

The Advisory Commission on Regulatory Barriers to Affordable Housing: Its Behavior and Accomplishments

Anthony Downs*
The Brookings Institution

Abstract

In March 1990, Secretary Jack Kemp of the U.S. Department of Housing and Urban Development (HUD) appointed a 22-member commission to investigate the nature and extent of regulatory barriers to affordable housing, as well as what to do about them. Chaired by Thomas Keane, ex-Republican governor of New Jersey, the Advisory Commission on Regulatory Barriers to Affordable Housing grappled with this issue for over a year, releasing its final report in early July 1991.¹ As a commission member, I had an unusual opportunity to observe just how the commission worked and what it accomplished. This paper tries to put those two subjects in perspective. It has been written from the viewpoint of a longtime specialist on housing, who also served on the very first urban commission—the Douglas commission—23 years ago.²

How the commission functioned

Defining the scope of the commission's assignment

The behavior of any commission can be viewed in terms of the way it responds to a series of challenges. The most basic challenge is defining the scope of its assignment. The more important the public thinks the commission's formally assigned subject is, the broader and more representative of all society the appointer must make its members. But because regulatory barriers to affordable housing ranked very low in public consciousness, Secretary Kemp was free to fill the commission mainly with right-wing conservatives like himself.

A key factor in this regard is the personal relationship between the appointer of the commission and the commission's chairman. A *loyalist* chairman tries to keep commission members focused on those narrow aspects of the subject the appointer had in mind. For such a chairman, making the appointer look good is a major goal. In contrast, an *expansionist* chairman is more interested in making a

* The views in this article are solely those of the author and not necessarily those of The Brookings Institution, its trustees, or its other staff members.

name for himself or herself or in exploring the issues involved in great depth. Such a chairman tries to make the commission's scope broader and more grandiose.

Governor Keane was a loyalist chairman. He kept the commission narrowly confined to examining those aspects of housing markets that are directly influenced by regulatory barriers. I believe that was the right course. Trying to cover all factors that increase housing costs would have so diffused the focus of the report that the report could have had very little impact.

However, maintaining the focus was not easy because a few commission members wanted to expand the scope of the commission's inquiry into all aspects of housing finance and construction. The chairman gained the support of these potential dissidents in part by including one chapter in the final report that mentioned—without analyzing—many broader influences on housing costs.

Deciding what depth of change to recommend

A second challenge facing every commission involves the depth of change in society's existing arrangements the commission is willing to recommend. Most of any society's central problems are deeply rooted in established behavioral patterns that benefit those interests dominant at the time. The more profoundly any commission considers those problems within its purview, the more radically it will perceive the changes necessary to correct them. But radical changes run the risk of being dismissed as hopelessly impractical and unrealistic in the eyes of the establishment now in power, the very group that must carry out any changes the commission recommends. Moreover, radical changes are likely to threaten at least some of the privileges and power of these establishment groups, given that these groups are partly responsible for the problems being studied. This commission was heavily influenced by the chairman's desire not to make recommendations that would upset the Bush administration, such as suggesting big increases in federal spending on housing assistance. Hence, it did not make radical recommendations.

Gathering evidence

The next challenge this commission faced was gathering evidence concerning the nature and extent of any regulatory barriers that were impeding housing affordability. To meet this challenge, it followed two tracks. The first entailed holding public hearings in major cities from coast to coast. The commission invited testimony from anyone who wanted to participate. Squads of people showed up from various interest groups and the public at large. The result was reams of testimony on many aspects of regulatory barriers and quite a few ideas concerning how to reduce such barriers. The second track entailed having a team of HUD's staff members from the Office of Policy Development and Research investigate the literature on this subject to find past studies that would provide objective data about it.

Some academic observers have criticized the commission for not carrying out in-depth empirical research on how regulatory barriers affect housing affordability.³ However, I believe this criticism misconstrues the nature and purpose of such bodies. The commission was not designed to conduct original empirical research, nor was it given the large budget necessary to do so. Rather, it was supposed to review what was already known and recommend actions on that basis. Its members relied on the HUD Office of Policy Development and Research staff to review the literature. The staff informed the commission that not much quantitative information existed on this subject. (The main studies it found are listed in the bibliography.)

From the start, the commission's members believed—I think correctly—that the main problem concerning regulatory barriers to housing affordability was not whether they existed or how large they were, but how to overcome the great political obstacles to reducing them. All previous federal commissions on housing had emphasized the existence of such barriers and the importance of reducing them, but none had succeeded in achieving that goal. Many other government commissions have likewise been designed mainly to invent politically acceptable means of achieving already-identified goals rather than to conduct detailed empirical research about those goals.

Making commission members aware of the importance of regulatory barriers

When appointed as a commission member, I believed most other members were not initially likely to recognize just how profoundly important regulatory barriers are in raising the costs of new housing units. I based that conclusion on more than 30 years of dealing with this subject as a housing analyst. Even most experts in this field had previously concluded that regulatory barriers might raise housing costs by not much more than 25 percent. True, that is a significant amount. Yet I was convinced—for reasons I state later—that the correct figure is at least 50 percent and might often be much higher. Other housing economists have sharply criticized this view with terms ranging from “undocumented” to “ludicrous.” Nevertheless, I believe it is both correct and quite relevant to U.S. housing policies.

Thus, I faced my own challenge of trying to persuade other commission members that this is the case. I wrote a 44-page paper setting forth my views on regulatory barriers and what to do about them, and I circulated this paper to commission members and staff before the first meeting. The remainder of this paper uses many arguments contained in that paper.

In retrospect, I believe this approach was successful in convincing commission members that regulatory barriers raise housing costs much more than most people realize. It also helped persuade them to adopt a remedial strategy that emphasizes state government pressure on local governments, as explained further on.⁴

Dealing with factions within the commission

Another challenge facing the commission’s chairman was serving the interests of two different orientations among commission members. A few members were primarily interested in the welfare of big cities and their low-income residents. But more members were interested in barriers to the affordability of new housing constructed in mainly middle- or high-income suburbs. Two relevant factors affected the influence exerted by individual commission members: the amount of time each had to spend on commission affairs and the aggressiveness with which each pursued his or her agenda.

Exerting much influence on the deliberations of any commission requires a member to spend considerable time on commission affairs. That member must attend most meetings, read the background materials, present written comments and ideas, and participate vigorously in discussions. This gives a great potential advantage to people who are not heavily loaded with other activities or tied down by demanding schedules. In this case, that included myself and several other “think-tank” members.

But this situation handicapped several public officials appointed for political or representational reasons, such as big-city mayors. Most such officials rarely attended meetings and exerted little or no influence on the commission’s findings. Moreover, the members appointed to represent poor residents of big cities almost never appeared. Hence, they also had little influence—with one exception. Chicago neighborhood activist Gail Cincotta was at almost every meeting, did her homework, and vociferously and skillfully represented her constituents’ interests. But she was greatly outnumbered by other active members who represented mainly suburban or middle-class interests.

Therefore, the commission decided to deal with both big-city and suburban barriers to housing affordability in separate chapters. It also decided to divide the concept of housing affordability into two distinct parts: the problems low-income households have in paying for decent housing without spending more than 30 percent of their incomes for shelter, and the difficulty many households have in buying their first homes, regardless of their incomes.

Overcoming the failure of past commissions to achieve results

The most difficult challenge to the commission was the universal failure to achieve significant results of all past housing commissions that had dealt with reduction of regulatory barriers. From the Kaiser commission in 1967 (the President’s Committee on Urban Housing) through the Presidential Housing Commission of 1981, nearly all housing commissions had pointed out the importance of regulatory barriers in raising housing costs. Moreover, they all recommended that those barriers be reduced voluntarily by local governments. Yet the diversity, geographic extent, intensity, and ill effects of such barriers has gotten much worse over the years. What could this commission do to have more positive effects than previous commissions?

In my opinion, the answer lay in a realistic understanding of why local governments retain regulations that raise housing costs. Previous commissions had merely pointed out the nature of regulatory barriers and their impacts upon housing costs, and had urged local governments to reduce those barriers. This approach assumed that local governments shared the commission's goal of reducing housing costs.

This reasoning reflects a common error in social policy analysis: *a mistaken presumption of common goals*. Many social policy analysts assume that behavior they regard as socially undesirable is caused solely by ignorance of its effects on the part of those performing it, rather than by genuine conflicts of goals or interests. Such analysts naively presume that, once everyone agrees on the facts, behavior they believe is desirable will be gladly produced by all. In reality, however, the persons carrying out this behavior often do not regard its supposedly ill effects as undesirable at all. In many cases, they even value those effects as positive. Therefore, these people either are deliberately trying to produce such effects or do not want them removed if those effects have arisen accidentally from actions initially undertaken for other purposes.

Accordingly, many local governments have strong incentives to *raise* housing costs—or, at least, not to lower them. Hence, merely informing those governments that their current policies raise housing costs and urging them to change those policies to reduce such costs are largely a waste of time. Such efforts ignore the true goals and motives of these governments. Past experience decisively confirms this conclusion.

To counteract this fallacious presumption of common goals, my paper for the commission focused on the motives of those local governments that were maintaining cost-raising regulatory barriers to housing. My approach was to recognize the true motives of local governments for not reducing such barriers and, therefore, to rely on forces other than their good will to alter these governments' behavior. Several other forceful members shared my view, and the commission accepted this approach. The title of the commission's final report—*Not in My Back Yard*—reflects what I believe is a realistic grasp of local government motivation.

The nature of regulatory barriers to housing affordability

The two data-gathering tracks used by the commission revealed that a surprising variety of regulatory barriers are raising housing costs all across the nation. Most of such barriers consist of regulations that have been adopted for good reasons but are being administered in ways that raise housing costs far more than is necessary to achieve their basic purposes. Therefore, the commission's identification of some regulation as a barrier to housing affordability is by no means a condemnation of that type of regulation altogether, nor is it a recommendation that the regulation be abolished.

For example, one of the most widespread and serious regulatory barriers to housing affordability consists of local zoning codes that exclude almost all moderate or high-density housing developments, including most multifamily housing. The commission's recognition that such zoning raises housing costs certainly did *not* mean the commission was opposed to all zoning per se, as some of its critics have inferred. On the contrary, the commission believed that zoning codes can and do serve legitimate purposes and should be part of every local government's regulations. But such codes sometimes have the effect—whether intentional or accidental—of raising housing costs substantially beyond the levels that the commission believed were morally defensible from the viewpoint of society as a whole.

The same is true of many other specific regulations cited in the list of barriers to housing affordability presented below. Examples are building codes, subdivision codes, environmental regulations, the Endangered Species Act, historic preservation regulations, and labor regulations, all of which governments have adopted to serve important purposes that need public attention.

The main purpose of the commission was not to challenge the legitimacy of such regulations, but to point out where they were unnecessarily raising housing costs and to recommend changes that would ameliorate that undesirable outcome. Its assignment was to examine whether such regulations acted as barriers to affordability, not to evaluate the overall merit of such regulations. Naturally, then, its report emphasized the negative impacts of these regulations on housing costs rather than their many positive benefits.

Specific regulatory barriers to affordability

The major specific regulatory barriers to housing affordability identified by the commission are listed below. I have set forth these specific barriers before presenting any analysis of them because the classifying categories I use later have been inductively derived from analyzing these items.

1. Zoning regulations that require large lots, large minimum housing sizes, or large side yards.
2. Zoning regulations that greatly restrict the amount of land on which multifamily housing can be built, given that multifamily units can be constructed less expensively than single-family units.
3. Building codes that require use of certain materials or methods that are more costly than other materials or methods that are technically just as sound.
4. Environmental regulations that prohibit construction on wetlands unless costly arrangements are made to preserve their “wetness” or replace them with equally wet areas.
5. Labor regulations (specifically, the Davis-Bacon Act) that require paying prevailing union wages for construction on even small-scale housing projects if federal funds are involved.
6. Subdivision regulations that require very wide or high-quality streets in low-traffic areas that do not need such costly arteries, or that require other forms of “gold-plated” local improvements.
7. Regulations that require home builders and other developers to keep extensive records of hiring practices or other behavior, which add to project costs without improving output quality and in many cases are never reviewed or used by anyone, including public officials.
8. Historic preservation regulations that restrict the ability of developers to use inexpensive construction methods, require costly preservation of existing structures or facades, or require costly investigations of possible prior use of sites before construction can begin.
9. Permitting and processing procedures that take very long periods of time, thereby forcing developers to pay higher interest

costs in carrying their land, as well as other project costs. Such time-consuming procedures include fulfillment of duplicate requirements from different agencies for the same information, multiple review processes, and constant revisions in plans to satisfy various officials or citizens.

10. Environmental regulations that prohibit any development on large or critically located tracts of land inhabited by species classified as endangered, regardless of the costs thereby imposed on the owners of such land or on the developers who must pay to create reserves for such species.
11. Environmental regulations that require developers to prepare lengthy and costly studies of the possible impacts of their proposed projects on various aspects of the environment before final approval to proceed with those projects can be received.
12. State or local ordinances or constitutional provisions that prohibit local governments from raising taxes or increasing spending enough to provide the infrastructures necessary to accommodate the population growth occurring in the areas concerned. These laws, of which California's Proposition 13 is an example, compel such governments to raise the costs of such infrastructures by imposing direct fees on each new development, thereby raising the costs of the houses therein.
13. Impact fees, proffers, exactions, mitigation fees, or development fees imposed on new housing developments by local governments to pay for the infrastructures that serve those new developments or other parts of their communities. Such fees add to the market prices of the housing in those developments.
14. Rent controls that, over the long run, inhibit the mobility of individual households, the willingness of owners to maintain and renovate their units, and the willingness of developers to create additional rental units in the communities concerned.
15. Local regulations or customs that prohibit the erection of manufactured housing units (sometimes called "mobile homes") in most single-family districts.
16. Building codes, parking regulations, or other ordinances that prohibit owners of large, single-family homes from creating accessory housing units out of some of the excess space in their homes and renting those units at low rents to low- or moderate-income households looking for affordable shelter.

17. Building codes that prohibit the construction or maintenance of single-room-occupancy (SRO) hotels or apartments, even though such dwellings provide now-homeless individuals with “decent-quality” accommodations far superior to what they could otherwise afford.
18. Building codes that require older structures being renovated to replace all their existing basic systems with costly and technically up-to-date versions of those systems, even though slight repairs to the existing systems would be technically adequate and safe.

The above list shows the immense variety of regulations that tend to raise the cost of housing, thereby reducing its affordability.

How regulatory barriers raise housing costs

The general ways in which the above regulations unnecessarily raise housing costs can be classified in these ways:

1. *Direct restrictions on housing supply*—such as zoning limits on multifamily units; numerical caps on the number of units that can be built each year; and allocation of large, developable land areas for agricultural use only.
2. *Direct cost increases*—such as requiring expensive components or methods that perform no better than less costly ingredients, and adding sizable fees to pay for reserves for endangered species.
3. *Delay-causing requirements*—such as excessively lengthy permit and review processes.

Some regulatory barriers fall into more than one of these categories.

Direct restrictions on housing supply tend to prevent relatively low-cost housing from being built at all in certain communities, rather than just directly increasing the cost of housing that is being built there. However, such prohibitions can raise the cost of occupying *both* units built there and the general type of units not permitted there.

For example, Fairfax County, Virginia, outside of Washington, contained more than 818,000 residents in 1990—a population higher

than that of seven states. About 30 percent of Fairfax County households were renters. But of the thousands of now-vacant acres zoned for residential use there, county zoning regulations permit fewer than 1 percent to be used for multifamily units and only 3 percent to be used for townhouses. Multifamily housing is both less expensive on average to build per unit than single-family housing, and more likely to be used for rental occupancy. Hence, greatly restricting future construction of multifamily units in Fairfax County will surely raise the market rents obtainable on such units that exist now as well as on those that are built in the future. Those rents will be far higher than they would be if a much larger number of multifamily units could be created there. And thus, such regulations not only reduce the affordability of *all* multifamily units in Fairfax County, present and future, but also prevent construction there of many more relatively low-cost units.

Of course, regulatory barriers to housing affordability mainly increase the costs of constructing new housing units rather than of occupying existing ones. Nevertheless, raising construction costs can also raise occupancy costs by preventing additional lower-cost competition for the existing units.

Even so, it is certainly true that eliminating *all* regulatory barriers to housing affordability would not come close to ending the existing housing affordability problems of America's low-income households. Those problems are caused more by poverty and low incomes than by high housing costs, as pointed out in chapter 5 of the commission's report. But making recommendations about how to ameliorate poverty and low incomes was clearly beyond the scope of the commission's assignment.

The effect of regulatory barriers on housing affordability

By how much do such regulatory barriers raise housing costs?

It is extremely difficult to determine by just how much the regulations listed above raise housing costs in the nation as a whole above what those costs would be in the absence of such regulations. One reason is that the specific regulations in each local jurisdiction differ from those in most other jurisdictions. Therefore, no

generalizations can be made from empirical measurements in one place to those in nearby communities or in the nation as a whole. Furthermore, nonregulatory traits that affect housing prices in each community—such as local amenities, the strength of the local economy, and the socioeconomic level of the population—also vary immensely from one place to another.

Another difficulty is that regulatory barriers almost always produce benefits to some residents of the local communities that adopted them, although not necessarily to their whole metropolitan areas. That is why those communities adopted such regulations in the first place. Modifying these laws so as to reduce their cost-raising effects on housing would therefore undermine the welfare of many local residents. That would partly offset the gains that greater affordability would provide to households who cannot afford to live there now.

However, in most cases, the specific benefits that result from *those aspects of such regulations that substantially raise housing costs* are distributed regressively; that is, the households who benefit from those specific aspects have higher incomes than the households who would gain from eliminating or scaling back those aspects. This does *not* mean that all or even most of the benefits from such regulations are regressively distributed—only the benefits from those aspects that raise housing costs substantially.

For example, zoning ordinances that spatially segregate housing from most nonresidential uses undoubtedly benefit nearly all residents of the communities that adopt them to some degree. Hence, the *general benefits* of zoning may very well not be distributed regressively. But the *specific benefits* of those elements of zoning laws that substantially raise housing costs are usually distributed regressively, almost by definition. Consider zoning laws that require minimum lot sizes of one acre per dwelling unit. Households who can afford such lots almost certainly have higher incomes, on average, than households who cannot. Presumably, the former benefit from excluding the latter—or at least they believe they do. But the latter are harmed by such exclusion because it reduces their choices of where to live. It also may raise the cost of units available to them by restricting the supply of such units. Similarly, nearly all housing-cost-raising elements of all regulations tend to restrict the housing choices of low- and moderate-income households more than they do those of upper- and middle-income households. Thus, the redistribution of welfare that would result from *reducing* the effects of these regulatory elements on housing affordability would be progressive.

Moreover, such local benefits may increase the demand for housing in the communities that have these regulations. Thus, removal of such regulations or reduction of their impact might decrease the demand for housing in those communities. That could cause a decline in housing prices that would easily become confused with the reductions in construction cost resulting from less stringent regulations.

Consequently, it is impossible to estimate reliably by how much housing costs in the nation as a whole could be reduced through removal of all or most of such regulatory barriers. It would be satisfying to be able to quantify that reduction via some average estimate, such as a 25 percent reduction in the average cost of building new units nationwide. However, no such estimate can be reliably documented; hence, neither this paper nor the commission's report presents one. Nevertheless, these regulations clearly add substantially to the cost of housing in many communities. This conclusion is supported by the studies cited in the bibliography to this article.

A few examples are instructive. In many California localities, impact fees (caused by government regulations to pay for infrastructures to serve new developments) total \$30,000 or more per unit. In Illinois, builders have estimated that it costs \$15,000 less to construct a certain type of home in a Chicago suburb than to build an identical unit within the city of Chicago; this is because of the latter's more stringent regulations. Furthermore, in Riverside County, California, each new dwelling unit is assessed \$1,960 to create preserves for the Stevens kangaroo rat. More than \$200 million will eventually be spent on such preserves—far more than is being spent on homeless human beings in all of southern California during a comparable period!

A radical perspective concerning “necessary” housing costs

It is easy to take for granted that the minimum housing quality standards supported by local government regulations throughout the United States are necessary for safe and sanitary dwellings. After all, those standards are almost universally required by law in all 50 states. Even if that belief is challenged, almost no academic experts, builders, or government officials believe that many American households either want or are willing to live in housing units with much lower quality standards than those called for by these minimum requirements. These two assertions are almost universally accepted. But they are also dead wrong.

There is almost no scientifically proven relationship between the minimum housing quality standards required in the United States and human health and safety.⁵ And hundreds of thousands, perhaps millions, of American households are right now living in dwelling units that fall far below the minimum quality standards required by law. But almost no one recognizes these facts or understands their implications for housing policy.

The great magnitude of costs that regulatory barriers add to U.S. housing prices can best be understood by considering resident housing in other nations. For example, in Hong Kong, when I visited there in 1974, relatively luxurious public housing units contained about 350 square feet per unit. Each unit was supplied with heat, plumbing, a kitchen, electricity, and fresh air. These units were located in 23-story apartment buildings.⁶ Singapore had similar accommodations that were also in high-rise public housing, although the units there ranged in size from 350 to about 1,000 square feet. And the average floor area among the four million housing units in the Tokyo metropolitan area in 1983—including both single- and multifamily units—was only about 580 square feet; only 14 percent contained 1,000 square feet or more.⁷

These units are so small and are located in such high-density structures compared with those in the United States that their existence may seem totally irrelevant to our housing situation. But they are actually highly relevant.

First, the success of these units in providing decent, safe, and sanitary accommodations for millions of persons shows that minimum housing quality standards are almost entirely cultural in nature. Moreover, in the United States, legally required minimum housing standards for space almost always greatly exceed anything justifiable as necessary for healthful living requirements. The families who lived in Hong Kong and Singapore public housing showed no evidence of any physical, mental, or health disabilities caused by their small dwellings. True, Japanese households complained about their small housing units, but they showed no signs of any serious disabilities stemming from small housing size, as their current success in competing with us economically clearly demonstrates. Thus, the requirements for much larger housing units in most U.S. localities are not based on minimum physical needs for healthful or safe living. Even American households could live healthy, safe, and fruitful lives in housing units much smaller than those we now require in most communities. This has recently been recognized in New York City in the construction for homeless households of new housing units containing about 400 square feet per unit.⁸

I believe that, in most U.S. communities, housing units containing fewer than about 700 square feet for a two-bedroom unit (or equivalently smaller sizes for one-bedroom and efficiency units) will violate local codes. Moreover, most U.S. suburbs sharply restrict the extent of residential densities above about ten units per acre on residentially zoned land. They often permit higher densities on small fractions of their land, but the average residential density allowed is usually well under ten units per net residential acre.⁹ Yet in many cities, such as New York City, thousands of households live healthy lives in structures with densities of over 50 units per acre.

Therefore, from the viewpoint of establishing the true impact of local regulations on housing costs, any requirements for minimum unit sizes of above, say, 500 square feet per unit or for maximum densities of below, say, 35 units per acre are the result of local government regulations, not of physical requirements for satisfactory living.¹⁰ This reasoning leads me to conclude that *probably well over half the cost of building new housing in the average U.S. community is a direct result of local government regulations rather than of any minimum requirements truly necessary for the occupants' health and safety*. This is a rough guess, not a scientific measurement. But even if it is only approximately correct, it has major implications for U.S. housing policy.

Most American housing is built to standards that go far beyond the minimums required by health and safety because builders and occupants want shelter that greatly surpasses such minimums. They want amenities that are not essential to human health but are desirable for a comfortable and satisfying life in a wealthy nation. There is surely nothing wrong with such desires. What is wrong then with requiring much higher-than-minimal standards in local housing? Legally, there is nothing wrong with it. But morally, such requirements are often wrong because they prevent a large percentage of the nation's population from being able to live in the communities where they prevail.

Moreover, such exclusion is part of an overall system of local regulations in every metropolitan area that encourages and even compels most of the poorest people to live concentrated together in the oldest, most deteriorated neighborhoods. As a result, these people must endure undesirable neighborhood conditions that create massive inequalities of opportunity for themselves and their children.¹¹ I believe this is a form of social injustice that local governments—perhaps unwittingly—perpetuate by requiring very high-quality housing standards for what seem to their residents to be entirely legitimate reasons.

Furthermore, there are alternatives to this system that, for the most part, would not require residents to abandon high-quality standards. But they would permit at least some local residents to live in much lower-cost housing that conforms to lower-quality standards while still providing adequate shelter and amenities. To put it another way, most local governments could reduce the present cost of building at least some new decent-quality housing within their boundaries by as much as 50 percent, and perhaps more, if they were willing to change their existing regulations to achieve that goal.

Again, I am guessing subjectively at what this percentage really is, but I strongly believe 50 percent is a conservative estimate in most suburban communities. If that seems improbable, consider how much the average suburb could cut the cost of occupying new units if it permitted them to be built at a density of 35 units per acre, in either SRO hotels (discussed below) or 400-square-foot apartments. Moreover, it would be a delusion to think no one would be willing to occupy such small new units. If their rents were based on the true costs of building them, these units would be flooded with applicants seeking to escape from overcrowded or higher-priced housing elsewhere in the same metropolitan area.

The relevance of these considerations to U.S. housing policies

Many U.S. housing experts say that most American households would not be satisfied to live in a housing unit containing only 350 to 400 square feet. We need to have much bigger units because our society is much wealthier than the societies of Singapore or Hong Kong (although not any wealthier than that of Tokyo). Moreover, our households—even the poorest ones—have been indoctrinated by television to expect and even demand higher housing standards for themselves. Hence, the argument goes, Americans will not occupy such small, dense housing units.

This argument sounds plausible, but it is false. In fact, hundreds of thousands of American households are occupying even smaller amounts of space per household right now in certain regions. This is because those households are poor, and the average prices of housing units around them are astronomical in comparison with their incomes. Many of these households are recent immigrants into the United States. They have little money—certainly not enough to pay anything like the median price of over \$200,000 per housing unit in Los Angeles and Orange counties. So they live with other households, doubled up, tripled up, or quadrupled up in dwelling units initially designed for a single household.

The *Los Angeles Times* recently estimated that more than 40,000 garages in the Los Angeles area were being illegally used as dwelling units by one or more households per unit. A high-ranking official in Santa Ana, California, told me two years ago she believed as many as 60,000 persons were living there illegally, mostly in overcrowded dwellings. Local government officials on Long Island, New York, told the commission staff that from 10 percent to 20 percent of the single-family homes in many neighborhoods there had added small—and illegal—accessory apartments that were being rented to second households. Thus, many thousands of American households are occupying units of lower quality than that legally permitted in most communities.

People who are too poor to pay for legally required minimum housing standards will quite reasonably live illegally in smaller or overcrowded quarters rather than become homeless. Experience throughout the world proves conclusively that *whenever housing quality standards are set or priced so high that a large fraction of the population cannot afford to meet them, that fraction will violate those standards in one way or another*. Moreover, local governments cannot stop this practice by rigorous code enforcement. True, local governments in some parts of a large metropolitan area, such as the wealthy suburbs, can rigorously enforce high-quality standards within their own boundaries. But that will simply force poor households to live elsewhere in that metropolitan area. Nearly every large U.S. metropolitan area contains thousands of very poor households, partly to supply the low-wage labor our economies still require. Somewhere within any metropolitan area that legally requires very high-quality housing standards throughout its territory, some local government will have to ignore major violations of those standards. The only alternative is to cast hundreds of thousands of people out onto the streets, homeless. Most elected officials in our democracy—quite correctly, in my view—would rather overlook widespread code violations than force such a mass creation of homelessness.

Two major conclusions spring from the above analysis. First, *current housing quality and density standards in many communities are set unrealistically high in relation to the true economic capabilities of millions of American households*. That is a key reason why over 22 million U.S. households—including over 18 million low-income households—paid over 30 percent of their incomes for housing in 1985.¹² Thus, high housing costs in relation to household incomes affected 28 percent of all U.S. households in 1985. In practice, local governments react to this situation by enforcing housing and occupancy codes to different degrees in different neighborhoods. Doing so is illegal, but there is no practical alternative. Politically, local

governments in such communities have been unwilling to legalize this practice or to adopt different codes in different neighborhoods because doing so might be interpreted as discriminating against the poor. People who readily accept the reality that poor households drive less costly cars and wear less costly clothes than wealthier households will nevertheless balk at accepting the idea that legally required standards of housing quality should be lower in poor neighborhoods than in wealthier ones.

The second—and closely related—major conclusion is that *a crucial way to reduce the costs of building housing is to reduce the quality standards such housing is legally required to meet*. These standards can refer either to the size and nature of the dwelling itself, or to the density at which dwellings can be placed on the land. Again, this conclusion may seem irrelevant. It is logical to presume that most Americans want higher-quality units than they now occupy, not lower-quality units. But two examples show just how relevant this conclusion can be to current housing policies.

The first example concerns SRO hotels. These are residential structures in which each resident occupies a single room, with perhaps a sink but no full bath and no kitchen. For every six units or so, there is a common bathroom, and for perhaps an even larger number of units, there is a common kitchen. Such hotels used to be called “flophouses.” Clustered around traditional skid row districts, they provide the lowest-cost dwellings in the city because the space and amenities offered per occupant are much smaller than those in conventional apartments. Moreover, a great many rooms can be loaded onto a single, relatively small site. This shows clearly how reducing required housing quality standards—especially unit size—can also drastically reduce housing costs.

This example has recently become relevant to housing policy because of the rise in homelessness. Many SRO hotels were demolished during the era of urban renewal and downtown upgrading. Some of their former occupants have become part of the homeless population. Most of that population are single men who have very little money. SRO hotels represent shelter that is quite suitable to their needs and far less costly to build or occupy than conventional housing units. Some cities have therefore begun both to preserve existing SRO hotels and to build new ones. Constructing new SRO hotels is a highly rational way to cope with homelessness. Yet local housing regulations make it illegal in the vast majority of American cities, including those with large homeless populations.

The second example concerns “Granny” or “mother-in-law” housing units that many owners of large single-family homes have developed within their homes.¹³ These *accessory units* usually contain a bedroom, a bath, a separate outside entrance, perhaps a sitting or reading room, and often some small cooking facilities, such as a grill or hot plate. They are connected to, but also somewhat separate from, the rest of the house. The owners of many large, older single-family homes have developed such units either to accommodate their relatives or to rent out to strangers for supplemental income. Because these units provide lower-quality shelter than full-sized, fully separate dwellings, they can be provided at much lower rents than larger dwellings.

Throughout the nation, in thousands of suburbs containing large single-family homes, such accessory units violate local occupancy codes. Yet the nation could almost overnight expand the available supply of relatively low-rent units by simply declaring that such units are legal throughout the country as long as they meet some simple minimum safety requirements. Thousands of such units that now exist illegally would become legal. More important, millions of homeowners would be encouraged to develop such units within homes that contain more space than they now need for their own use. The cost per unit of adopting such a policy would be very low and could be entirely borne by the private sector. Even if just 10 percent of all the owner-occupied single-family homes in the United States built before 1975 had accessory rental units added to them, the supply of affordable housing would be expanded by 3.8 million units. That would increase the nation’s supply of rental housing by 10 percent and would add many times more rental units than the total number of public housing units now in the entire United States.¹⁴

There are some plausible arguments against such a policy, which I will not discuss here. My point is that *willingness to reduce housing standards far below the levels now legally required in most communities can dramatically decrease the cost of creating additional housing units without necessarily causing major losses of social welfare*. Some architects have begun to recognize this possibility and have started designing housing units much smaller than average newly built units to reduce housing costs.¹⁵

Another possible benefit from reducing legally required housing standards is that the per-unit cost of subsidizing housing for very low-income households could be slashed. If every new housing unit costs at least \$75,000, with a monthly occupancy cost of \$750 or more, then the amount of subsidy required to permit a poor person

to live in it is much larger than it would be if new units cost only \$20,000 to \$30,000. This discourages Congress both psychologically and economically from making greater use of housing subsidies.

Why local governments adopt regulations that raise housing costs

Most local regulations that raise housing costs were adopted to achieve other goals. For example, detailed environmental impact studies were at first required to ensure that large-scale housing projects did not unduly injure the local environment. That is a commendable and legitimate purpose. But over time, the required studies have often become so elaborate and costly, and local governments have taken so long to review them, that they now add substantially to the cost of each housing unit created. A key issue concerning all such regulations is to what extent local governments are now motivated to recognize such impacts and to mitigate the complexity, timing, and cost of such studies or of other requirements so as to reduce those impacts?

In highly urbanized communities—especially big cities—local regulations that raise housing costs mainly affect building techniques, historic preservation of neighborhoods, use of unionized labor, technical requirements concerning rehabilitation of older homes, ability to place manufactured homes in single-family neighborhoods, legality of accessory apartments in single-family homes, and length of time required to obtain permission to build from all the agencies empowered to affect it. In these communities, such regulations have only rarely been deliberately adopted to increase occupancy costs. Rather, they have usually been designed to achieve many other goals sought by specific interest groups.

In growing suburban communities, local regulations that raise housing costs consist mainly of zoning rules that keep residential densities low and stringently restrict building of multifamily units, building codes that require large housing units and costly construction methods, subdivision regulations that require gold-plated infrastructures such as wide local streets, impact and other development fees that load the costs of community infrastructures onto new housing units, and permission processes that involve long delays and require costly planning and preparation. Moreover, some of these communities deliberately adopt such regulations from the start to increase the cost of new housing units created within their boundaries. They have three major motives for doing so.

The first motive is to protect or maximize the value of the investments homeowners have made in their residences. Most homeowners fear that proximity to lower-priced homes would reduce the market prices of their homes. Because the equity in their homes constitutes their single largest economic asset, they make it difficult to build either multifamily housing in general, or low-cost housing of any type, within their communities.

The second motive is primarily social. Many residents of middle- and upper-income suburbs fear that “invasion” of their communities by low-income residents would bring undesirable consequences, such as rising crime rates, rising drug abuse, and students in local schools from homes that do not encourage good educational performances. Higher-density housing may also bring greater local traffic congestion and air pollution and may cause congestion of local public facilities. Therefore, residents support maintaining high housing prices to exclude lower-income residents and preserve socioeconomic segregation.

These fears are not groundless; some such consequences *might* occur if the number of low-income households entering the community is significant. However, these fears are sometimes mixed with hostility to other ethnic groups associated with low-income status; and although such hostility has no legitimate role in American public life, these fears are extremely widespread and powerful forces in thousands of American localities. In fact, the major purpose of zoning ordinances and even of local government itself in some suburban communities is to restrict the type of households who can live there. Many suburbs originally incorporated to maintain their exclusivity. They sought to prevent invasion of their remaining vacant land by groups with markedly different socioeconomic status from their own. In such communities, reducing housing occupancy costs is a goal contradictory to the main purpose of the entire local government. This observation applies not to most suburbs but to a nontrivial number.

Moreover, many suburbs that initially incorporated and adopted zoning and other ordinances for appropriate reasons completely unrelated to housing costs do not now want to modify those ordinances to lower the cost of building new housing units there. Most of their residents who are aware that their existing ordinances keep out households with incomes lower than their own approve of this effect. Thus, the key issue concerning local motivations about regulations that raise housing costs is not why they were initially adopted but how willing are current residents to reduce that impact? As the commission has pointed out, such cost-lowering

modification can often be easily carried out without reducing the ability of the ordinances to serve their original purposes effectively. Yet such modification is often vehemently opposed by existing residents, as thousands of home builders across the nation can testify from their experiences at local zoning board hearings.

True, such behavior by local governments leaves out of account the interests of the 50 percent of all households in society with incomes below the median. It is possible for many local governments to ignore the welfare of such a large fraction of the population because of (1) the fragmentation of governmental powers in most metropolitan areas, (2) the small average size of a typical suburban jurisdiction, and (3) placement of legal and political control over land use almost exclusively in the hands of such small and fragmented local governments. Elected officials in each local community are motivated mainly by the desire to be reelected, which they can best achieve by serving the perceived interests of the existing residents. In many suburbs, existing residents consist mainly of middle- and upper-income households. For all the reasons cited above, these residents strongly support local laws that prevent creation of lower-cost housing anywhere near them.

The third motive for maintaining high-cost housing involves the community's tax base. If local housing values keep rising steadily, the local government's tax base continuously expands and the government can raise more taxes even without increasing tax rates. This gives the members of local government itself a strong motive for maintaining high housing prices in their communities.

When such policies are adopted over a large portion of any metropolitan area, they make it difficult to house a substantial fraction of the area's total population. This leads to—or at least aggravates—other serious problems, including traffic congestion caused by excessive commuting to jobs, suburban labor shortages, and high unemployment in inner-city areas. Yet it is politically difficult to break this noose choking off low-cost housing in large suburban areas because the potential beneficiaries of such housing are not yet present in the local electorates that vote for those officials who make the rules. Hence, the deck is stacked politically in favor of those existing homeowners who do not want lower-cost housing in their communities.

This analysis shows that simply exhorting most local governments to change their existing regulations that raise housing costs is