How Minimum Zoning Mandates Can Improve Housing Markets and Expand Opportunity

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ABSTRACT

Dramatic differences in income, productivity, and housing costs within the United States make geographic mobility important for spreading prosperity. But Americans' ability to move to places like San Francisco, Boston, and New York in search of economic opportunities is limited by severe restrictions on new housing supply in these productive places. State-level Minimum Zoning Mandates (MZMs) allowing landowners to build at a state-guaranteed minimum density, even in municipalities resistant to development, would be an effective means of encouraging denser housing development. These MZMs would improve housing affordability, spread economic opportunity more broadly, and limit the environmental impact of new development.

This idea should appeal to voters and policymakers across the political spectrum. For those who are concerned about inequality, improved housing availability has the potential to help the most disadvantaged Americans. By making it easier for disadvantaged workers to access jobs, MZMs should increase employment, worker productivity, and ultimately earnings. Those who care about property rights should welcome a tool to override unnecessary restrictions on those rights. Finally, those who focus on making the best use of limited resources will recognize the benefits of using valuable land more efficiently.

1. Introduction: The Harms of Anti-Development Policies

Municipalities impose a range of creative limits on new housing supply. Policies such as minimum lot sizes, overly strict historic preservation rules, direct prohibitions on multi-family housing, maximum building sizes relative to land area, and parking requirements—together called "exclusionary zoning"—are used to prevent new housing units from being built in high-demand areas. These types of exclusionary zoning rules are often defended on the grounds that they reduce traffic or preserve neighborhood character, but they have a sordid history. In the past, zoning regulations were often used to maintain racial segregation (Rothstein, 2017).[1]

To understand the effects of land use regulations, it is helpful to consider the hypothetical outcomes we would observe if the regulations were weakened. In that hypothetical world, the areas where many people want to live—cities or neighborhoods that are close to jobs that pay high wages—would see more development.

Instead of being used for a $2.5 million single-family home, a plot of land in San Francisco's Sunset neighborhood might be developed into three $1.5 million

1 For example, Chicago's first comprehensive zoning ordinance was used to concentrate blacks in certain neighborhoods in 1923 (Shertzer, Twinam, & Walsh, 2016). San Francisco's nineteenth-century restrictions on operating a laundry were part of a thinly veiled anti-Chinese legislative agenda (*Yick Wo v. Hopkins*, 1886).

apartments. On its own, rezoning this single lot would not make San Francisco housing much more affordable. But the lot would house 3 times as many people. That means more people would be able to live in the city of San Francisco as opposed to distant suburbs, and more people would be able to live in the overall San Francisco metropolitan area. With enough densification of this sort, housing prices in the region would fall, spreading opportunity more broadly.[2] All else equal, cheaper housing would increase the real wages of existing residents.

Unfortunately, severe regulations in productive metropolitan areas such as San Francisco, New York, and Boston currently inhibit this process (Gyourko, Saiz, & Summers, 2008). Research suggests that the consequences of these regulations are dramatic.

In studies comparing cities with differing levels of land use regulation, researchers have found that these regulations lead to dramatically higher housing costs (Saiz, 2010). The overall cost of housing in the United States is at least $3.4 trillion higher than it would be absent zoning regulations.[3] These high costs subsequently prevent Americans from moving to productive metropolitan areas where they would find more economic opportunities (Hsieh & Moretti, 2017).

Since major cities are the most productive places (Glaeser & Gottlieb, 2009), artificially constraining population growth in these areas reduces overall production and wages. The sizes of these effects are stunning: U.S. gross domestic product (GDP) is $2 trillion below its potential as a result of restrictive land use regulations, according to multiple teams of researchers with very different methodologies (Hsieh & Moretti, 2017; Herkenoff, Ohanian, & Prescott, 2017). Wages are $1.3 trillion below their potential. Research also suggests that by preventing Americans from moving to new opportunities, these restrictions have even stopped the natural process of income convergence across regions, exacerbating income inequality (Ganong & Shoag, 2017).

These policies also push people into suburbs and exurbs, necessitating long, car-

2 Given the high cost of living in places like San Francisco, it is not clear whether high productivity translates into high real incomes for workers there. See Moretti (2013) and Diamond (2016).

3 This calculation is based on the results of Gyourko et al. (2008) and Saiz (2010), which use data from the 2000 U.S. Census. These numbers have likely increased significantly since 2000, so the $3.4 trillion total is likely a significant underestimate. I calculated this number as follows: (1) Suppose that the Wharton Residential Land Use Regulatory Index (WRLURI) (from Gyourko et al., 2008) were reduced from its actual value in each MSA to the minimum value observed in the data (obtained from Saiz, 2010). This simulates a dramatic deregulation of housing supply across the United States. (2) Using the empirical relationship between the Saiz (2010) estimate of inverse housing supply elasticity and WRLURI, predict how much the inverse housing supply elasticity would fall due to the reduction in WRLURI. (3) Using the relationship between inverse housing supply elasticity and house prices (from Saiz, 2010, Figure II(a)), predict how much median home prices would fall in each MSA due to the changes in steps (1) and (2). (4) Add up the reduction in median home prices times the number of housing units in the MSA in 2000 (from the 2000 Census).

based commutes.[4] The effects on commuting obviate one of the principal arguments in favor of zoning—traffic reduction. At best, zoning leads to traffic displacement. In practice, research finds that it leads to longer commutes and more traffic overall (Shoag & Muehlegger, 2015). This extra commuting time costs Americans one billion hours per year and leads to fewer social connections (Putnam, 2000). And longer commutes, of course, imply more pollution (Glaeser & Kahn, 2010).

2. The Policy Proposal: State-Level Minimum Zoning Mandates

In principle, the solution to this problem is clear: cities should relax their zoning rules. But opposition to new development is so powerful that this is often politically impossible. This kind of opposition even has its own famous acronym: NIMBY, shorthand for the usual argument that development should always go somewhere else, i.e., "not in my back yard."

To circumvent this political hurdle, I propose that state governments adopt *Minimum Zoning Mandates* (MZMs). These MZMs would be explicit zoning codes that provide a baseline minimum density that land owners, such as developers, can invoke when municipal zoning and permitting processes prevent useful development.

The MZMs should provide all land owners with a meaningful right to build housing up to a certain density significantly beyond single-family houses. Medium-density rowhouses and small apartment buildings should be allowed in every location where any sort of development is allowed. This is the type of density that is associated with some of America's most-loved neighborhoods: Greenwich Village and other parts of Lower Manhattan, Boston's North End and South End, the Mission in San Francisco, Lincoln Park in Chicago, and much of historic Philadelphia. It meshes well with existing single-family homes, as we see in places like Cambridge, Massachusetts. MZMs need not enable high-rise condo towers that would change the character of leafy, low-density neighborhoods. Even medium-density zoning rules could generate interesting new neighborhoods and resolve the housing shortages in productive cities.

Effective MZMs would provide land owners with the right to build projects that meet the state code without any need for local approval, thus bypassing municipal zoning and other reviews. (If municipalities were granted the opportunity to review MZM projects, they could potentially delay or thwart them, reducing the policy's effectiveness.)

4 Even if public transit is an option, it can be agonizingly slow. See Dougherty and Burton (2017) about a three-hour commute—each way—from Stockton to San Francisco.

Of course, MZMs should not remove all municipal zoning powers. Cities would still control industrial zoning, for example. It would not be appropriate for MZMs to authorize noisy, polluting industries in residential neighborhoods, but they might allow light retail and restaurants if new residents demanded these sorts of services. Crucially, under these minimums, cities could always allow more flexible development options. If MZMs didn't authorize high-rise towers, cities could still choose whether and where to approve those. But MZMs would provide a guaranteed minimum right to use land effectively.

Perhaps the biggest challenge in developing a MZM would be determining the specifics. A helpful MZM must be powerful enough to meaningfully increase housing availability without sparking too rapid a change in any one neighborhood. A well-designed MZM should also respect legitimate city regulations—such as fire safety codes—and be tailored to address the specific barriers to development in each state.

A detailed framework—the "BUILD" framework—could help states design such effective MZMs. When designing a MZM, states have to make regulatory decisions across five major categories—**B**uildings, **U**se, **I**nvoking, **L**ocations, **D**elays (i.e., "BUILD"). Thinking about this framework could help a state understand the tradeoffs involved when determining the details of its MZM.

Buildings: What sorts of buildings should the MZM permit? A MZM statute would have to specify what sorts of construction are permitted even over municipal objections. What is the maximum height, and does it vary within the state? Are there any other restrictions that should be imposed, even in the context of an effort to minimize restrictions?
Key Tradeoff: The more flexible the MZM is in terms of what buildings are permitted, the more effective it would be in reducing barriers to new construction.

Use: Who has the right to use MZMs? Does the right belong to an individual land owner? Does the state government need to step in and declare that a locality is subject to the MZM?
Key Tradeoff: The most effective MZMs would allow individual landowners to use this right.

Invoking: For whoever has the right to invoke a MZM, how do they do so? Does the builder have to apply to the local government for a permit, but under the MZM criteria rather than local zoning codes? Do applicants need to undergo an approval process with a state body in order to override local zoning?
Key Tradeoff: The most efficient way to implement a MZM would be to require local governments to approve a building permit that complies with the MZM within a limited time frame. This would save the additional administrative hassle of applying to a state body.

Locations: Where does the MZM apply? Everywhere throughout the state? Only in particular neighborhoods? Only in localities that have excessively restrictive zoning codes to start? If the latter, how are these defined?
Key Tradeoff: It would be challenging to classify each locality's restrictions, in part because some of the techniques municipalities use to restrict housing are delays and bureaucratic inflexibility. So it would be easiest to apply the MZM universally.

Delays: How rapidly can the MZM be invoked and applied? In particular, how will the process be designed to avoid unnecessary delays, either due to a municipality being uncooperative or any relevant state body taking significant time in approving a use of the MZM (if required)?
Key Tradeoff: The process and associated regulations should be designed to authorize construction as quickly as possible. Permitting delays are a major part of housing supply restrictions, with pernicious consequences for overall housing market dynamics (Paciorek, 2013).

3. Advantages, Disadvantages, and Frequently Asked Questions

ADVANTAGES

- MZMs provide a tool to bypass excessive local housing supply restrictions. If implemented aggressively, they would make housing markets more responsive to local demand. This would improve housing affordability, alleviate commutes, and expand economic opportunity.

- Relative to other proposed solutions, MZMs have the potential to create broad improvements in housing markets. MZMs would not require planners to decide on specific areas to target or identify specific populations who may benefit. Instead, developers could build housing that appeals to the entire population, in the areas where it is in highest demand.

- MZMs also have the potential to spill over into improved municipal zoning codes. If localities didn't change their restrictive zoning, then MZMs would create an opportunity for landowners to override this zoning and develop most areas into medium-density residential neighborhoods. But municipalities may want to encourage other activities, such as retail and restaurants. They therefore would have an incentive to improve their own zoning codes in order to encourage builders to rely on local zoning rather than the statewide MZM minimums. This effectively creates artificial regulatory competition between the locality and the state. This competition could spur localities to relax their own zoning, thus making MZMs a positive force for improving local policies.

- MZMs may have a significant benefit for local labor markets. By making it easier for workers to access jobs, they could increase labor force participation and employment. By allowing workers to move closer to preferred employment centers, they could increase productivity and wages.

DISADVANTAGES

- Adopting a MZM would require the state to decide on a maximum restrictiveness that localities are permitted to enforce. This may be challenging and contentious. The framework outlined above could help lawmakers think about the tradeoffs involved in establishing these statutes.

- MZMs might apply more broadly than necessary—even in areas that are not engaged in exclusionary zoning. Ideally, we might want to leave these areas untouched, but doing so in a systematic way would be challenging. (See Questions and Answer section, below.)

QUESTIONS AND ANSWERS

If this is such an obvious problem, why do states need to step in? Why won't municipalities change zoning on their own?

Land use regulations at the local level only reflect local interests. Each locality that restricts housing pushes people into other areas. These restrictive zoning decisions do not take into account the effects on other areas, and on outsiders. In general, metropolitan areas with more fragmentation of local governments have stricter zoning regulations—when each government controls only a small community, zoning rules tend to be less inclusive (Fischel, 2015).

How can Minimum Zoning Mandates overcome the challenge of these local politics?

It's true that powerful political forces created the current system, and it will be challenging to overcome those forces. But this challenge can be met. Politically, state legislatures and governors should be able to see the broader picture, rather than just the narrow local concerns that breed exclusionary zoning. State budgets currently pay for exclusionary zoning in the form of long commutes that necessitate costly highway construction and repair projects and result in lower productivity for residents (and lower tax revenue). Voters, meanwhile, often complain about the difficulty of finding housing near major employment centers. By alleviating these problems, politicians would reap the benefits of better quality and higher employment in their districts, higher tax revenues, and grateful voters.

State legislatures are less likely than municipalities to be sensitive to complaints from individual neighborhood NIMBY groups. Each of these groups merely wants to push development into someone else's neighborhood. These groups have powerful influence at the municipal level, but state governments have a broader constituency. State legislatures may recognize that their electorate is unhappy with high housing costs, and that everyone needs to live somewhere. Of course, powerful lobbying could lead to exceptions in certain cases, but it will likely be harder to extract meaningful concessions from a state legislature than it is to hold up a local council hearing.

Are states legally allowed to override municipal zoning decisions?

Yes, states have the right to override municipal zoning. Municipalities' powers are all granted by the states, and they can be limited. MZMs fit perfectly within the fundamental state powers; it is a state-level initiative to guarantee property rights. When a land owner—resident, developer, or investor—wants to build dense housing and is prohibited from doing so by zoning, this is an infringement on that land owner's right to use her property. While some such infringements are inevitable, MZMs would restore an element of these rights to the land's actual owner. This is a classic role for state governments.

Can the federal government do anything about this problem?

Glaeser and Gyourko (2008) propose a number of improvements to federal housing policy. These include using federal money to induce overly restrictive areas to permit new construction, by estimating counties' supply restrictions and subsidizing those that improve. They also propose reforms to the mortgage interest deduction, a federal policy that contributes to high house prices in areas with inelastic housing supply. The approach proposed here would make more sense at the state level, since states have complete control over the municipalities that they create, while federal approaches tend to involve subsidies or other fiscal policies.

Are there any precedents for this sort of approach?

Yes. This proposal is in the spirit of previous efforts to use higher levels of government to override restrictive local zoning. Such proposals have included financial inducements to increase zoning (Glaeser and Gyourko, 2008). MZM statutes have the advantage of being more direct and less punitive than withholding funding.

Existing state policies provide precedents in the spirit of this proposal, but they have been more limited in scope. The Massachusetts Comprehensive Permit Act allows developers of affordable housing to override local zoning (Massachusetts Comprehensive Permit Act, M.G.L. Chapter 40B §§ 20-23). A number of recent bills in the California state legislature aim to weaken some of the most egregious

zoning regulations. California Senate Bill 827 (2018) would have restricted some local zoning rules in areas near major transit routes. California's recent Senate Bill 35 (2017) tries to force localities to meet their own building targets. These examples offer precedents for state-level intervention, but they still require action from the underlying municipalities and thus enable municipalities to continue to obstruct some construction (Hamilton & Furth, 2018). MZMs would have the advantage of bypassing municipalities and allowing developers to directly build at reasonable densities, as defined by each state.

Does a judge or regulator have to invoke the MZM to override municipal laws?

It would be preferable for any individual landowner to be able to invoke a MZM. Otherwise, the same political apparatus that created the zoning restrictions originally would be in charge of deciding when to override those restrictions. Regulatory capture would likely lead the same interests that currently impose exclusionary zoning to lobby against invoking MZMs. If the goal is to simplify the building process and thus create new housing faster, adding a bureaucratic hurdle to invoking the MZM would defeat the purpose.

Won't MZMs be used just to build unaffordable luxury condos? Why not require these extra units to be subsidized low-income housing?

Allowing market-rate housing to be built more cheaply will enable the housing market to work better for everyone, including low-income Americans. The problems that MZMs address are pervasive throughout the housing market. The distortions that arise when people are prevented from moving to productive areas affect workers at all income levels. So the goal of this policy is to facilitate broad improvement in the housing market.

There are good reasons to design public policies with one specific goal per policy. To the extent that separate problems plague the low-income housing market specifically, other policies should, and do, address those problems. Applying MZMs specifically to low-income housing would risk creating new distortions and may create new inefficiencies in land use arrangements. The goal of MZMs is to reduce problems in the housing market broadly without creating new distortions.

Will MZMs allow developers to build housing for the rich and crowd out land needed for low-income housing?

In the absence of MZMs, land use restrictions frequently prevent the construction of dense housing, such as apartments, in favor of single-family housing, which is artificially expensive. Eliminating these restrictions will increase the supply of land that can be used to support middle- and low-income consumers. Thus, the increased

density resulting from MZMs will not reduce the supply of low-income housing units; in fact, it is likely to increase the supply of these units.

Existing zoning rules often have the explicit goal of keeping low-income residents out of a particular area. Limiting the supply of housing units drives the prices of those units up, making them unaffordable for low-income consumers. By increasing the supply of housing and reducing costs, MZMs will break this dynamic and improve affordability for low-income residents. This would make housing cheaper for those renting on the market and make it easier for the government to provide subsidized housing—if housing is cheaper, then government funds can be used to subsidize more families.

Will MZMs apply everywhere or only affect localities that are excessively restricting housing supply?

While it may be possible to design a MZM that only targets specific localities, this would introduce additional complexity and reduce transparency. An ideal policy might only target municipalities that are imposing unreasonable zoning restrictions and limiting housing supply beyond some reasonable level. The challenge for such a policy would be deciding which municipalities are covered. Since the level of housing demand is very different across places, simply looking at number of housing units built or permitted would not be a good indicator of supply restrictions. In the interest of simplicity, this proposal would apply to all municipalities.

Future research should explore the feasibility of estimating locality-specific housing restrictions. Ideally, this research would entail:

1. documenting legal and regulatory barriers to construction in each municipality in an interested state (as opposed to the samples where this has been documented previously (Gyourko et al., 2008));

2. developing a method to estimate housing supply elasticities in each locality;[5] and

3. updating the two estimates above every few years.

This is a worthwhile task for future research. But since this work would be quite demanding, it would be easier to apply MZMs everywhere.

5 The most influential set of supply elasticity estimates comes from Saiz (2010). These estimates are at the level of the metropolitan area (MSA), which is appropriate for thinking about overall housing markets. But since MSAs are not political units, these estimates do not provide granular enough information on which to base locality-specific policies.

4. Conclusion

A widespread effort to create more housing in America's most productive and expensive regions has tremendous potential benefits for people, the economy, and the environment. While housing restrictions in any one location might have minimal effects on the national economy, current restrictions are so widespread that they generate major reductions in economic potential.

This situation should be deeply concerning, regardless of one's political or economic perspective. By preventing more people from moving to areas with better opportunities, exclusionary zoning leads to the inefficient use of human capital; it may also generate and perpetuate income inequality. Furthermore, zoning regulations infringe on very reasonable uses of one's own private property.

Historically, narrow local interests have dominated municipal land use policies, but state governments can overcome this challenge by adopting a broader perspective. Minimum Zoning Mandates offer an effective path to overcoming municipal resistance to development and expanding opportunities for all Americans.

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