

The Role of Zoning Regulations in the Perpetuation of Racial Inequality and Poverty: A Case Study of Oakland, California

A policy-focused story told with maps from [The Place Database](#)

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The findings and conclusions of this narrative reflect the views of the author and do not necessarily represent those of the Lincoln Institute of Land Policy.

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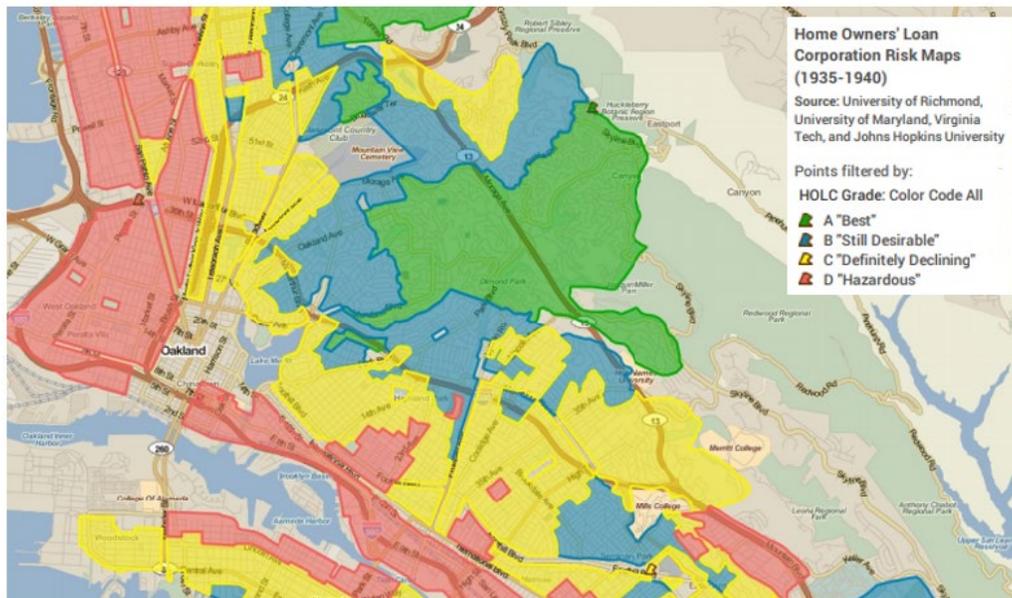
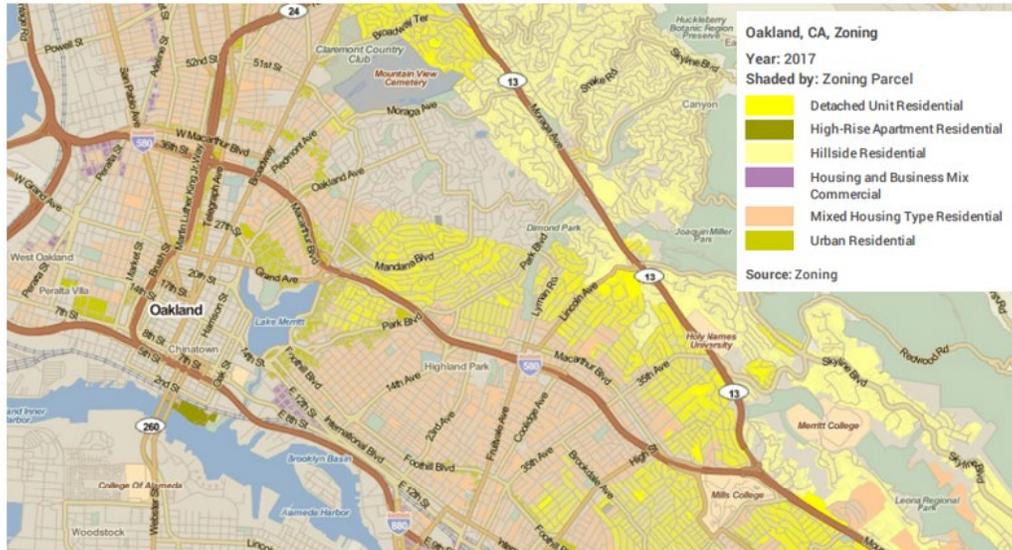
Photo Credit: Getty Images/jhorrocks.

The Problem: Income (and Race-Based) Discrimination

Owning property improves economic standing substantially for low- and moderate-income households and renting a home in a wealthier neighborhood gives low-income families access to improved education and safer environments. However, exclusionary zoning practices continue to prevent low-income households from gaining these two key sources of wealth—education and property—and have severely limited economic mobility.

Exclusionary zoning is used to prevent higher density development in proximity to wealth and reinforces income-based discrimination, which is reflected in planning guidelines, the legal structure, and the bootstrap framework of American society. For example, individuals can't obtain zoning variances based solely on economic hardship because economic hardship is typically considered "self-inflicted" rather than the result of a variety of societal and historic factors (Fulton 2018). In addition, many zoning regulations that are attributed to the character of a neighborhood functionally bar new development that would allow low-income individuals to move into these neighborhoods, and benefit from increased funding for community resources, education, and infrastructure. The most common exclusionary zoning measures include large minimum lot sizes, single unit per lot requirements, and minimum square footage requirements (Rigsby 2016).

Discrimination against low-income residents, who are predominantly people of color as a result of the historic barring of communities of color from methods of wealth accumulation, also continues to reinforce race-based discrimination in housing. Measures like exclusionary zoning, which don't appear to discriminate on the basis of race and don't appear illegal, continue to negatively impact people of color. Whether policy makers are intending to use these tools to prevent people of color from moving into certain neighborhoods or whether their decisions are informed by unconscious biases and prejudice, it's the responsibility of policy makers to acknowledge the potential for their perceptions and actions to impact policy design.



Map 1: Residential zoning designations in Oakland, California. Credit: The Place Database, <https://plcy.mp/rn8z9gB>.

Map 2: Historic redlining in East Bay juxtaposed onto a modern digital map of the region. Red areas indicate neighborhoods that were predominantly black and where lending was strongly discouraged. Yellow areas indicate some risk, and green and blue areas indicate predominantly white neighborhoods where lending was encouraged. Credit: PolicyMap, <https://plcy.mp/h6ptGtX>.

Historical Context

Racial discrimination in the U.S. has been supported institutionally and legally through various methods. The following timeline lists significant policy and legal decisions since the 1890s.

1896: *Plessy v. Ferguson* permits segregation that is “separate but equal.” The landmark decision is enforced in many ways, including through racial zoning districts.

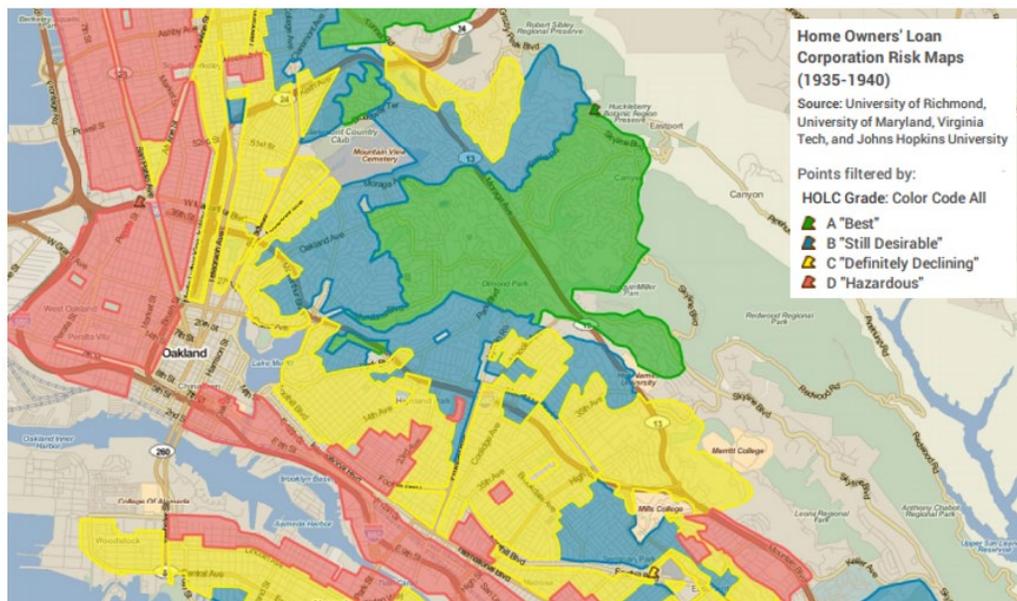
1917: The U.S. Supreme Court strikes down overt racial zoning in *Buchanan v. Warley*, stating that, “denial of the full use of property from a feeling of race hostility constituted inadequate grounds to uphold the Louisville racial zoning ordinance.”

1936 - 1939: Federal agencies employ redlining practices in the East Bay. The blue and green areas (where lending was encouraged) in the accompanying map generally align with areas where exclusionary zoning now exists.

1954: *Brown v. Board of Education* rules that the “separate but equal” doctrine is unconstitutional.

1968: Congress enacts the Fair Housing Act (FHA), which prohibits housing discrimination based on race, color, national origin, religion, sex, ability, and familial status. The FHA does not prohibit class-based, or economic, discrimination (Rigsby 2016). This functions as a legal loophole that permits continued discrimination against minority communities that tend to be low-income due to historical barring from homeownership opportunities and access to education.

1972 - 1976: The Pruitt Igoe housing projects in St. Louis, which housed predominantly black residents, are demolished; the project is seen largely as a failure because it concentrated poverty in one central location with little access to transportation and jobs.



Map: Historic redlining in East Bay juxtaposed onto a modern digital map of the region. Red areas indicate neighborhoods that were predominantly black and where lending was strongly discouraged. Yellow areas indicate some risk, and green and blue areas indicate predominantly white neighborhoods where lending was encouraged. Credit: PolicyMap, <https://plcy.mp/h6ptGtX>.

Case Study: Oakland, California

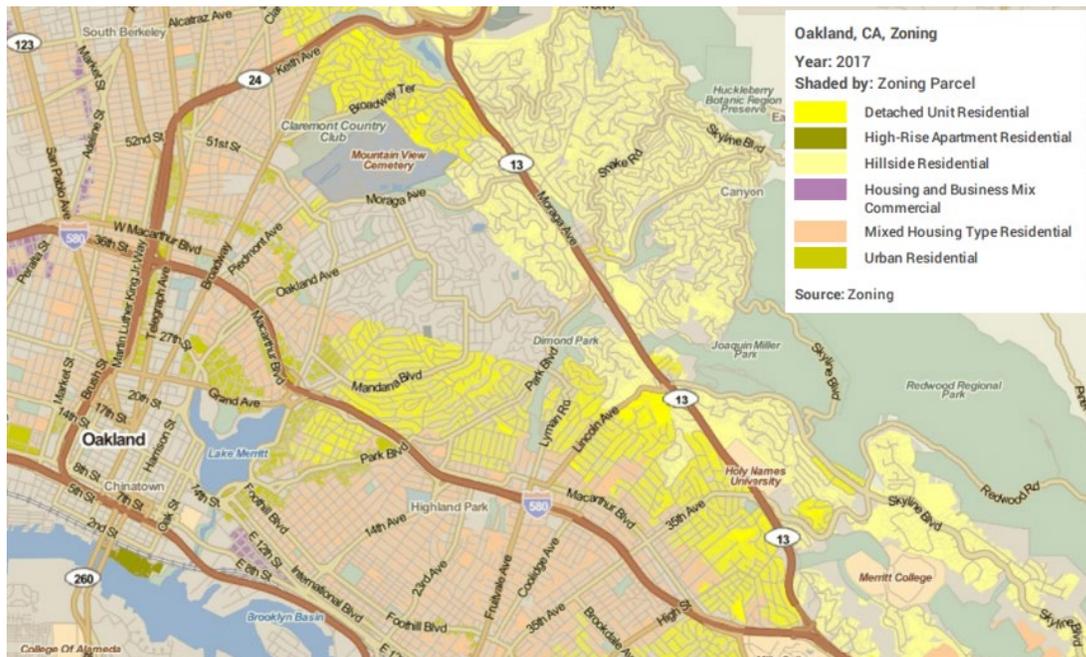
There are three general residential zoning categories in Oakland:

- high rise and urban residential (high density, olive/moss green on the map)
- mixed housing (medium density, peach on the map)
- detached and hillside (low density, yellow on the map).

In Oakland, areas that are zoned for mixed housing and high rise/urban residential correspond with areas that were historically redlined as risky areas for lending. Conversely, areas zoned for low-density residential development correspond with areas that were historically identified as suitable for lending. Although redlining was challenged by the Fair Housing Act, exclusionary zoning is still permitted because it does not explicitly discriminate against people of color. In general, the legal precedent requires intent in order to substantiate a discrimination claim.

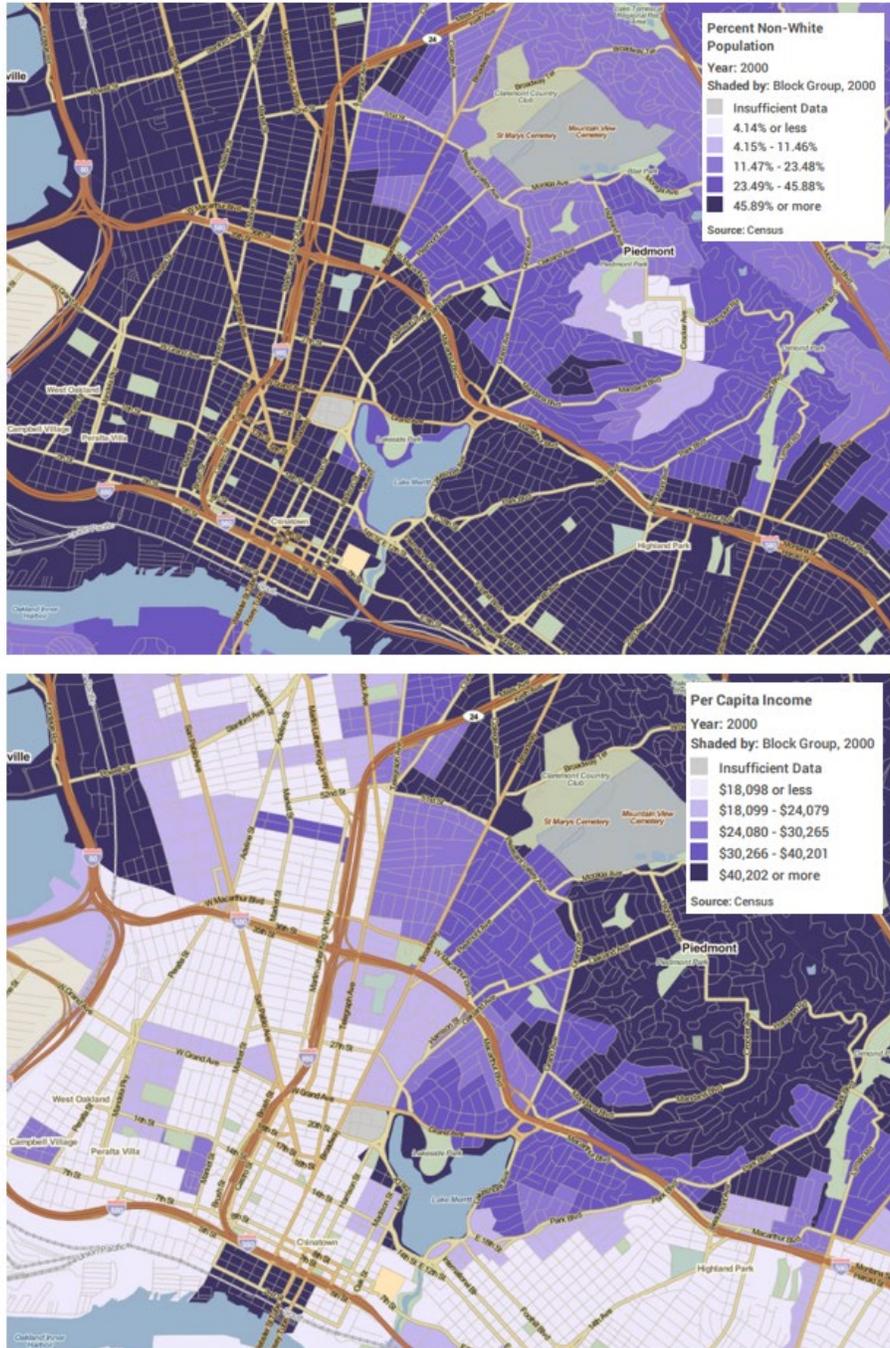
Current zoning restrictions make it economically infeasible for low-income people to move to more affluent areas of Oakland because of higher development costs in low-density areas. In order to make a return on their development, developers must sell or rent houses at a higher price, functionally barring low-income people from these areas. Property owners may charge well above the development cost based on demand, regardless of what is affordable for most people in the area.

The mixed housing and high rise/urban areas also correspond with primarily low-income communities of color, although this trend has changed in a few key areas over the last 10 years as high-density inner-city communities have been redeveloped and gentrified to accommodate the influx of workers in the technology sector, who are typically more white and affluent. These low-income neighborhoods are most vulnerable to this displacement. Between 1990 and 2013, low-income communities of color in Oakland have slowly shifted outward, south and east, as they have been displaced.



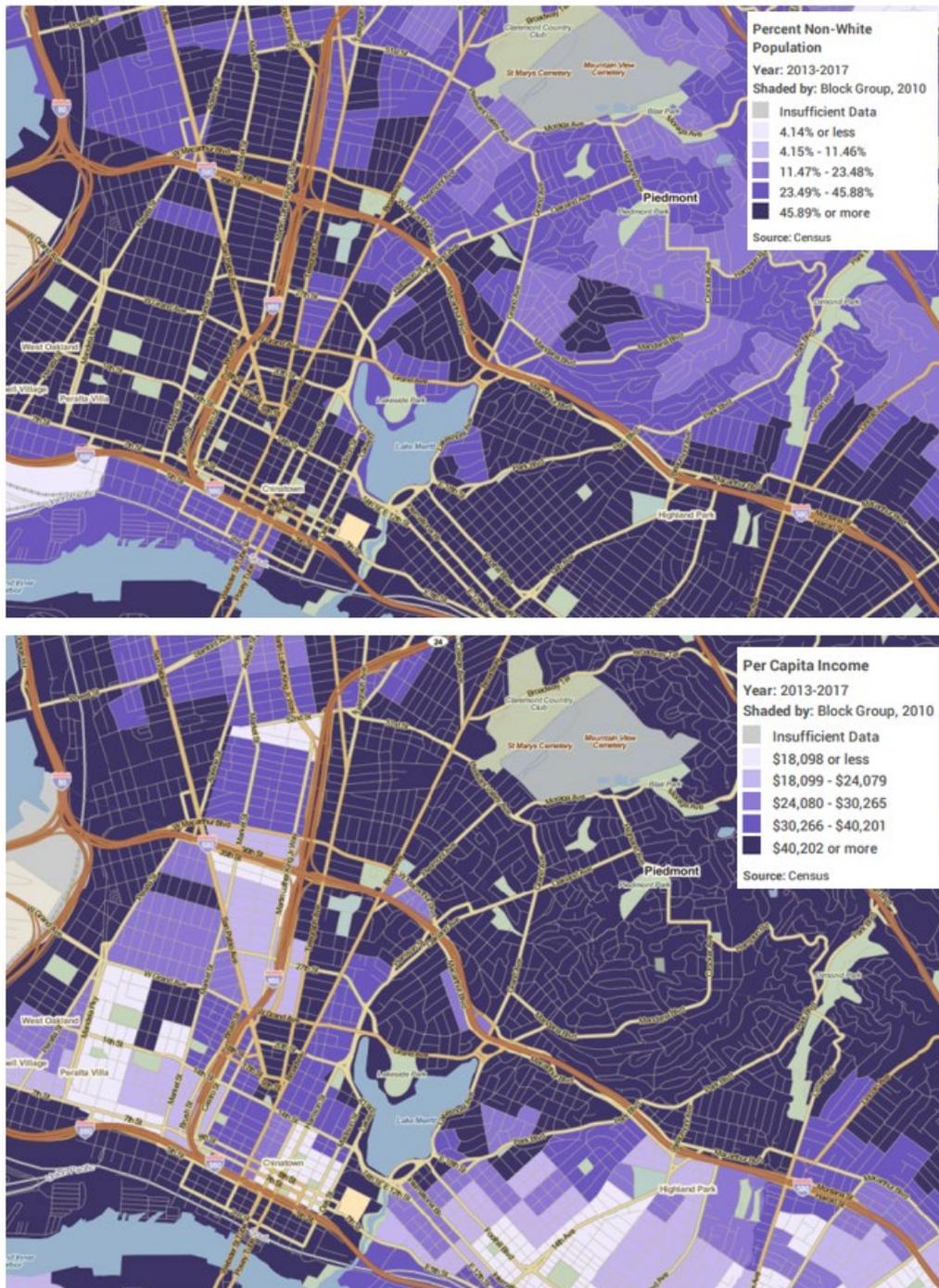
Map: Residential zoning designations in Oakland, California. Credit: The Place Database, <https://plcy.mp/rn8z9gB>.

When it comes to residential distribution, there is a clear correlation between residents' race and income. In 2000, the very early days of the tech boom, there was a strong correlation between race and income divisions within Oakland and former redlining patterns. These divisions also correlate with zoning designations in the previous zoning map.



Maps: Non-white population and per capita income in Oakland, 2000. Credit: PolicyMap.

Over a decade later there was still a distinct correlation between race, income, and zoning. However, some of the central downtown areas saw an increase in per capita income and a decrease in the non-white population.



Maps: Non-white population and per capita income in Oakland, 2013-2017. Credit: PolicyMap.

Possible Solutions

Below are three proposed complementary solutions. Rather than search for a magic bullet, we must take a multipronged approach; a problem created and sustained through multiple policies and practices must also be dismantled by multiple mechanisms and from multiple angles.

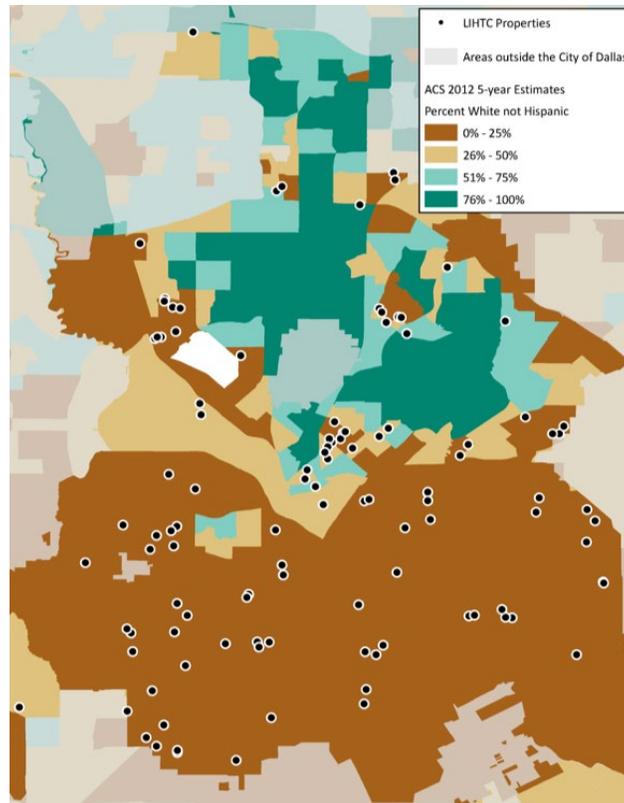
Legal Approach

One approach is for non-profits to sue cities for discriminatory zoning regulations claiming disparate impact. In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, the U.S. Supreme Court ruled that impact, rather than intent, determines if a regulation is discriminatory. This logic is evident in the Bay Area where existing zoning regulations in addition to a massive population influx of tech workers have led to the displacement of many people of color. Low-density zoned neighborhoods cannot be redeveloped for higher density apartment buildings which would help to accommodate the population increase.

Benefits: Sets a precedent and legally requires local government agencies to adjust their policies to comply.

Drawbacks: Very contentious, does not foster cooperation between housing advocates and city government. Also, litigation is expensive and there is no guarantee the housing advocates will prevail.

Example of solution in action: This strategy has not been utilized to challenge exclusionary zoning specifically. In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, Texas DHC was sued for placing the majority of affordable housing units in low-income black communities. The U.S. Supreme Court ruled in favor of the Inclusive Communities Project, setting a legal precedent for disparate impact. Randal O'Toole champions this radical idea, suggesting the concept could be extended to exclusionary zoning. HUD data is only available through 2016, and this case was decided in 2015, so the impact of this ruling is not yet visible. However, there are continued efforts by Texas politicians and representatives to prevent low-income housing integration through other means.



Map: Low Income Housing Tax Credits (LIHTCs) in relation to race in Dallas. Credit: Open Communities Alliance, www.ctoca.org/texas_v_inclusive_communities_project.

Land Use Approach

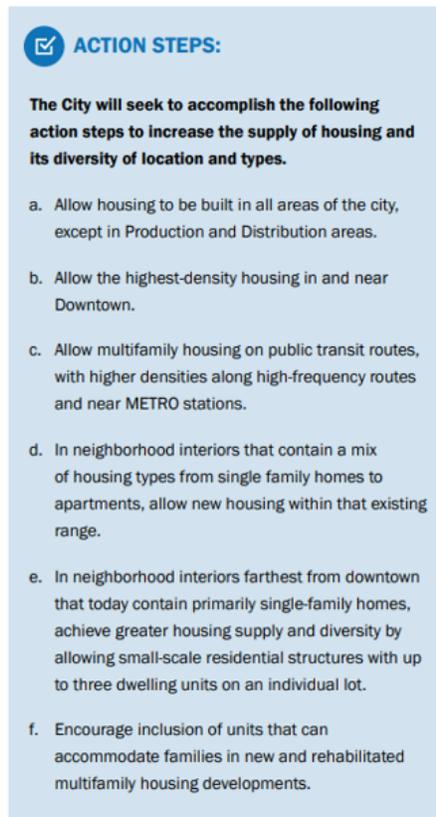
Another approach is for policy makers to enact inclusionary zoning and upzoning policies to create a more even geographic distribution of affordable homes and to increase the total supply of housing. Existing inclusionary zoning methods in the U.S. require developers to build a certain number of below-market rate units, often in exchange for an incentive such as a tax abatement or density bonus. Upzoning increases the total number of units that can be built on a single parcel.

Benefits: Disperses low-income units across the region. Provides an incentive to developers to increase the overall number of affordable units.

Drawbacks: Inclusionary zoning measures may discourage development in areas with low- to medium-income residents because overall return compared to development costs is negligible. Also, if not crafted equitably, an inclusionary zoning policy may exclude the most economically vulnerable. Upzoning measures may have a delayed effect; housing prices may temporarily go up due to land speculation.

Example of solution in action: The City of Oakland has a very limited form of inclusionary zoning, where a developer can provide on-site or off-site affordable housing as an alternative to paying an impact fee. But cities across the U.S. are also using upzoning to increase the supply of housing. In 2013, Chicago began allowing bigger buildings near transit. Minneapolis recently eliminated single family zoning altogether.

Minneapolis 2040 – The City's Comprehensive Plan



ACTION STEPS:

The City will seek to accomplish the following action steps to increase the supply of housing and its diversity of location and types.

- a. Allow housing to be built in all areas of the city, except in Production and Distribution areas.
- b. Allow the highest-density housing in and near Downtown.
- c. Allow multifamily housing on public transit routes, with higher densities along high-frequency routes and near METRO stations.
- d. In neighborhood interiors that contain a mix of housing types from single family homes to apartments, allow new housing within that existing range.
- e. In neighborhood interiors farthest from downtown that today contain primarily single-family homes, achieve greater housing supply and diversity by allowing small-scale residential structures with up to three dwelling units on an individual lot.
- f. Encourage inclusion of units that can accommodate families in new and rehabilitated multifamily housing developments.

Figure: Minneapolis' action steps to increase the supply of housing and its diversity of location and types. Credit: Minneapolis 2040 - The City's Comprehensive Plan, https://minneapolis2040.com/media/1475/pdf_minneapolis2040_may2019.pdf.

Economic Approach

A third approach is for cities to strengthen rent control and other renter protections and reduce permitting requirements and costs where possible.

Benefits: Reducing permitting costs and requirements will reduce the cost of development and, in combination with rent control methods, will reduce the cost to tenants. The City of Oakland must identify the biggest permitting costs in its permitting process, and determine where costs might be reduced through the reduction of discretionary review requirements.

Drawbacks: Rent control and stabilization are widely debated, with many different sources defending or critiquing their byproducts and effectiveness. Nonetheless, the fundamental principle, housing low-income people, and keeping them housed, is achieved through rent control. Some NIMBYs and interest groups may resist deregulation to any degree. Thoughtful and well-analyzed deregulation, with active community input, will ensure that protective regulations (e.g. some level of environmental review) are still in place.

Example of solution in action: The San Francisco Bay Area Planning and Urban Research Association (SPUR) is in the process of creating community environmental reviews so that more future developments can occur by right. In its current form, an environmental review is extremely expensive and hard for small developers to justify. This change would theoretically increase the attractiveness of development in areas of San Francisco that have seen low development in the past several decades despite population increases. This is one example of a major permitting expense that could be mitigated to encourage increased development while still maintaining policies intended to protect the environment. In theory, reduced development costs in combination with rent control practices would increase affordable housing while also encouraging development by maintaining a positive return for developers.



Photo: Located within a San Francisco Transit District, the newly built 388 Fulton Street was not required to have parking spaces for its 69 residences. Credit: SPUR 2019 Annual Report, https://www.spur.org/sites/default/files/publications_pdfs/SPUR_2019_Annual_Report.pdf.

Conclusion

In Oakland, racial and economic segregation are maintained through exclusionary zoning regulations and other mechanisms. Addressing exclusionary zoning alone will not solve this issue, but it is an integral part of any multifaceted approach. Simply increasing the supply of available housing will not resolve this issue; Oakland must also address the distribution of supply, as concentrated poverty limits access to community resources that are key to breaking the cycle of generational poverty. Upzoning in low-density areas, in addition to affordable housing programs and policies such as inclusionary zoning and rent control that help open up access to these areas, will increase access to community resources that are not currently available in communities with concentrated poverty. Each jurisdiction must develop a multifaceted approach appropriate for eliminating income-based discrimination in its unique context. However, as evidenced in this essay, changing exclusionary zoning regulations must be a key element of all approaches.



Photo: Oakland, California. Credit: Getty Images/Andrei Stanesco.

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