%
Homeownership Rate	28.70%	30.20%	5.23%	33%	10.26%
Median Gross Rent	$653	$705	7.96%	$ 900	27.66%

While the city has seen substantial increases in housing production in the last few years, the demand still greatly outpaces supply overall and low-income renters have not benefited from the change in production rates. During 2002 to 2005, the housing stock grew almost three times faster than housing demand, with an average annual increase of 14,100 units and an increase in demand of 4,800 units.[111] However, the new units were predominantly high-end condos and while the new construction added rental stock, it shifted them up-market. In fact, the number of units available at rents less than $1,000 fell by over 150,000 between 2002 and 2005 while those renting for $1,400 or more increased by nearly 25 percent.[112] Among low-income unsubsidized renters, the median share of income spent on rent rose to over 50 percent in 2005, from 43 percent in 2002.[113]



According to research by the Furman Center, if production continues at recent rates and demand continues as expected, the difference in overall supply and demand will take some pressure off of the rental housing market over the next few years. However, there is also reason to believe that 2005 represented a near peak of the housing cycle, and that as interest rates rise the housing market will begin to deflate.[114] Vacant city own land has also decreased from 7.5

[110] 2000 U.S. Census; Furman Center. "State of the City 2005." 2005.
[111] Furman Center. "State of the City 2005." 2005.
[112] Ibid, 2.
[113] Ibid.
[114] Ibid, 5.

percent in 2003 to 6.8 percent in 2005. As such, providing affordable housing in the future will be increasingly challenging.

NYC's Economy

Like Boston, the high costs of housing in New York City are also thought to have an adverse effect on New York City's economy. As described in a report by the New York State Comptroller, "In the long term, the high cost of housing may well have negative implications both for job growth and for the quality of the workforce that is essential to attracting firms to New York City."[115] The report goes on to argue that New York City's inadequate supply of affordable housing will limit its prospects for economic growth. National research has shown that housing and other quality-of-life factors are evaluated by firms in deciding areas for business development, particularly in the information, service-oriented economies that are active in New York City. Thus, it should not be a surprise that 89 percent of employers in New York City stated housing costs as a serious deterrent to doing business there.[116]

Legal Context of NYC

As written in the State of New York's Local Government Handbook, "The home rule powers available to New York local governments are among the most far-reaching in the nation, and their extent makes the local government a full partner with the state in the shared responsibility for providing services to the people."[117] Additionally, in terms of zoning, the state planning and zoning enabling statues give municipalities the authority to implement incentive zoning regulations.[118] However, the high degree of autonomy and discretion may be somewhat misleading. While the City of New York has broader police

[115] New York State Office of the Comptroller. "No Room for Growth: Affordable Housing and Economic Development in New York City." October 1999.
[116] Housing First! "Building for the Future." pp. 10-11.
[117] State of New York. "Local Government Handbook."
[118] State of New York. General City Law 81-d; Town Law 261-b; Village Law 7-703.

powers than the City of Boston, the City still depends on obtaining explicit statutory authority for their housing programs. As described in a report from Pace Law School:[119]

> The Municipal Home Rule Law and the Statute of Local Governments are sources of substantive authority for local governments to pass local laws regulating land use and development within their jurisdictions. Although this authority derives from the New York State Constitution, with a mandate that such authority be construed liberally, the courts have often expressed an unduly restrictive view of home rule authority. In contests between State interests and local governments' supersession authority, the State has been Goliath and local governments an ineffective David. Even the Constitutional limitations on the State's ability to repeal or amend the powers provided in the Statute of Local Governments seem to fall away in the face of an artful expression of the State's interest. Furthermore, the requirement that locally elected officials exhibit some omniscience with regard to which provisions of state law they are superseding has a chilling effect on the exercise of home rule authority.

Given the composition of the State Assembly and Senate, the ability of New York City to obtain statutory authority and thus create new effective policies may still be relatively strong. Boston has representatives that comprise 11 percent of the House of Representatives and 15 percent of the Senate. In comparison, New York City has 42 percent of the state's representatives overall.[120] The Democrats also have a strong majority in the Assembly. On the Senate side, Republicans maintain a slight majority, and senators from upstate New York dominate the leadership positions. The Assembly Speaker is from New York City as are many committee chairs. In fact, the chairman of the Assembly's Housing Committee, Vito Lopez, represents a large part of Brooklyn and has been an advocate of affordable housing at the state level, often seeking more affordable housing than the city administration.

<u>Political Environment in NYC</u>

Like Boston, the main stakeholders with regard to affordable housing policy in New York City can be broken down into five categories: residents, housing organizations, developers, local government, and state government as shown in Figure 17.

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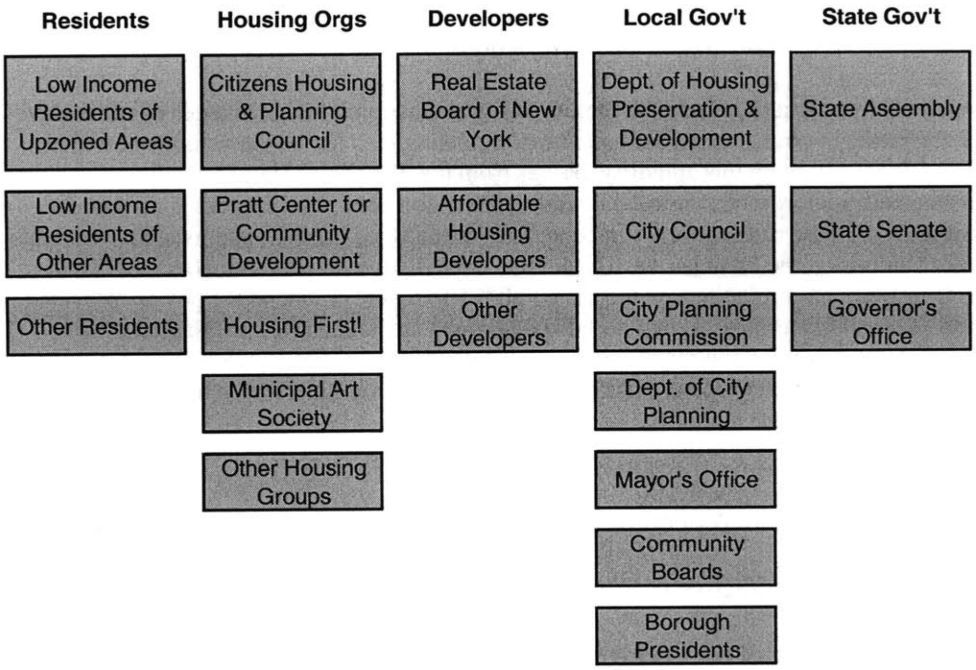
[119] Stinson, Joe. "The Home Rule Authority of New York Municipalities in the Land Use Context." Pace Law School. 1997

[120] Barron and Frug, 2006. Chapter Two.

Figure 17. New York City Housing Policy Stakeholders



New York City, similar to Boston, has a well organized network of housing advocates, many of which played a key role in helping neighborhoods recover from the blight and abandonment of the 1970s and '80s. One of the most important groups in recent policy changes has been the Pratt Center for Community Development. Dating back to 1975, Pratt's mission is to "work for a more just, equitable, and sustainable city for all New Yorkers, by empowering communities to plan for and realize their futures."[121] Run by Executive Director Brad Lander, the group is effective by leveraging professional skills and financial savvy to support neighborhood quality and promote affordable housing. Another prominent group, The Citizens Housing and Planning Council (CHPC), is a non-profit policy research organization with an advisory board that includes former city housing directors, affordable housing advocates, lenders, and developers. They focus on formulating policy recommendations for affordable housing and zoning issues. Housing First! is a comparable group, structured as an alliance of nonprofit organizations, banks, businesses, landlords, and religious leaders who are committed to major investment

[121] Pratt Center for Community Development. http://www.prattcenter.net/about.php. Last visited April 13, 2007.

in New York City's infrastructure. They focus on elevating affordable housing issues to the top of the civic agenda.

A similar group at the state level is the New York State Association for Affordable Housing (NYSAFA), a trade association for private sector housing-related organizations throughout the state. They lobby specific pieces of local and state legislation and include developers, general contractors, attorneys, lenders, and other professionals. Besides their representation through CHPC, Housing First!, and NYSAFA, the New York City development community, one of the most important players in local policy decision-making, lobbies through the Real Estate Board of New York. The city also has a number of other community development groups such as Phipps Houses Group, ACORN Housing Corporation, Abyssinian Development Corporation, Fifth Avenue Committee, Harlem Congregations for Community Improvement, and many other small CDCs. Thus, the housing development and advocacy organizations are each well organized, but there are also bridging institutions and coalitions that bring both sides and multiple interests together.

The local government in New York City is controlled by the City Council and Mayor. The City Council is comprised of 51 members from 51 different Council Districts throughout the five boroughs. The Council monitors the operation and performance of city agencies, makes land use decisions and has responsibility for approving the city's budget. However, like Boston, New York City can be classified as having a "strong-mayor" government. The mayor can serve up to two four-year terms and has final authority on land use and other local laws. The mayor also appoints, among many other positions, the heads of the Department of Housing Preservation and Development (HPD), Department of City Planning (DCP), City Planning Commission (CPC), and the Economic Development Corporation (EDC). Unlike Boston, these agencies are directly controlled by the mayor's office and are divided by tasks.[122] As noted earlier, these four bodies are concentrated in Boston in the Boston Redevelopment Authority, which is

[122] New York City's charter provides that, of the five members of the zoning board that hears petitions for zoning variances, one must be a registered architect, one a professional engineer, and one a planner. In other words, the city sets forth qualifications for appointees that give much greater weight to backgrounds in planning and design than do the requirements imposed on Boston by state law.

partly controlled by state-level appointments. Though a strong-mayor city, New York City has a robust system of local political officials beyond the City Council, including borough presidents, and community boards. While the mayor can override most decisions of these other elected and appointed officials, they play a role in the city's land use review procedure. This process, known as the Uniform Land Use Review Procedure (ULURP) is shown in Appendix E.

In November 2001, Michael Bloomberg won New York City's mayoral seat in an upset. In his first address to the New York City Housing Conference he outlined his plans for housing, which included the rezoning of several neighborhoods, coordinated disposition of city-owned land, and streamlined approvals. Mayor Bloomberg also explicitly stated that to him, creating affordable housing was a matter of both social justice and economic development. His housing commissioner, Shaun Donovan, argues that, "For the City to succeed in the new economy, when we are no longer challenged by abandonment, but by affordability, we risk losing New York's preeminence in creating jobs." He goes on to emphasize the importance of affordable housing in allowing for people of different income levels to contribute to the city, promote creativity, and diversify the economy.

Observers point out that the economic development component of affordable housing creation contributed significantly to the Bloomberg administration's two robust housing plans. Increased housing production, with a focus on affordable units, can be seen as a means of providing housing for those in need as well as broadening the city's competitive advantage and being less dependent on Wall Street for municipal economic success. As Commissioner Donovan stated, "We must create healthy diverse, mixed income neighborhoods for the city to succeed."[123] To this end, the first New Housing Marketplace Plan, released in December of 2002, aimed to produce or preserve 65,000 units in 5 years. After reaching these objectives, the administration released a second plan, New Housing Marketplace 2004-2013, which aims to build or preserve 165,000 units in 10 years.

[123] Shaun Donovan. Speech at The Furman Center. "Affordable for Whom? Meeting Diverse Housing Needs in High-Cost Cities." April 25, 2006.

Specifically, the 2004-2013 plan envisions the construction and preservation of 116,874 rental and 48,158 homeownership units. The plan promises to provide 73,335 new rental units and to preserve another 43,539 existing rental units. Approximately two-thirds of the rental units provided in the plan will be targeted to households earning $50,240 or less.[124] To achieve these targets the plan lays out four strategies: "(1) finding new land for affordable housing, (2) creating incentives to develop housing for new populations, (3) harnessing the private market to create affordable housing, and (4) preserving government-assisted affordable housing." Of main interest here are strategies two and three. As part of "creating incentives," the city launched a housing trust fund, as will be described in the linkage section below. To harness the private market the city has realigned their property tax incentive program, known as 421-a, and rolled-out a variety of inclusionary zoning programs in medium density districts in Manhattan as well as the outer boroughs, often coinciding with large-scale rezonings.

As Commissioner Donovan describes it, New York City has a shortage of housing and needs to add a great deal of additional units to keep up with demand. If the overall problem of creating more units cannot be addressed, the housing affordability problem will get even worse. Thus, the challenge is to promote both overall development and affordable housing specifically. However, this must be done by "getting the calibration correct and not harming the goose that lays the golden egg."[125]

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[124] City of New York. "New Housing Marketplace Plan 2004-2013." 2004.

[125] Shaun Donovan. Speech at The Furman Center. "Affordable for Whom? Meeting Diverse Housing Needs in High-Cost Cities." April 25, 2006.

NEW YORK CITY POLICIES

As described in the New Housing Marketplace plan, New York City aims to accomplish its affordable housing goals by using a variety of incentives and exactions, with a particular emphasis on expanding and modifying incentives that affect private affordable housing development on private land. Following the structure of the Boston case study, the three policies that will be considered are linkages, inclusionary zoning, and real estate tax abatements. For each policy, the origin, current or proposed policy manifestation, and empirical or projected results are discussed.

Linkages in NYC

New York City does not have a linkage program on commercial development like Boston. This can be explained in part by the different historic degrees of abandonment in the two cities. It was also likely impacted by the different political history of the two cities and the fact that the Boston program emerged out of a very specific development project coinciding with a unique political position. As far as Brad Lander of the Pratt Center sees it, linkage is more politically challenging in New York City than Boston. However, his comments may be somewhat self-fulfilling since as a powerful advocate, he would rather leverage commercial development for good jobs and local hiring than affordable housing.[126] Lander is also unclear if linkage is better than a direct tax, since he sees them as effectively the same thing. Similarly, Holly Leicht, Deputy Commissioner of HPD does not see linkage as viable in New York City.[127] She points out that the residential market is much stronger in New York City than the commercial market, and thus that leveraging funds from commercial development does not make sense. She also references deals done by the New York City Economic Development Corporation, where residential units cross-subsidized office space. Besides market reasons, Leicht also believes that commercial linkage programs would not be politically viable in New York, since the housing advocacy

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[126] Brad Lander, Executive Director, Pratt Center for Community Development. Interview by Ari Goldstein on February 23, 2007.

[127] Holly Leicht, Deputy Commissioner, NYC HPD. Interview by Ari Goldstein on February 15, 2007.

groups have not focused on it and there is an aversion in the political administration to policies that can be seen as taxes on development.

However, New York City does have, like Boston, an official housing trust fund that at one time was known as a linkage. New York City's fund is financed by revenue from the Battery Park City Authority. The city has a variety of unique "authorities," most of which are quasi-public organizations controlled jointly by the City and State. Many of these authorities, or "Public Benefit Corporations," control, lease, and operate large amounts of land. For example, the New York-New Jersey Port Authority owns the World Trade Center Site, but leases it to developer Larry Silverstein. The Battery Park City Authority was created in the 1980s and is charged with developing and maintaining 92-acres of landfill located at the southern tip of lower Manhattan across from the former World Trade Center sites. The Authority leases plots of land to private developers and the developers in turn build buildings and pay both ground rent and Payments in Lieu of Taxes (PILOT) to the Authority. Excess revenues collected by the authority are held in a special reserve.

For many years these funds were not used for affordable housing, despite a specific housing requirement in the original 1969 master plan. In a 1987 New York Times article, the director for the city's Bureau of Housing Redevelopment Operations said of the Battery Park deal, "This looks like the most successful and largest scale linkage project in the country, where local government takes advantage of the boom in the central business district real estate and spins it off to benefit low-income housing."[128] Nevertheless, the authority often directed funds away from housing. As Mayor Ed Koch wrote in 2001, "The City should not use, as it is doing, the escalating Battery Park City Authority surplus funds for general purposes. Those fund were earmarked in an agreement entered into by Governor Mario Cuomo and me to provide financing for affordable housing."[129]

Recently, in 2006, Mayor Bloomberg, Governor Pataki, and New York City Comptroller William Thompson announced the final approval of the New York City Housing Trust Fund (NYCHTF), funded

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[128] Quint, Michael. "Battery Park Pays More Than Its Way." New York Times. October 25, 1987.
[129] Housing First! http://www.housingfirst.net/bpc_home.html. Last accessed April 1, 2007.

by $130 million in Battery Park City Authority revenues. The NYCHTF will target households earning below 30 percent of AMI as well as those earning between 60 and 80 percent of AMI. The City expects that 2,000 units will be developed through this funding.[130]

While this strategy of active public land ownership and development has been used in New York City's past, it represents a key strategy for New York City, Boston, and other cities moving forward. However, since the focus of this thesis is on the regulation of private land, this policy tool will not be fully explored.

[130] City of New York. Press Release. "Mayor Michael Bloomberg, Governor George Pataki and Comptroller William Thompson Announce Final Approval of $130 Million Fund for Affordable Housing." July 31, 2006.

Inclusionary Zoning in NYC

Policy Origin

New York City's IZ program can be traced back to 1983, when a variety of organizations, following the *Mount Laurel* cases of 1975 and 1983, joined forces to propose an IZ policy to the City Council. These myriad groups, Pratt Institute's Center for Community and Environmental Development, the Center for Metropolitan Action at Queens College, CUNY Law School, and the American Planning Association, held a symposium on urban IZ that brought together land use planning experts from around the country. The proposal sought to zone "equally for the rich and poor," and argued that, "City policy should be aimed toward redistributing some of the development pressure to the outer boroughs where redevelopment is desperately needed."[131] More specifically, it called for a 10 percent affordable housing set-aside for all new or substantially rehabilitated developments, as well as for new commercial development (i.e. IZ and linkage). Developers could opt to build the units off-site or contribute to a city-run housing trust fund.

In 1987, a weakened version of the proposal was adopted in the New York City Zoning Resolution. It ignored the linkage element and focused on residential development in a certain area of Manhattan. It states that, "in the district indicated (R10), an Inclusionary Housing Program is established to preserve and to promote a mixture of low- to upper-income housing within neighborhoods experiencing a shift from mixed to upper-income housing and thus to promote the general welfare."[132] The program was voluntary and gave a 20 percent density bonus incentive if a developer agreed to provide the low-income housing.[133] However, the R10 district was not very large and did not contain many vacant parcels. As such, from 1987 to 2004 the program produced only 603 units.[134]

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[131] Pratt Institute Center for Community and Environmental Development. "Inclusionary Zoning and Housing Trust Fund: A Proposal For Equitable Development in New York City." December 1983.
[132] New York City Zoning Resolution, art. 2, ch. 3, sec. 23-90, adopted May 21, 1987.
[133] Ibid.
[134] Salama, Jerry et all, 2005.

In 2005, as the City proposed a variety of neighborhood rezonings, community-based activism put IZ back on the political agenda. The ultimate policy changes stemmed from a housing crisis climate and through community groups actively seeking to mitigate rapid gentrification coinciding with the City's desires to rezone particular neighborhoods. As New York City Councilor David Yassky argued in 2002, "Mayor [Bloomberg] proposes rezoning large areas of unused manufacturing land for residential use but has not put forward plans to ensure that New Yorkers of modest means can afford to live in some of the new developments created from these massive, city-sponsored rezoning efforts."[135] Yassky, who became a voice of the advocate community, argued that rezoning from manufacturing to residential gives a windfall to landowners, which allows for flexibility in getting developers to produce 20 percent of their units as affordable.

Current/Proposed Policy

What the City finally adopted, after a process of community activism and dialogues with developers, was a voluntary program to be implemented through rezonings in medium and high-density residential districts. As the City describes, "The program fosters economic integration within redeveloping neighborhoods by leveraging private market activity to generate affordable housing. By providing a floor area bonus for the construction or preservation of affordable housing, inclusionary zoning harnesses the strength of the city's

New York's New Inclusionary Development Policy	
Type of Law	ordinance: voluntary
Threshold	geographic areas
Set-Aside Requirement	20% of total proposed units at 80% AMI; or 10% at 80% AMI and 15% at 125% AMI.
Income Target	80% AMI (below $66,000) and 120% AMI (below $99,000)
Terms of Affordability	life of development
Incentives	33% density bonus
Cash-out fee	none
Off-Site Construction	same requirements, or preservation

[135] Yassky, David. New York City Councilor. "Affordable Housing Zoning Bonus." 2002.

housing market to create a mix of units for low- and moderate-income families along with market-rate apartments."[136]

As areas in Manhattan, Brooklyn, and Queens are being rezoned, the policy is being implemented by HPD and DCP on a neighborhood-by-neighborhood basis. The program is currently in affect, with area specific modifications, in Hudson Yards and West Chelsea in Manhattan, South Park Slope, Williamsburg, and the Greenpoint-Williamsburg's waterfront and upland areas in Brooklyn, and Maspeth/Woodside in Queens. The city's original Inclusionary Housing bonus also continues to be available in R10 districts in Manhattan.

The program allows developers to use a floor area bonus if 20 percent of their residential floor area is dedicated to permanently affordable housing. Density bonuses are combined with other affordable housing finance tools such as City, State, and federal subsidy programs as well as 421-a tax benefits that allow for greater percentages of required affordable housing. In most of the neighborhoods, the program gives a 33 percent floor area bonus to sites providing 20 percent affordable housing, either on-site or off-site, sometimes with concomitant height bonus allowances.[137] The units must be affordable to households at or below 80 percent of AMI and must remain affordable for the life of the development receiving the bonus. The low-income units can be new units on the same site or preserved units in a separate building off-site. Off-site units must be located within the same community district or within a half-mile of the site receiving the bonus. In the case of the Greenpoint-Williamsburg program, the policy gives greater incentives to the upland area, since the waterfront properties will be able to generate higher market-rate rents.

Brad Lander of the Pratt Center was heavily involved in the recent IZ policy changes. He advocated at the grassroots level, but also spoke the language of development risk and return, which enabled him to bridge interests and participate in policy formation.[138] He argues that it has only been in

[136] City of New York, Dept. of City Planning. http://www.nyc.gov/html/dcp/html/zone/zh_inclu_housing.shtml. Last accessed on April 1, 2007.
[137] City of New York. "Greenpoint-Williamsburg Inclusionary Housing Program." November 2005.
[138] Holly Leicht, Deputy Commissioner, NYC HPD. Interview by Ari Goldstein on February 15, 2007.

the last few years that the city has been at the level where they could leverage the hot market. He is a large proponent of IZ, and tax abatement reform as will be discussed below, but believes that it is important to evaluate the success of the programs over time. He notes that New York City's old IZ program produced too few units and was too different from the current program to be of any use in considering future success. As for the recent policy, he points out that it has not been in affect for long enough to produce any useful data on when and what kind of units it will produce. Nevertheless, he is confident that the incentives in areas like Hudson Yards and Greenpoint-Williamsburg are significant enough where developers will choose to build affordable housing.[139] While he is in favor of mandatory universal IZ theoretically, he realizes that it is politically untenable unless implemented neighborhood by neighborhood, through a mapped system.

Results

As established in the New Housing Marketplace plan, New York City's new IZ program is expected to create 6,000 units of housing in the recently rezoned neighborhoods. HPD and DCP will continue to analyze new areas for IZ adoption. As Lander points out, implementing IZ in new areas or modifying existing policies depends on a full public approval process, codified through New York's Uniform Land Use Review Procedure (ULURP). The City is strategically rezoning most of New York to new contextual zoning, and is typically upzoning and adopting IZ in the process. According to Lander, some have advocated for HPD to have greater administrative power over the IZ program, thus making it less dependent on the ULURP process, however the City Council will not give up their power of discretion and advocates, though trusting of the agency now, are not confident that it will be as agreeable under other administrations.

[139] Brad Lander, Executive Director, Pratt Center for Community Development. Interview by Ari Goldstein on February 23, 2007.

Real Estate Tax Abatements in NYC

Policy Origin

New York City's property tax incentive programs for residential development were put in place in the 1970s, at a time of declining property values, abandonment, and a dearth of development activity in even the most desirable parts of Manhattan. In particular, the 421-a program, referring to the relevant section of the New York State Real Property Tax Law, began in the 1970s to spur housing development throughout New York City. The program provides a construction period exemption for up to 3 years as well as up to a 25-year (21 years full, 4 years phase out) post-construction exemption from the increase in real estate taxes resulting from the work.[140] In the 1980s, when the real estate market in Manhattan revived, the program was changed to require central Manhattan developers to build lower-cost units if they wanted the exemption. However, even with the implementation of the exclusion zone, many people realized that the program could easily end up subsidizing luxury housing development if market conditions changed.

Within the last five years, the 421-a program came under much criticism for its inefficiency and regressive structure. While the program has subsidized over 100,000 housing units since its inception only about eight percent of the units are affordable to low or moderate-income families.[141] The program has costs the city more as the city's real estate market has strengthened. From 2002 to 2005, the cost increased 150 percent, from $130 million to $225 million.[142] In 2006 alone, the program cost the city $320 million in foregone revenue.[143] As such, taxpayers have subsidized luxury market-rate development in expensive neighborhoods, development that would have likely been built anyway.

[140] City of New York, Dept. of Housing Preservation and Development. http://home2.nyc.gov/html/hpd/html/developers/421a.shtml. Last accessed on April 20, 2007.
[141] Pratt Center for Community Development. "Reforming New York City's 421-a Property Tax Exemption Program." 2006.
[142] Ibid.
[143] Ibid.

Current/Proposed Policy

The most recent changes to the program came from a compromise between Mayor Bloomberg and the New York City Council in December of 2006.[144] All relevant parties had acknowledged over the years the need to modify the program and in 2005, Bloomberg created a special taskforce to draft recommended changes. The taskforce was lead by HPD and included members of the real estate, affordable housing, advocacy, and non-profit communities. As stated by Commissioner Donovan, the goal was to "reposition the 421-a program to reflect the current real estate development environment by continuing to maintain incentives for certain areas and housing types in need of continued stimulus, while leveraging greater resources for the production of affordable housing."[145] However, Donovan was also quick to point out that, "To do something that would actually hurt the production of affordable housing would be, to us, the greatest mistake that would come out of this process."[146]

The taskforce included large real estate developers, representatives from the Real Estate Board of New York, and community advocates like Brad Lander of the Pratt Center.[147] In addition to being a member of the 421-a Taskforce, Lander published a report that exposed the tax abatement's many flaws. Unlike IZ, as discussed above, New York's 421-a program had been around long enough to produce significant data on its costs and benefits. Pratt's position on the 421-a reform, as described in the report, was that there should be a sliding scale whereby any developer anywhere in the city should be able to build affordable housing and get an abatement. However, the citywide argument didn't get political traction, according to Lander.

Lander also points out that in addition to the many rational arguments in favor of requiring on-site affordable housing (either for the 421-a abatement or IZ), there are also some logical arguments for off-site. As Lander asks, "If a developer can preserve existing, unprotected housing in a neighborhood facing

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[144] On December 28, 2006, Mayor Bloomberg signed Local Law No. 58 of 2006. The legislation will become effective one year later, on December 28, 2007, but is due for statutory authority renewal from the state legislature.
[145] Donovan, Shaun. City of New York. "Recommendations of the 421-a Task Force." October 2006.
[146] Shaun Donovan quote. Scott, Janny. "Council Considers 3 Bills on Developers' Tax Breaks." New York Times. December 15, 2006.
[147] Holly Leicht, Deputy Commissioner, NYC HPD. Interview by Ari Goldstein on February 15, 2007.

changes, rather than building fewer new affordable units in the tower, shouldn't that be an option?"[148] Likewise, when development interest is concentrated downtown, off-site allowances can enable existing neighborhoods to benefit, similar to linkage.

Overall, Lander believes that the new IZ and 421-a reforms are very strong efforts and would like to see them implemented in more places, as they are upzoned. However, he still thinks that they could be strengthened and could be done on a mandatory or voluntary basis, or through a sliding scale. While leveraging hot real estate markets typically depends on building more, Lander points out that this needs to be viewed in context. Some of the members of the affordable housing coalition for which Lander often speaks, believe that the priority should be on worrying about the community first by working on traffic, infrastructure, employment, and school issues before looking at growth. They fear that their neighborhoods are getting overdeveloped, with concern for economic development and affordable housing trumping other existing, local issues.

The recent changes expand the 421-a exclusion zone, the area where developers are required to make 20 percent of the housing affordable in order to qualify for the tax benefit. In addition to the current neighborhoods of midtown Manhattan and small parts of Brooklyn, the area will include most of Harlem, lower Manhattan, DUMBO, Brooklyn Heights, downtown Brooklyn, Carroll Gardens, Cobble Hill, Boerum Hill, Park Slope, Williamsburg, Greenpoint, and parts of other neighborhoods where prices are high.[149] See Appendix D for a map of the new exclusion zone. The new program also imposes a luxury cap that only allows tax benefits for the first $650,000 in assessed property value. Citywide, the new requirements mandate that in order to get the full 25 years of benefits, the development must provide affordable housing.

In terms of changing the 421-a program over time, Lander argued in the task force meetings for a policy based on price not geography, as a way of getting natural policy adjustment over time. His

[148] Brad Lander, Executive Director, Pratt Center for Community Development. Interview by Ari Goldstein on February 23, 2007.
[149] Donovan, Shaun. "About 421-A: Extreme Changes Will Slow Building, Progress." City Limits Weekly. December 18, 2006.

thinking was that you would have a set scale of a certain percent of the units affordable at a set level, or else you would have to pay taxes. This wouldn't require adjusting the boundaries and would be somewhat self-regulating.

Instead, to evaluate where which requirements should be in effect, a special commission was created to review the lines of the exclusion zone very two years.[150] Deemed the "Boundary Review Commission," it will review the "Geographic Exclusion Zone" every two years and will be composed of members appointed by the Mayor and City Council. The goal is to ensure that affordable housing is required only in neighborhoods where the market can support it, without threatening the development of middle-income housing in less thriving local markets.

However, as Lander points out, this becomes a political fight, at least as much as an economic index issue. For example, there were two areas, Astoria and Long Island City, that should have been included in the recent exclusion zone changes, but were left out because the city councilors were well connected to developers and opted out. The process of choosing the exclusion zone for the recent 421-a policy change was for the Taskforce to start with 32 neighborhoods recommended by HPD. Twenty five of these had high enough sales prices, but the task force introduced other factors besides price, such as density, as filter criteria, even though as Lander claims, "density has nothing to do with it since FAR and 421-a development don't correlate." Nevertheless, this filter of needing a FAR of six or higher, led to seven recommended areas. The other eighteen neighborhoods were still advocated for by some members of the Taskforce. The speaker of the City Council then took the list and called individual members to ask if they wanted to be included in the new exclusion zone. The members from Astoria and Long Island City opted out, but not for any economic rationale. While this process wasn't especially transparent,

[150] As described by the City, "A Boundary Review Commission with members appointed by the Mayor and Council will reassess the GEA every two years to determine whether the boundaries should be revised. The Commission will issue a biennial report to the Council and the Mayor with recommendations for changes to the GEA or an explanation why no recommendations are being made. The first such report must be made by December 1, 2008." http://home2.nyc.gov/html/hpd/downloads/pdf/421-a-legislation-overview-faq.pdf. Last accessed on April 20, 2007.

future two-year reviews may be more data driven since the process will be legislated rather than ad-hoc.[151]

Results

According to Commissioner Donovan, "This [421-a change] is the single most important element of the largest affordable housing plan in the nation's history," referring to the mayor's housing plan. "No other single change that we will make, or new policy, will have as broad an impact."[152] He estimates that the changes will result in a $400 million trust fund that will produce 7,200 affordable units over 10 years as well as 6,600 units from new tax revenue allowed for by changes in the plan, and lastly, another 6,000 units to be created on the basis of the improved incentives.[153] Thus in total, the tax exemption program is expected to generate 19,800 affordable units within 10 years.[154]

The legal issues surrounding 421-a complicate matters. Under New York City's rules, after approval by the Mayor and City Council, the new 421-a law will take one year before going into effect. However, the initial state enabling legislation for the tax abatement is also expiring and up for renewal by the State Legislature. As such, Albany could exert tremendous influence by modifying the terms of the authorization extension, rather than just granting an extension with discretion to the city on implementation details. In fact, Vito Lopez, the chairman of the State Assembly's Housing Committee, has expressed that he wants the program to require greater amounts of affordability in more neighborhoods.[155]

[151] Brad Lander, Executive Director, Pratt Center for Community Development. Interview by Ari Goldstein on February 23, 2007.
[152] Shaun Donovan quote. Scott, Janny. "In Overhaul, City Seeks to Expand Lower-Cost Units." New York Times. December 21, 2006.
[153] Donovan, Shaun. City of New York. "Recommendations of the 421-a Task Force." October 2006.
[154] Ibid.
[155] Holly Leicht, Deputy Commissioner, NYC HPD. Interview by Ari Goldstein on February 15, 2007.

NEW YORK CITY CONCLUSIONS

New York City has used mostly incentives to promote its affordable housing agenda and leverage its hot real estate market. The lack of exactions stem in part from the city's unique history of abandonment which stands in stark contrast to its recent economic renaissance as well as the conservative nature of some of the city's recent mayors relative to other cities such as Boston and San Francisco. Given the focus on incentives, the main economic challenge is to get the math right so as to efficiently incent affordable housing development in unique sub-markets and at different times. Though using incentives, the city still faces limited legal authority from the state. Additionally, similar to Boston, the city's recent policy initiatives and adjustments have stemmed from well-organized coalitions of diverse stakeholders, along with a receptive mayor and proactive municipal officials.

Economic

Like Boston, New York City has used creative housing and land use policies to promote affordable housing development and leverage the city's strong real estate market. However, in comparison to Boston, New York City's policies are much more incentive rather than exaction-oriented. There is no explicit linkage on private land, though the city has creatively leveraged city-owned land through the Battery Park agreements. The IZ policy is voluntary and in only a few neighborhoods. Likewise, the 421-a program is a pure incentive through forgone tax revenue that exists only in certain areas and has only recently begun to adopt appropriate conditions. The city's history of abandonment pushed municipal policy towards incentives, which are now being adopted with added conditions in response to the very different market conditions. It is projected that the 421-a program's recent changes will greatly enhance affordable housing development throughout the city. Likewise, as the city undertakes upzonings and rezonings it is implementing IZ programs tailored to the specific neighborhood and market conditions. Thus, although incentive-based, New York City's programs, like Boston's, have become more robust over time.

While exactions risk hurting the market by asking for too much, incentives risk giving away too much without getting affordable units in return. Unfortunately, neither the new IZ policy nor tax abatement system has been in affect for enough time to produce any substantial data on unit production or costs to the city. However, given the city's projections for the two programs, the numbers of affordable units they are expected to generate are substantial in absolute numbers. In total, IZ is expected to generate 6,000 units over ten years. The 421-a changes are expected to generate 19,800 units over ten years, from the special trust fund, on-site construction, and additional tax revenue collection combined. Averaging approximately 2,580 units per year (600+1,980), these two policies will accommodate roughly 35 percent of the city's new rental housing development goals.[156] However, even if the city meets its projections, this represents a smaller share of the overall affordable housing need than Boston's exactions programs.

The main reason given by policy-makers for not implementing a mandatory program in New York City in the past was a fear of thwarting the market overall by imposing undue financial burdens. However, given Boston's relatively successful use of mandatory IZ without significant density bonuses, in comparison to New York City's voluntary program with 33 percent density bonuses in only specific geographic areas, it leads one to think that the city's implementation strategy may be influenced by more than macro-economic considerations. Granted, New York City's program calls for 20 percent of the units to be affordable to households at approximately 80 percent of AMI whereas Boston's calls for 15 percent of the units at around 54 percent of AMI. Nevertheless, a mandatory IZ program in New York City could surely generate more affordable units.

Policy-makers feared in 2005 that a mandatory IZ program would lead to less overall production of housing units if the market turned downward. However, they did little to capture the additional upside potential of further market growth. Even as the nationwide property market began to cool at the beginning of 2007, real estate in New York City showed strong signs of vibrancy. Estimated market

[156] City of New York. "New Housing Marketplace 2004-2013." 2004.

values jumped by 19 percent in 2006, double the increase from the previous year.[157] The steepest jumps were in the outer boroughs. Both the Bronx and Brooklyn increased by 27.6 percent.[158] Thus, while the incentive structure mitigated the risk of thwarting the market, the city also appears to have lost out on the opportunity to leverage the IZ program to the maximum extent possible. The same set of recent market data indicate that commercial property rates had also continued to boom. Commercial property values were up throughout Manhattan in 2006 with the hotel industry topping the list at an increase of 39.8 percent from the year before.[159] While the local tax rate on hotels and commercial property in New York City is already very high and the city uses these tax revenues for affordable housing, such strength indicates that New York City could likely leverage the boom through a linkage if it was prioritized by housing advocates and city officials. Instead the advocates have only recently begun to talk about linkages, but in relation to job training and hiring practices more than affordable housing.

One question raised by the market timing is about whether the policies are being implemented at the right times to maximize their positive effects? One problem that developers sight with the recent proposed changes to 421-a, is that it is being changed at the wrong time. In particular, developers argue that the city is putting relatively more constraints on the market, by lessening the incentives, at the same time that the market is turning downwards.[160] In general, public and private actors agree that government tends to act on changing policies tied to market performance after political demand is created for the changes, which by nature occurs after the market peaks.[161] As Deputy Commissioner Leicht points out in relation to 421-a, "The legislative process couldn't keep up with the marketplace."[162] By the time the new 421-a policy comes into effect, the market will be in a different state. Along with "natural" market shifts, that could be headed downward, the change of government policy may also flood the market as developers try to build before the rules go into effect. One way to deal with this dilemma is to use

[157] Chan, Sewell. "Property Values in New York Show Vibrancy." New York Times. January 13, 2007.
[158] Ibid.
[159] Ibid.
[160] Alan Bell, Principal, The Hudson Companies. Interview by Ari Goldstein on April 3, 2007.
[161] Interviews with Alan Bell and Holly Leicht. 2007.
[162] Holly Leicht, Deputy Commissioner, NYC HPD. Interview by Ari Goldstein on February 15, 2007.

dynamic indicators that adjust policy requirements to market forces more predictably and incrementally. This will be further discussed in Chapter 7.

Legal

As raised in the Boston case study, there are two main categories of legal issues, those pertaining to the federal Constitution, and those dealing with the relationship between the city and state. Because New York City's policies are incentives, they avoid the takings questions and tests established by Nolan and Dollan. While this could allow for greater flexibility in policy adjustment, the fact that the city still depends on the state for explicit authorization and renewal of authority for their incentive programs puts them in a very similar situation as Boston. On the one hand if New York City had legal fears about a mandatory IZ program, looking to Boston could ameliorate them. On the other hand, both cities could benefit from greater grants of autonomy from their states to implement and adjust policies over time.

Political

Politically, New York City and Boston are quite similar. However there are still some key differences and opportunities for learning. As stated by HPD Commissioner Donovan, "New York City has much to learn from Boston," since Boston has faced the challenges of affordability in times of urban wealth for longer than New York.[163] Overall, New York City's elected, and thus appointed leadership, has been more risk averse than Boston's. However, both cities have active, well-organized stakeholders and sophisticated policy-makers. As Paul Grogan pointed out in the same dialogue with Donovan, the city agencies and departments in cities like Boston, New York, and San Francisco are all sophisticated, with professional policy entrepreneurs who can learn from each other.[164]

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[163] Remarks by Shaun Donovan, Commissioner of HPD. "Affordable for Whom? Meeting Diverse Housing Needs in High-Cost Cities." Conference sponsored by the Furman Center for Real Estate and Urban Policy. April 25, 2006.

[164] Remarks by Paul Grogan, Executive Director of The Boston Foundation. "Affordable for Whom? Meeting Diverse Housing Needs in High-Cost Cities." Conference sponsored by the Furman Center for Real Estate and Urban Policy. April 25, 2006.

As noted earlier, effective policy implementation depends on multi-stakeholder initiatives from the bottom-up or proactive action from the top-down. However, the relationships are usually more intertwined such that policies are informed and aided by iterative organizing and activism from both different stakeholder groups such as housing advocates and developers, as well as support from elected officials. In this regard, New York City, like Boston, falls in the category of an "inclusive city," whereby local officials depend on neighborhood groups and visa-versa. In particular, many of the CDCs that grew out of the city's history of abandonment and financial struggle have adjusted their energies to the new market realities. Groups like the Pratt Center, Housing First!, and CHPC have served as effective bridging institutions between neighborhood groups, housing advocates, and the for-profit development community. The Pratt Center's two reports on IZ and 421-a called for many of the policy changes that were eventually implemented and as Deputy Commissioner Leicht points out, "sophisticated advocates like Brad Lander of Pratt have both the advocacy and finance expertise, which has made them effective."[165]

However, Leicht is also quick to point out that without a receptive ear at the mayoral and agency levels there is little room for new policy creation.[166] Like Sheila Dillon in Boston, Leicht is a major player in local housing policy and came from the non-profit advocacy community. From her time at the Municipal Art Society, Leicht believes that effective policy implementation really depends on a proactive, or at least receptive, mayor. She argues that during the Guilliani administration there was little activity on the affordable housing front, despite attempts at raising the issue by the City Council and advocates. As Leicht explains, the City Council does not have enough power on its own to get anything actually passed and litigation by advocates is not well suited to create effective policy.[167] Nevertheless, despite Mayor Bloomberg's activism on the housing front, Leicht points out that New York City has an insistence on keeping IZ voluntary, largely for political and ideological reasons that favor incentives.

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[165] Holly Leicht, Deputy Commissioner, NYC HPD. Interview by Ari Goldstein on February 15, 2007.
[166] Ibid.
[167] Ibid.

Thus, the political environment in New York has had well-organized advocates and bridging groups as well as recent political leadership interested in affordable housing development. While this leadership sees the connection between housing, moral imperatives and economic development, there is still political-ideological resistance to exactions policies. Nevertheless, the city decision-makers seem to be actively listening for better policies and have effectively used stakeholder task forces to engage in collaborative problem solving. The 421-a review Taskforce, with membership ranging from Brad Lander of Pratt to directors of the Greater Real Estate Board of New York, exemplifies this system of decision-making that seeks to create sustainable agreements that promote both public and private interests.

CHAPTER 7: SYNTHESIS & IMPLICATIONS

Boston and New York

What Boson and New York City demonstrate is that high cost cities that face increasingly unaffordable housing can leverage the market through incentives and exactions to allow for a broader cross section of households to benefit from the city's economic strength. Inclusionary zoning policies can promote both residential development in general and affordable housing in particular. Linkages can help neighborhoods share in the demand for downtown office, hotel, and commercial development. And, tax abatements can have widespread impacts that indirectly subsidize development overall with extra incentives for the production of affordable housing. These three tools allow cities to mitigate and partially reverse the normal dynamic of hot markets diminishing housing affordability.

Boston and New York City also share active local governments that have uniquely responded to changing market conditions. Often catalyzed by organized coalitions of advocates and developers, these local governments analyzed conditions and defined approaches to address challenges and opportunities of leveraging the market. Local government took either a receptive or leadership approach, but policy impetus and follow-through almost always depended on myriad actors across the community development system. In summary, as demonstrated by the recent history of these two cities, effective policy implementation depends on strong market values for residential and commercial real estate, specific legal authority or a grant of broader municipal autonomy from the state, and active political coalitions of affordable housing advocates and developers with a receptive political administration.

While it is ideal to have alignment of economic, legal, and political conditions, policies need only two of the three legs to begin to walk. Boston compensated for inadequate legal authority by using political capital to leverage commercial development activity. If economic and legal conditions are especially supportive, policy implementation will be significantly less dependant on political risk taking. Lastly, if a city has political will and legal authorization, they can compensate for a weak economic state by designing policies to adjust over time to take advantage of the market if it strengthens.

Exactions and Incentives in Other Cities

The specific lessons to be learned by other cities from studying Boston and New York City's usage of exactions and incentives will vary depending on the economic, legal and political contexts of the particular city. However, the case study cities demonstrate not only a broad range of options for municipalities, but also the importance of politically sophisticated stakeholders.

Many cities lack the political capital required to easily implement any kind of affordable housing programs. Indeed, local government powers are already used in many cities and towns to keep them exclusive and unaffordable through a variety of land use techniques such as use restrictions, and dimensional and large lot size requirements.[168] However, for those cities that seek an alternatate path, inclusionary zoning and other tools on the exactions-incentive continuum demonstrate that local zoning power can be used to achieve a different public purpose, maintaining a diverse population and work force by keeping housing affordable to individuals and families across a wide range of incomes.

While such a vision is not shared by as many cities as it could be, the ubiquity and creativity of affordable housing policies in other cities beyond Boston and New York reaffirms at a different scale the same conclusions that can be drawn from the two case study cities – that affordable housing incentives and exactions are being used more frequently and robustly. In other words, there is room for context specific innovation and many cities have utilized their thriving real estate markets to promote diversity.

Neither Boston nor New York top the list of annual units produced or projected to be created by policies such as IZ. For example, Denver averages 1,132 units per year, Montgomery County, 387, and Sacramento, 155 (see Appendix B). Boston averages only 121 units per year, but this is still a greater amount than New York City, as a percentage of total new housing stock. The point is that the economic, legal, and political conditions can align and lead to successful policy in other cities – places not known for their progressive political activism.

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[168] Glaeser, 2006.

As of 2005, California, New Jersey, and Massachusetts accounted for 56 percent of the 1,089 jurisdictions offering any kind of regulatory incentive for affordable housing, but account for only 19 percent of all jurisdictions.[169] While most programs are some variation on IZ, it is clear that the number of cities and towns using such incentives for affordable housing is substantial. Moreover, the fact that 46 percent of the jurisdictions using them are outside of the states known for their activism on housing issues is a positive sign.

The story for exactions, and linkages in particular, is more limited. The cities with linkage policies similar to Boston's are Cambridge, San Diego, San Francisco, Sacramento, Berkeley, and Seattle, as shown in Appendix C. While linkage fees have spread beyond the big cities where they first began, they are still concentrated in California and Massachusetts. Twenty-five California jurisdictions, forty-six New Jersey cities, and ten Massachusetts cities had some sort of linkage fee in 2003. In 2003, Florida and Kentucky had more than five jurisdictions with linkage fees.[170] Again, exactions are used less than incentives, but have gown in popularity and have proven viable in different places.

Overall, the basic idea of exactions and incentives on private land development to promote affordable housing is understood by policy-makers in many cities. However, there have been numerous variations on this central theme that have responded to the unique economic, political and legal contexts of different cities. For example, Chicago allows all types of developers in the city's downtown to purchase additional density and uses the proceeds to fund affordable housing throughout the city.[171] This can be seen as a hybrid between IZ and linkage. Another interesting innovation, though at the state level, is the use of real estate transfer taxes in Florida. Championed by a unique coalition representing the state's homebuilders, realtors, affordable housing advocates, faith-based communities, finance groups, and environmental organizations, the state adopted a law that requires between 10 and 70 cents per $100

[169] Pendall, 2006. p. 12.
[170] Ibid, 15.
[171] Jack Markowsi, Commissioner, Chicago Department of Housing. Remarks at "Housing Boston 2012." April 27, 2007.

in assessed value on all real estate transfers to go into a dedicated affordable housing trust.[172] As assessed property values increase, so too does the size of the trust fund. Thus, the program can be seen as similar to a mix between tax abatements and linkage.

Lessons for Other Cities

While these figures and examples highlight the breadth and uniqueness of incentives and exactions in other cities, there are a variety of more general considerations to take into account for any city. For example, it is important to understand that such policies are not always appropriate. If a particular city has a weak real housing market, affordable housing will theoretically not be the largest challenge. If land prices are low, development of relatively affordable units should not be extremely expensive and other issues such as unit quality or negligent landlords may be of greater political concern. However, if the market is beginning to warm, the City would be well advised to implement an incentive-based IZ program. If the town currently uses impact fees, they could consider gathering extra fees for affordable housing development while exempting affordable housing developments from the added costs. If the city has a thriving non-residential market coinciding with an affordable housing crisis, they could work towards studying and implementing a linkage program. However, it is important to remember that in suburbs, or towns with less residential or commercial demand, IZ, linkage, or other exactions will likely fail, as developers will simply opt to build elsewhere. As Clark Ziegler posits, "Incentives and exactions won't work the same in the suburbs of Boston as they do in the city itself because there are many suburbs, among which demand can shift. But, there is only one Boston."[173] Nevertheless, the overall economic lesson is that a decently strong and stable real estate market is a necessary but insufficient condition for using either incentives or exactions for affordable housing.

The legal lesson is that cities have increasingly broad powers vis-à-vis federal Constitutional issues, but should still examine the economic consequences of a particular proposed action to make sure it

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[172] Jamie Ross, Executive Director, 1000 Friends of Florida. Remarks at "Housing Boston 2012." April 27, 2007.
[173] Clark Ziegler, Executive Director of the Massachusetts Housing Partnership. Interview by Ari Goldstein on February 22, 2007.

passes the dual Nolan/Dollan tests. Likewise, the use of incentives or flexibility for especially burdened developers is advised. As far as statutory authority, cities should push the boundaries of their existing home rule or explicit authorizations. While the state has the legal power to completely overrule or revoke manifestations of local power or creativity, such action may be politically untenable and in other cases explicit authority can be obtained after the fact.

Pushing for a particular policy, especially in an environment with less then stellar economic performance and dubious state authority requires tremendous political activism. Such policy entrepreneurship is also challenging in more friendly situations. In either case, the lessons from Boston and New York City indicate that a key to their success has been a strong network of stakeholders who have worked together to craft appropriate, mutually-beneficial policies.

Moving Forward

New types of exactions policies can overcome one of the biggest barriers to implementation that cuts across economic, legal, and political issues: the fear that mandatory exactions policies will be unresponsive to local sub-markets or thwart development. Markets do have natural fluctuations and while the past decade has been a period of strong real estate appreciation, there will be, if history is any guide, a time of depreciation as well. Indeed, the first quarter of 2007 was marked by what economists deemed a deflating of the "housing bubble" as well as widespread foreclosures on subprime loans. As described by Senator Charles Schumer, Chairman of the Joint Economic Committee, "Subprime foreclosures are expected to increase in 2007 and 2008 as 1.8 million hybrid adjustable rate mortgages (ARMs)-many of which were sold to borrowers who can not afford them-reset in a weakening housing market environment."[174]

High cost cities are somewhat insulated from the subprime foreclosure fallout, given their strong markets, but are likely to be affected given the large numbers of low-income populations in some of these

[174] Senator Charles Schumer, Chairman, Joint Economic Committee. "Sheltering Neighborhoods from the Subprime Foreclosure Storm." April 2007.

cities. Neither Boston nor New York City are in the list of the top 50 metropolitan areas as ranked by foreclosures per total population, however both cities show signs of increased mortgage delinquencies. The percentage of subprime mortgages with late payments in the Boston metro area increased from 6 to 15.9 percent between 2005 and 2007.[175] In the New York City metro area the figures were 5.6 to 11.9 percent.[176] As foreclosures occur, adjacent property values will also likely decrease.

While dealing with the subprime fallout has its own policy implications, the point is that urban real estate markets have both times of great strength (maybe too much), as well as periods of depreciation and value readjustment. To leverage the most from strong markets, while protecting against further hindering the markets in times of weakness, exaction and incentive policies can use safety valves, sliding scales, or dynamic market indicators. Boston's IZ program uses a safety valve of sorts in that it is an aggressive mandatory, citywide policy, but allows developers to make a case if they are especially burdened by the requirement. In this situation, a cooling market would likely lead to a greater number of developers demonstrating hardship. A sliding scale system would be similar in that an exaction or incentive policy could be implemented citywide with requirements in different neighborhoods that would vary depending on pre-determined studies or specific data sets.

The difference between the two sources of information is that the former is static and depends on a time trigger or political leader to implement an adjustment whereas the latter would use specific dynamic indicators to adjust more fluidly over time. Such indicators could include capitalization rates, interest rates, construction costs, or market-rate rent levels. Probably the simplest indicator would be the difference between market and affordable rents. One problem with this system is that indexing to such a figure requires a relatively frequent and geographically appropriate data source. Unfortunately, the only annual data are produced by HUD on a regional level. The Office of Federal Housing Enterprise Oversight (OFHEO) produces a quarterly house price index, but only for single-family homes. Non-governmental companies and organizations in the business of market research, such as Torto Wheaton,

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175 Ibid.
176 Ibid.

would be more appropriate, but may face legal and political hurdles. In any case, more research should be done into which dynamic indicators could be used and how they could optimally be structured.

Such a system of adjusting to different market conditions could have many benefits. Legal takings concerns for exactions could be ameliorated, exactions could be maximized without hampering the market overall and incentives could be structured to increase their demands when possible so as to not oversubsidize development without gaining affordability. Dynamic indicators could also promote market efficiency by adjusting incrementally, thus avoiding artificial flooding of the market as developers seek to avoid major policy changes, and by increasing policy predictability. Additionally, the transparent use of such indicators could help to ensure that economic considerations trump politics in deciding where exactions and incentives are implemented.

However, political control over these types of land use policies would likely be very difficult to wrestle from local elected officials. Moreover, the democratically elected and appointed leaders in cities that are seeking to improve upon their existing exaction and incentive policies have already shown desirable characteristics, either through their activism or receptivity to organized stakeholder coalitions. Nevertheless, these coalitions of housing advocates and developers would be well-served to promote the relinquishment of discretion over when and how such policies adjust over time while advocating instead for the use of dynamic indicators. This is especially true in cities with less transparent, sophisticated, or honest local officials. Thus, local stakeholders should use their political clout to mitigate the potential for "bad politics" while pushing for the systematized use of transparent and efficient policy adjustment mechanisms by moving from political discretion to legal rules.

Final Thoughts

As cities have succeeded in boosting investment and property values, they have created new challenges of gentrification and affordable housing. Providing affordable housing is imperative not only to homeless and special needs populations but also to local economies and the working class people on who these economies depend: teachers, police officers, and trades workers as well as higher skilled labor that can find a better quality of life for less in other areas. Affordable housing, and mixed income communities in particular, are also of great social importance to ensure that households have access to good jobs, schools, and health services. As such, while many cities value and encourage real estate investment in their neighborhoods they must demand a balanced and equal revitalization that benefits all residents. Ultimately, the mixture of residents that cities' housing policies provide for will shape the kind of city that each place becomes. By expanding overall supply as needed, while using incentives and exactions, such as impact fee exemptions, linkages, inclusionary zoning, and tax abatements, to create specifically affordable units, cities will be able to ensure that their successes are shared, opportunities distributed, and diversity preserved.

APPENDIX A. COMPARISON OF INCLUSIONARY ZONING POLICIES

City*	Type of Law	Threshold	Set-aside Requirement	Income Target (% of AMI)	Terms of Affordability	Incentives	Type	Cash-out Fee Formula	Off-site Construction
Boston Pop: 523,683 AMI: 82,600	executive order	10 units	15%	54 – 68% (already converted to MSA AMI)	perpetuity	zoning relief subject to negotiation	fixed	$200,000 • (A • .15) A = total proposed units	requires approval from BRA director and is subject to negotiation, must equal 15% of all proposed units
Cambridge Pop: 101,355 AMI: 82,600	ordinance	10 units	15%	65%	50 yrs	30% density bonus	not permitted	N/A	not permitted unless "significant hardship" can be demonstrated
Denver Pop: 544,759 AMI: 71,650	ordinance	30 units	10%	80% (<3 stories) 95% (>3 stories) 65% (rental)	15 yrs	10% density bonus; cash reimbursement; expedited review; reduced parking req'ts	sliding	B • (A • .50) A = per unit affordable sales price B = number of affordable units required	number of units built must exceed on-site requirements
Montgomery County, MD Pop: 918,881 AMI: 89,300	ordinance	35 units	12.5% to 15%	determined periodically by County Executive	30 yrs (for sale) 99 yrs (rental)	density bonus	arbitrary	an amount that will produce "significantly more" affordable units	must build "significantly more" affordable units in same or a joining planning area
New York Pop: 8 million AMI: 70,000	ordinance	geographic	20% to 25%	80% to 125%	life of development	33% density bonus, typical	fixed	N/A	within community board or ½ mile
San Diego Pop: 1,220,734 AMI: 63,400	ordinance	10 units	10%	100% (for sale) 65% (rental)	55 yrs	none specified	fixed	$1.00 / square foot (yr 1) $1.75 / square foot (yr 2) $2.50 / square foot (yr 3)	must (a) encourage an "economically balanced" community and (b) qualify as transit oriented development
San Francisco Pop: 731,978 AMI: 95,000	ordinance	10 units	10% or 12% depending on use	60% (rental) 100% (for sale)	50 yrs	fee waivers	arbitrary	determined systematically by Mayor's Office of Housing	must (a) include 1.5 or 1.7 times that of on-site requirement, depending on type and (b) be proximate
Somerville Pop: 77,478 AMI: 82,600	ordinance	8 units	12.5%	50% (1/2) 80%(1/2)	perpetuity	density bonus, expedited review, fee waivers	sliding	A • (B – C) A = number of affordable units B = per unit market price C = per unit affordable price	requires approval from Special Permit Granting Authority, must meet or exceed on-site requirement

* US Census Bureau 2003
** US Department of Housing and Urban Development 2005
[1] Sacramento's program only applies to designated "new growth areas"

APPENDIX B. PRODUCTION STATISTICS FOR INCLUSIONARY ZONING PROGRAMS

Jurisdiction	State	Total Units Produced	Units produced as of	Source	Year adopted	Annual production rate	Per capita annual production rate[177]
Boston	MA	665	2006	BMRB	2000	110 units	4,328
Boulder	CO	380	2005	BPI	2000	156 units	1,733
Cambridge	MA	131	2003	PolicyLink	1999	33 units	3,071
Davis	CA	1,500	2003	PolicyLink	1987	94 units	642
Denver	CO	3,395	2005	PolicyLink	2002	1,132 units	481
Montgomery Co.	MD	11,210	2003	PolicyLink	1974	387 units	2,374
New York (original)	NY	603	2005	Pratt Center	1987	33.5 units	238,805
New York (recent)	NY	TBD	2007	Pratt Center	2005	TBD	TBD
Sacramento	CA	465	2003	BPI	2000	155 units	2,616
San Diego	CA	1,200	2003	BPI	1992	109 units	11,199
San Francisco	CA	90	2003	BPI	2002	90 units	8,133
Somerville	MA	45	2005	City of Somerville	1991	3 units	25,826

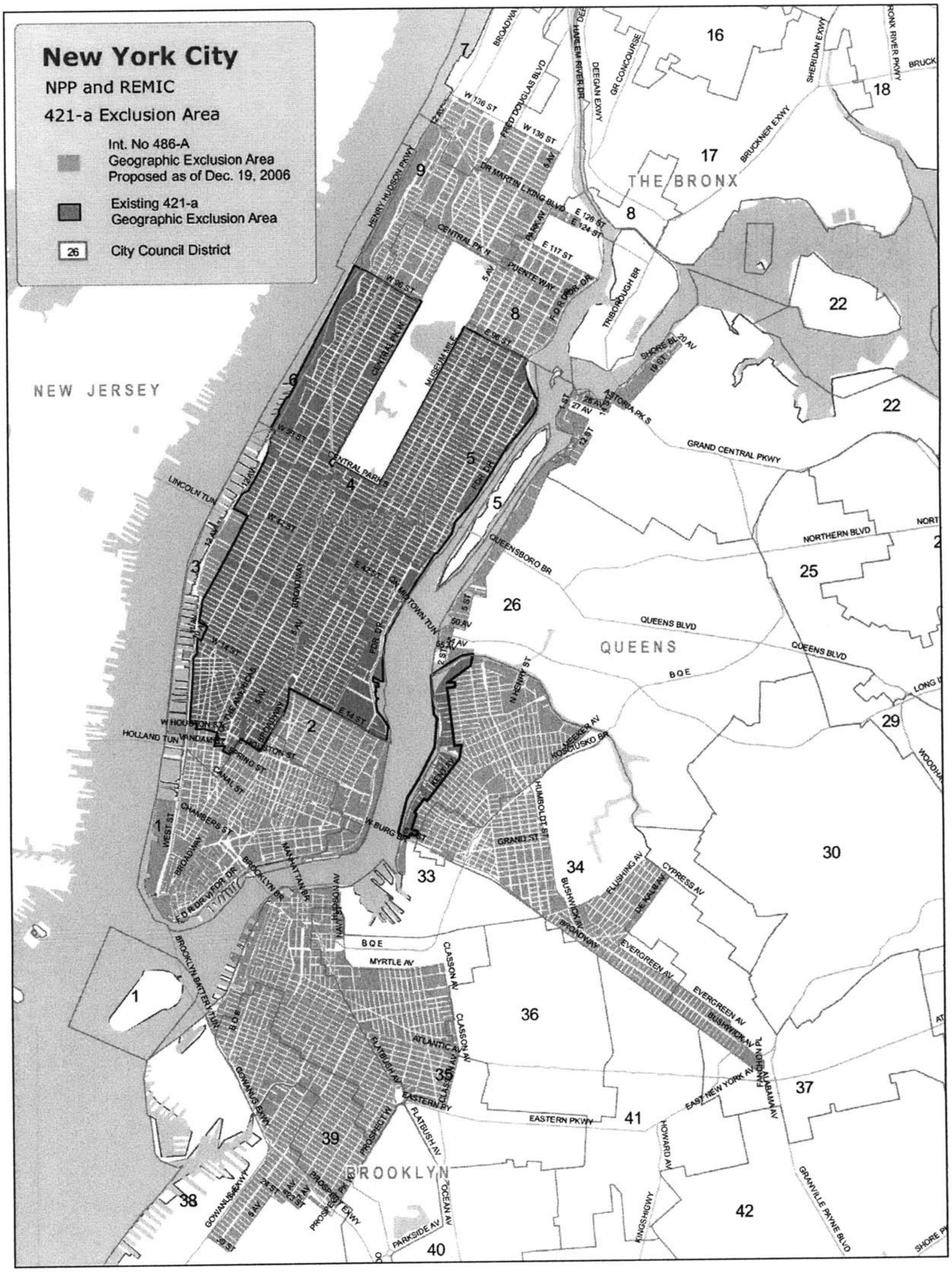
[177] Number of people for every one unit built annually.

APPENDIX C. COMPARISON OF LINKAGE PROGRAMS

	Adopted	Type	Office Fee (psf)	Other Uses	Threshold or Exemption	Additional, non-housing linkages	Results as of 2005
Boston, MA	1986	Mandatory	$7.18	All[178]	100,000 sf	Jobs	$81 million
San Francisco, CA	1981	Mandatory	$7.05	Only office	25,000 sf		$35.3 million
Sacramento, CA	1989	Mandatory	$.99	All			$2 million[179]
Berkeley, CA	1993	Mandatory	$4.00		7,500 sf	Child care	$1.93 million
San Diego, CA	1990	Mandatory	$1.06		Unknown		$30 million
Seattle, WA	1989	Voluntary			N/A		166 units and $5 million
Cambridge, MA	1988	Mandatory	$3.00	All	30,000 sf		$750,000

178 All refers to: Hotel, R&D, Retail, Manufacturing, and Warehouse. Typically the fees are different for each use.
179 As of 1998.

APPENDIX D. NYC'S PROPOSED 421-A GEOGRAPHIC EXCLUSION ZONE

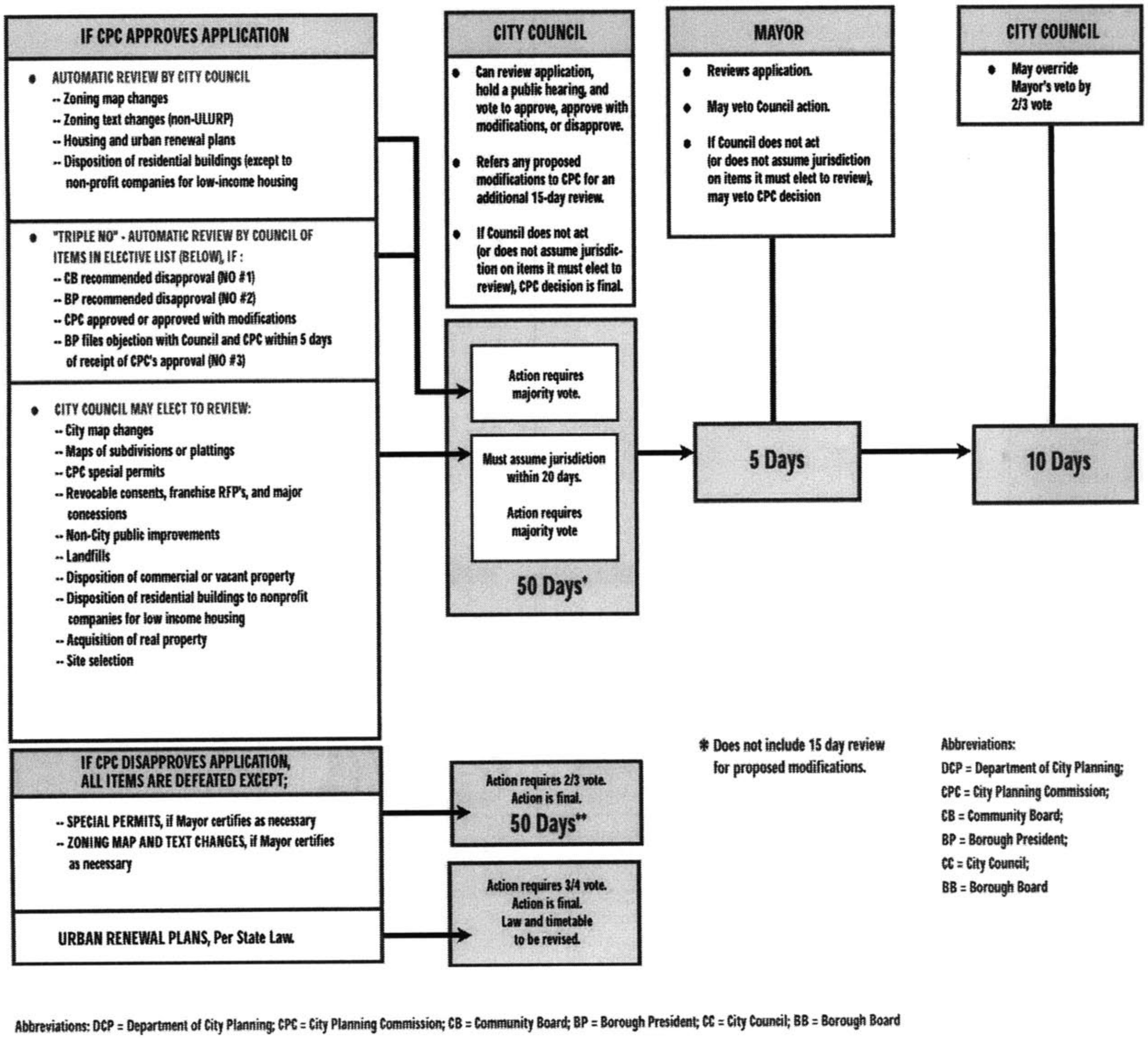


APPENDIX E: NEW YORK CITY – UNIFORM LAND USE REVIEW PROCEDURE[180]

• CITY MAP CHANGES • MAPS OF SUBDIVISIONS PLATTINGS • ZONING MAP CHANGES • CPC SPECIAL PERMITS • REVOCABLE CONSENTS FRANCHISE RFP'S MAJOR CONCESSIONS • NON-CITY PUBLIC IMPROVEMENTS • HOUSING AND URBAN RENEWAL PLANS • LANDFILLS • DISPOSITION OF REAL PROPERTY • ACQUISITION OF REAL PROPERTY • SITE SELECTION	DEPARTMENT OF CITY PLANNING Application and Pre-Certification	COMMUNITY BOARD	BOROUGH PRESIDENT (and) BOROUGH BOARD)	CITY PLANNING COMMISSION	
	• Receives application and related documents. • Forwards application and documents within 5 days toCB, BP, and CC (and BB - if project affects more than one CB). • Certifies application as complete	• Notifies public • Holds public hearing • Submits recommendation to CPC, BP (and BB). • Can waive rights on franchise RFP's and leases.	• BP submits recommendation to CPC or waives right to do so. • BB (if project affects more than one CB) may hold a public hearing and submit recommendation to CPC or waive right to do so.	• Holds public hearing • Approves, modifies or disapproves application. • Files approvals and approvals with modifications with City Council. • Disapprovals are final, except for zoning map changes, special permits, and urban renewal plans.	SEE CHART BELOW FOR THE PROCESS FOR CITY COUNCIL AND MAYORAL REVIEW (Charter Section 197-d)
PROCESS TAKES	No Specified Time Limit (after 6 months, applicant or BP in some cases, may appeal to CPC for certification).	60 Days	30 Days	60 Days	
Clock = 1 Year					
TOTAL DAYS....		60 Days	90 Days	150 Days	

[180] City of New York, Department of City Planning. http://home2.nyc.gov/html/dcp/pdf/luproc/lur.pdf. Last accessed on April 1, 2007.

APPENDIX E: NEW YORK CITY – UNIFORM LAND USE REVIEW PROCEDURE[181] (CONTINUED)



[181] City of New York, Department of City Planning. http://home2.nyc.gov/html/dcp/pdf/luproc/lur.pdf. Last accessed on April 1, 2007.

APPENDIX F: PRESS RELEASE ON BOSTON'S LINKAGE PROGRAM'S COMMISSION

Mayor Menino Announces New Commission to Review City's Linkage Program
(September 26, 2000)

Mayor Thomas M. Menino today announced the formation of a commission to study Boston's linkage program. The twenty-five (25) member commission represents broad community involvement in the linkage discussion. The group includes a mix of residents, housing activists, private developers and city and state officials.

The Mayor's Commission will work with the Boston Redevelopment Authority and the City of Boston to consider key issues surrounding linkage, including exaction fees for housing and jobs and payment timelines.

The new commission is modeled on the 1983 "Advisory Group on Linkage between Downtown Development and Neighborhood Housing," which outlined the guidelines that led to the city's current linkage program.

Out of the 1983 Commission, the Massachusetts Legislature enacted Chapter 371 of the Acts of 1987 authorizing the City of Boston to assess large-scale commercial real estate requiring zoning relief with fees to mitigate rising housing prices caused by economic growth and to provide job training monies.

"Linkage is one of the best tools we have for creating affordable housing in the City," said Mayor Menino. "I applaud the members of the commission for accepting my invitation to help the City examine linkage in a formal way. The Linkage Commission's job won't be easy. The members must balance affordable housing needs with concerns of the development community."

Mark Maloney, Director of the BRA, said, "The City's economic prosperity has put enormous pressure on the housing stock. The private sector, benefiting from this boom, must help mitigate some of the effects on our neighborhoods. Key questions must be examined to ensure that our Linkage Program remains strong."

Linkage Commission Members

Co-chairs of the Commission:
Paul Grogan of Harvard University;
Clayton Turnbull of the Neighborhood Housing Trust.

Two (2) Members of the General Court:
One from the Senate & One from the House.

One (1) Member of the City Council:
Paul Scapicchio, Chair of the Committee on Economic Development and Transportation.

Three (3) Representatives of City Government:
Mark Maloney, Chief Economic Development Officer;
Charlotte Golar Richie, Chief of Housing;
Ed Collins, Collector-Treasurer.

Four (4) Mayoral Appointees:
Bruce Bolling, Massachusetts Alliance for Small Contractors*;
Clayton Turnbull, Neighborhood Housing Trust;
Samuel Tyler, Boston Municipal Research Bureau;
Paul Grogan, Harvard University.*

Three (3) Neighborhood Residents:
Donna Brown, South Boston;
Clara Garcia, Jamaica Plain;
Katherine Hardaway, Dorchester.

Five (5) Development Representatives:
Rebecca Lee, Goodwin, Procter & Hoar LLP;
(TBD) Greater Boston Chamber of Commerce;
Ron Druker, Greater Boston Real Estate Board*;
Kevin Phelan, Meredith & Grew;
David Begelfer, National Assoc. of Office Properties.

Five (5) Housing Representatives:
Aaron Gornstein, Citizen Housing and Planning Association;
Mossik Hacobian, Urban Edge Housing Corporation;
Tom Callahan, Massachusetts Affordable Housing Alliance;
Marc Draisen, MACDC;
Bill Stetson, Beacon Residential Management.

Two (2) Jobs Representatives:
Conny Doty, Office of Jobs and Community Service;
Neil Sullivan, Private Industry Council.

* Indicates a member of the original Advisory Group.

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BIOGRAPHICAL NOTE

Ari Alowan Goldstein earned a BA in architecture, *summa cum laude*, from UC Berkeley. During his undergraduate career he studied affordable housing design and development in East Oakland, California and traveled to India, South Africa, and Brazil as part of the International Honors Program to study squatter settlement housing. Prior to pursuing his Master's in City Planning at MIT, he was a housing fellow at the New York City Department of Housing Preservation and Development (HPD). In the summer of 2006 he received a Rappaport public policy fellowship from the Kennedy School of Government at Harvard University to work for the Joint Committee on Housing in the Massachusetts Legislature. In July of 2007 he will join the Jonathan Rose Companies, a socially and environmentally conscious real estate developer.