

Comments

IN SEARCH OF “REFINEMENT WITHOUT EXCLUSIVENESS”: INCLUSIONARY ZONING IN HIGHLAND PARK, ILLINOIS[†]

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I. INTRODUCTION

Since it first appeared some thirty years ago,¹ inclusionary zoning gradually has gained a foothold of credibility among some policymakers and legal commentators.² However, this affordable housing strategy, in which local governments require builders to set aside units in new residen-

[†] The quotation in this title is taken from a Highland Park newspaper’s June 1874 depiction of the young town’s emerging culture. At that time, the *Highland Park News* provided this description of the new community: “Refinement without exclusiveness, cultivation without arrogance, and a genial and unpretentious hospitality impart a pleasurable freedom to social life, and a speedy formation and growth of local attachment. Comparisons drawn from observation here and elsewhere convince us that these are among the distinctive features of this place.” MICHAEL H. EBNER, *CREATING CHICAGO’S NORTH SHORE* 78–79 (1988) (quoting HIGHLAND PARK NEWS, June 1874).

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¹ See Robert C. Ellickson, *The Irony of “Inclusionary” Zoning*, in *RESOLVING THE HOUSING CRISIS: GOVERNMENT POLICY, DECONTROL AND THE PUBLIC INTEREST* 135, at 136 (M. Bruce Johnson ed., 1982). This essay is a slightly modified reprinting of a law review article originally published under the same title, available at 54 S. CAL. L. REV. 1167 (1981).

² See, e.g., Lisa C. Young, *Breaking the Color Line: Zoning and Opportunity in America’s Metropolitan Areas*, 8 J. GENDER RACE & JUST. 667, 685 (2005) (identifying inclusionary zoning as a useful technique for the creation of affordable housing).

tial developments for low- and moderate-income households,³ has simultaneously met with a good deal of skepticism from some scholars.⁴ Critics argue that inclusionary zoning policies harm housing markets by reducing builders' abilities to profit from developments; consequently, they predict that developers will stop building in jurisdictions that adopt inclusionary zoning.⁵ Proponents of inclusionary zoning, on the other hand, maintain that rather than freezing housing markets, these programs actually encourage developers to produce lower-priced homes.⁶ Moreover, they also suggest that when adopted by wealthier or predominantly Caucasian towns, inclusionary zoning might be a useful tool for encouraging economic and racial integration.⁷

This Comment seeks to contribute to this debate by examining the impact of an inclusionary zoning ordinance that the City of Highland Park, Illinois, adopted on August 25, 2003.⁸ This analysis is structured around the two issues most central to the above debate: the ordinance's impact on rates of residential development and its impact on Highland Park's economic and racial makeup.⁹

Part II begins by introducing inclusionary zoning and delving into scholars' conflicting theoretical assessments of its effects. It also describes Highland Park—an affluent, predominantly Caucasian suburb of Chicago situated on the shore of Lake Michigan—and explains the workings of its new ordinance.

Part III sets forth a detailed analysis of the ordinance's impact on local rates of home-building and on Highland Park's economic and racial composition. After the inclusionary zoning ordinance took effect, residential development in Highland Park came to a standstill, as predicted by inclusionary zoning critics; home-building resumed, however, after approximately two years.¹⁰ This resumption may have been due, in large part,

³ See Robert Chambers, Comment, *Pushed Out: A Call for Inclusionary Housing Programs in Local Condominium Conversion Legislation*, 42 CAL. W. L. REV. 355, 367–68 (2006).

⁴ See, e.g., Ellickson, *supra* note 1, at 136–37.

⁵ See, e.g., Bernard Siegan, *Conserving and Developing the Land*, 27 SAN DIEGO L. REV. 279, 293 n.31, 294 (1990).

⁶ See, e.g., Andrew G. Dietderich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 FORDHAM URB. L.J. 23, 28 (1996).

⁷ See, e.g., Laura M. Padilla, *Reflections on Inclusionary Housing and a Renewed Look at Its Viability*, 23 HOFSTRA L. REV. 539, 564–66 (1995); Young, *supra* note 2, at 685 (“Despite zoning’s sordid history of racial segregation, exclusion, and expulsion, in some metropolitan areas, [inclusionary] zoning can actually promote the creation of affordable housing and help break the color line in housing.”).

⁸ See Highland Park City Council, Meeting Minutes (Aug. 25, 2003) (on file with author).

⁹ By taking this approach, this Comment does not necessarily evaluate the ordinance in terms of the City’s goals for it, but instead evaluates the ordinance using the terms of the larger theoretical debate about inclusionary zoning.

¹⁰ Cf. Edward G. Goetz, Karen Chapple & Barbara Lukermann, *The Minnesota Land Use Planning Act and the Promotion of Low- and Moderate-Income Housing in Suburbia*, 22 LAW & INEQ. 31, 36–37

to the municipal government's efforts to communicate with builders and assuage their concerns about the ordinance.¹¹ These findings suggest that although development shutdowns may occur after the adoption of inclusionary zoning ordinances, those shutdowns are not always irreversible.

Additionally, Part III identifies a number of aspects of this ordinance's design and implementation, as well as certain preexisting conditions in Highland Park, that may impede the ordinance's ability to significantly increase racial and economic integration in that town. By identifying these problematic features, this Comment attempts to provide guidance regarding how to structure ordinances that will better advance integration in communities that decide to adopt inclusionary zoning in the future.

In Part IV, this Comment calls attention to the extraterritorial impact of Highland Park's ordinance on other regional communities. As Highland Park was the first town in Illinois to enact inclusionary zoning,¹² its ordinance has served as a model for other municipalities that are considering inclusionary zoning themselves. Furthermore, Highland Park's willingness and ability to be the first Chicago-area community to adopt inclusionary zoning has smoothed the way for other regional communities to adopt similar policies—including some towns whose inclusionary zoning efforts may be more likely to advance racial and economic integration. The extraterritorial impacts of inclusionary zoning policies, however, frequently go unnoticed by scholars, many of whom only address the effects of inclusionary zoning policies on the jurisdictions that adopted them.¹³

Highland Park's ordinance has only been in effect for approximately five years, and the first postordinance residential developments were, as of the writing of this Comment, still under construction.¹⁴ Therefore, this Comment's data and analysis must be qualified as highly preliminary. Only a few existing studies, however, address the impact of inclusionary zoning ordinances,¹⁵ even while more and more communities consider adopting

(2004) ("[I]nclusionary zoning relies upon the initiative of developers for implementation and the overall impact is related to the degree to which developers act.").

¹¹ See Telephone Interview with Betsy Lassar, former Housing Planner, City of Highland Park (Nov. 8, 2006).

¹² Lynn M. Ross, *Affluent Community Sets Precedent with Inclusionary Zoning Ordinance*, ZONING NEWS, Oct. 2003, <http://www.planning.org/affordablereader/znzp/znoc03a.htm>.

¹³ See Dieterich, *supra* note 6; Ellickson, *supra* note 1; Young, *supra* note 2 (all focusing on the effects of inclusionary zoning policies within the jurisdictions that adopted them).

¹⁴ Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁵ See, e.g., Naomi Bailin Wish & Stephen Eisdorfer, *The Impact of Mount Laurel Initiatives: An Analysis of the Characteristics of Applicants and Occupants*, 27 SETON HALL L. REV. 1268 (1997) (presenting an in-depth and illuminating study of New Jersey's inclusionary zoning programs); Young, *supra* note 2, at 694–702 (offering a briefer review of the New Jersey and Massachusetts inclusionary zoning programs).

these policies.¹⁶ The availability of empirical data describing inclusionary zoning's impact may prove useful to policymakers engaged in the task of deciding whether and how to adopt such programs.¹⁷ Part V, therefore, concludes with the hope that this Comment's analysis can inform efforts to design, implement, and evaluate inclusionary zoning policies around the country.

II. INCLUSIONARY ZONING MAKES ITS WAY TO HIGHLAND PARK

A. Introduction to Inclusionary Zoning

Nationwide, most inclusionary zoning programs share the same basic structure.¹⁸ Normally adopted by municipal or county governments, these programs provide builders with incentives to sell or rent a certain percentage of units in a residential development at "affordable" prices set by the government.¹⁹ These incentives usually include waivers of government-imposed building and demolition fees, exemptions from local zoning laws, and other tactics designed to ensure that builders can still profit from their developments.²⁰ Additionally, inclusionary zoning policies apply only to developments of certain sizes, typically those involving at least five to ten units.²¹

Though the first community to adopt this type of program did so in 1971, it was not until the mid-1970s and early 1980s that the legal community began to take serious notice of inclusionary zoning.²² The policy's sudden prominence was due in large part to a 1975 case in which New Jersey's Supreme Court famously invalidated "exclusionary" zoning.²³ Exclusionary zoning entails the use of local zoning powers to exclude low- and moderate-income—and frequently minority—families from residential

¹⁶ See NICHOLAS BRUNICK, BUS. & PROF'L PEOPLE FOR THE PUB. INTEREST, THE IMPACT OF INCLUSIONARY ZONING ON DEVELOPMENT 2 (2004), available at http://www.bpichicago.org/documents/impact_iz_development.pdf ("Hundreds of communities across the country now use some form of inclusionary zoning at the local level in order to address affordable housing needs.").

¹⁷ See Quintin Johnstone, *Government Control of Urban Land Use: Comparative Major Program Analysis*, 39 N.Y.L. SCH. L. REV. 373, 444 (1994) ("More detailed and accurate data are needed on land use trends and on the impact of government controls . . . [because t]oo often, legislative and administrative requirements are based on guess or political preference, without the needed factual foundation.").

¹⁸ See Brian R. Lerman, *Mandatory Inclusionary Zoning—The Answer to the Affordable Housing Problem*, 33 B.C. ENVTL. AFF. L. REV. 383, 385 (2006).

¹⁹ Chambers, *supra* note 3, at 367–68. This percentage typically ranges from ten to thirty percent. *Id.*

²⁰ Young, *supra* note 2, at 686–87.

²¹ Chambers, *supra* note 3, at 368.

²² See *id.* at 365–66 (recounting a brief history of inclusionary zoning).

²³ *S. Burlington County NAACP v. Twp. of Mount Laurel (Mount Laurel I)*, 336 A.2d 713, 728 (N.J. 1975).

neighborhoods.²⁴ Municipalities typically accomplish these goals by requiring homes to have, for example, large lot sizes and floor areas—in other words, by promoting the development of properties that would be priced out of reach for lower-income purchasers and renters.²⁵

In that case, *South Burlington County NAACP v. Township of Mount Laurel*, a local branch of the New Jersey NAACP charged that the Township of Mount Laurel used exclusionary zoning tactics to keep out racial minorities.²⁶ While agreeing that the township’s zoning was exclusionary, the court invalidated its zoning policy using broader economic terms, finding that it excluded low- and moderate-income families.²⁷ The court went on to hold that the township—and, by implication, all New Jersey municipalities—had to “make realistically possible” opportunities for affordable housing.²⁸ The eventual solution adopted by many townships in the state was to amend zoning rules to require a fixed percentage of housing units to be priced affordably; in other words, they adopted inclusionary zoning.²⁹

Since *Mount Laurel*, an increasing number of counties and municipalities around the country—perhaps concerned about their own legal exposure—have adopted inclusionary zoning.³⁰ As mentioned above, current estimates place the number of inclusionary zoning programs nationwide between two hundred and four hundred, though they are still far from common.³¹ As these programs have become more widespread, legal commentators have engaged in a sometimes charged debate over inclusionary zoning’s impact. This debate has largely focused around two points: the

²⁴ See Lerman, *supra* note 18, at 386; Young, *supra* note 2, at 667–68 (noting that racial minorities are disproportionately poor in this country).

²⁵ Lerman, *supra* note 18, at 386; see also *Mount Laurel I*, 336 A.2d at 723.

²⁶ See Sam Stonefield, *Affordable Housing in Suburbia: The Important but Limited Power and Effectiveness of the State Override Tool*, 22 W. NEW ENG. L. REV. 323, 331 n.23 (2001).

²⁷ *Mount Laurel I*, 336 A.2d at 722–23. The NAACP’s understanding of exclusionary zoning as a race-based problem, as well as the court’s subsequent decision to define exclusionary zoning in economic terms, highlights the fact that the problem of exclusionary zoning frequently raises both issues of race and of economic status. These twin issues are discussed with respect to Highland Park’s inclusionary zoning ordinance in Part III.B, *infra*.

²⁸ *Mount Laurel I*, 336 A.2d at 724.

²⁹ For an explanation of the multiple judicial and legislative steps leading to this result, see Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 FORDHAM URB. L.J. 877, 907–09 (2006) (describing the aftermath of *Mount Laurel I*, *Mount Laurel II*, and the New Jersey Fair Housing Act).

³⁰ Wish & Eisdorfer, *supra* note 15, at 1271–72. Of course, these other municipalities and counties have adopted inclusionary zoning for various reasons of their own. Doubtless, some municipalities have done so because they were worried about facing legal challenges similar to *Mount Laurel*. Others may simply have viewed inclusionary zoning as a new strategy to be used in an already identified effort to increase affordable housing. See *id.*

³¹ Telephone Interview with Nicholas Brunick, Attorney, Applegate & Thorne-Thomsen, P.C. (Nov. 1, 2006); see also BRUNICK, *supra* note 16, at 2.

extent to which inclusionary zoning affects local housing markets³² and the extent to which it can facilitate racial and economic integration in residential neighborhoods.³³

First, inclusionary zoning critics have argued that these programs stifle development and drive builders out of housing markets.³⁴ Highlighting the various costs that inclusionary zoning imposes on home builders, including potentially significant reductions in developments' profitability, these critics argue that inclusionary zoning burdens developers so much that they eventually will leave town and relocate to less regulated areas in order to avoid those costs.³⁵ As a result, these scholars predict that in a jurisdiction that adopts inclusionary zoning, the housing market will functionally stall and the development of new homes will be severely limited.³⁶

Inclusionary zoning proponents, however, contend that these programs will actually benefit housing markets.³⁷ To them, exclusionary zoning policies "thwart[] free market forces"³⁸ by permitting current residents of an area to use zoning to effectively fix the price of land.³⁹ By removing these artificial price constraints and counteracting their effects, these proponents argue, inclusionary zoning programs will allow developers to respond efficiently to economically diverse market demand by producing lower-priced housing alongside more expensive homes.⁴⁰ Because inclusionary zoning enables the market to respond to this formerly stifled demand for lower-priced homes, proponents argue that its impact will amount to a housing boom, not a bust.⁴¹

³² Compare, e.g., Dieterich, *supra* note 6, at 28 ("A switch to inclusionary zoning rules is likely to expand the aggregate supply of housing available across income strata."), with Ellickson, *supra* note 1, at 136–37 (arguing that inclusionary zoning policies reduce rates of home-building and harm local housing markets).

³³ Compare, e.g., Ellickson, *supra* note 1, at 136 ("[Inclusionary zoning] can be expected to increase general housing prices, thus further limiting the housing opportunities of moderate-income households."), with Young, *supra* note 2, at 685 ("[Inclusionary] zoning can actually promote the creation of affordable housing and help break the color line in housing.").

³⁴ See, e.g., Ellickson, *supra* note 1, at 136–37.

³⁵ See Siegan, *supra* note 5, at 294.

³⁶ See *id.* at 293 n.31; Dieterich, *supra* note 6, at 26–27 (summarizing Ellickson's argument that inclusionary zoning "stalls the housing market, raises prices, decreases supply, and eventually hurts the class of less wealthy people it originally intended to help").

³⁷ See, e.g., Dieterich, *supra* note 6, at 28.

³⁸ Young, *supra* note 2, at 687.

³⁹ See Dieterich, *supra* note 6, at 60 ("Because zoning is legal, price fixing is not difficult.").

⁴⁰ See *id.* at 28; Young, *supra* note 2, at 685–87.

⁴¹ See Dieterich, *supra* note 6, at 28; Young, *supra* note 2, at 685–87. In its purest form, this economic argument is made without reference to the various incentives that inclusionary zoning policies usually make available to developers, though these incentives are designed to increase the odds that developers can still profit from their developments notwithstanding the enactment of inclusionary zoning. See generally Dieterich, *supra* note 6.

With respect to inclusionary zoning's impact on the economic and racial makeup of neighborhoods, critics argue that instead of enabling integration, inclusionary zoning perpetuates existing exclusionary policies.⁴² This theory was first articulated by Professor Robert C. Ellickson, who argued that because inclusionary zoning limits the production of new housing, it eventually causes existing home prices to inflate.⁴³ Thus, even more homes become unaffordable for low- and moderate-income households and for frequently poorer minority households.⁴⁴ This argument—that so-called "inclusionary" zoning has self-defeating effects—has been taken up by a "legion" of later scholars.⁴⁵

Many other scholars, however, argue that inclusionary zoning can substantially further the related goals of economic and racial integration.⁴⁶ Affordable housing proponents argue that when adopted by a more affluent community, inclusionary zoning furthers economic integration by causing the production of lower-priced homes into which lower-income households can move.⁴⁷ This is desirable, they argue, because this move is often associated with a major improvement in quality of life.⁴⁸ Lower-income urban residents who move to more affluent suburbs, for example, can escape the problems that often afflict poorer urban communities: crime, substandard educational opportunities, diminished access to jobs, and poor health conditions.⁴⁹

Although increased economic integration would benefit low-income people of all races, many inclusionary zoning proponents have expressed hopes that these programs will particularly help facilitate residential racial integration.⁵⁰ It is generally recognized that many—though certainly not all—of the problems associated with economic segregation have fallen disproportionately on urban minorities, who are often disproportionately poor.⁵¹ Furthermore, over the past sixty years, large black populations have

⁴² See, e.g., Ellickson, *supra* note 1, at 136–37.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Dietderich, *supra* note 6, at 27.

⁴⁶ See, e.g., Justin D. Cummins, *Recasting Fair Share: Toward Effective Housing Law and Principled Social Policy*, 14 LAW & INEQ. 339, 342–51 (1996); Lerman, *supra* note 18, at 411; Young, *supra* note 2, at 685.

⁴⁷ See, e.g., Cummins, *supra* note 46, at 342–51.

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See, e.g., Marc Seitles, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89, 111 (1996) (describing inclusionary zoning as one way of achieving residential racial diversity and noting that "when a community is racially diverse, the people who live there have an opportunity to learn tolerance, which in turn may lessen the extent to which minorities are subject to all forms of prejudice"); Young, *supra* note 2, at 685.

⁵¹ See Orfield, *supra* note 29, at 877; Young, *supra* note 2, at 667–68.

become concentrated in poverty-ridden urban cores, while many Caucasians have moved to “opportunity-rich” suburbs.⁵²

Inclusionary zoning advocates have suggested that racial segregation, much like economic segregation, could be alleviated by helping urban minority residents move to suburbia.⁵³ Studies examining integrationist efforts like Chicago’s Gautreaux program,⁵⁴ for example, have indicated that poorer African-American urban residents who move to suburbia have reaped invaluable benefits: more jobs,⁵⁵ better educational opportunities,⁵⁶ lower crime rates,⁵⁷ healthier living conditions,⁵⁸ cleaner and more attractive environments,⁵⁹ and improved opportunities for professional advancement.⁶⁰ Advocates have identified inclusionary zoning as a promising strategy by which racial integration—and the provision of its concomitant social, professional, and educational opportunities—can be achieved.⁶¹

B. Highland Park’s Inclusionary Zoning Ordinance

By becoming one of the latest communities to adopt inclusionary zoning,⁶² the City of Highland Park has become, in a certain sense, the latest venue for this debate. Situated on the shore of Lake Michigan, this “suburban paradise” is locally perceived as a highly desirable, elite place to live.⁶³ Its residents are highly educated: over sixty percent of them have at least a bachelor’s degree, while only about a quarter of all Americans have attained

⁵² Young, *supra* note 2, at 668.

⁵³ *Id.* at 685.

⁵⁴ See James E. Rosenbaum et al., *Can the Kerner Commission’s Housing Strategy Improve Employment, Education, and Social Integration for Low-Income Blacks?*, 71 N.C. L. REV. 1519, 1552–53 (1993) (noting that Chicago’s Gautreaux housing program, which enabled urban black residents to move to suburban communities, increased and improved adult employment, youth education, and social interaction between black and white neighbors). See *generally* Hills v. Gautreaux, 425 U.S. 284 (1976) (awarding vouchers to predominantly minority Chicago families who lived in housing projects so that they could move to the suburbs as compensation for the projects’ substandard living conditions); Clarence Page, *Foreword* to ALEXANDER POLIKOFF, *WAITING FOR GAUTREAU: A STORY OF SEGREGATION, HOUSING, AND THE BLACK GHETTO*, at xi (2006) (“[E]nvironment does make a difference. The results of Gautreaux proved it.”).

⁵⁵ Orfield, *supra* note 29, at 878.

⁵⁶ *Id.*

⁵⁷ *Id.* at 883.

⁵⁸ *Id.*

⁵⁹ See Young, *supra* note 2, at 669 (describing how exclusionary zoning tactics frequently situate “noxious land uses” near predominantly minority neighborhoods).

⁶⁰ Orfield, *supra* note 29, at 878.

⁶¹ Padilla, *supra* note 7, at 564–66 (observing that inclusionary zoning programs in the suburbs increase integration).

⁶² Highland Park City Council, *supra* note 8.

⁶³ See Jocelyn Prince, *An Affluent Suburb Makes Room—Housing in Highland Park, Illinois*, CHICAGO REP., June 2002, at 12 (“Some consider Highland Park a suburban paradise: clean and pristine with tree-lined curving streets, sprawling homes, upscale stores and boutiques, low crime rates, and some of the best schools in the state.”).

a similar level of education.⁶⁴ Highland Park residents also earn high salaries: in 2006, the median family income was \$117,235.⁶⁵ In fact, the suburb's median household income is approximately twice that of the Northeastern Illinois six-county region⁶⁶ and nearly two and one-half times the national median household income.⁶⁷ Highland Park schools, moreover, consistently win acclaim;⁶⁸ one reason might be that the average teacher's salary in Highland Park is \$67,874, the highest in the county and the fifth highest in the six-county region.⁶⁹ Approximately 91.2% of the suburb's 30,038 residents are Caucasian.⁷⁰

As for the suburb's housing market, Highland Park is a fairly old, established, and developed town. Unlike some of the newer communities ringing Chicago, most of Highland Park's land is already improved and has been for quite some time.⁷¹ The bulk of the suburb's housing dates to a few generations ago, as the median year of construction for Highland Park's owner-occupied homes is 1958.⁷² Its rental units are not much younger, as their median year of construction is 1962.⁷³ Consequently, much of the residential development that occurs in today's Highland Park involves the demolition or rehabilitation of existing structures, rather than the creation of

⁶⁴ U.S. Census Bureau, Highland Park (city) QuickFacts, <http://quickfacts.census.gov/qfd/states/17/1734722.html> [hereinafter U.S. Census Fact Sheet] (last visited Aug. 28, 2008). It should be noted that the City of Highland Park claims that some of its census data is not fully reliable, because data for certain residents of the neighboring city of Highwood was unintentionally included in Highland Park's 2000 census data. See Memorandum from the City of Highland Park Housing Comm'n to Mayor Daniel M. Pierce and City Council Members (Feb. 25, 2003) [hereinafter Housing Commission Memorandum] (on file with author). The city has stated that because of this error, the Census Bureau overstates the number of Highland Park households with incomes below \$100,000 and understates both the median family income and median household income. *Id.* Because of this problem, this Comment uses demographic data that has been provided directly by the City of Highland Park whenever possible; for example, it uses the city's own calculation of its total population, rather than corresponding census data. Where city-calculated data is not available, however, this Comment still relies on census data as an approximate representation of the demographic reality in Highland Park.

⁶⁵ City of Highland Park, City Profile and Overview, <http://www.cityhpil.com/visitors/profile.html> (last visited Aug. 28, 2008).

⁶⁶ Housing Commission Memorandum, *supra* note 64. The six-county region includes the counties of Cook (in which the City of Chicago is located), DuPage, Kane, Lake (in which Highland Park is located), McHenry, and Will. *Id.*

⁶⁷ U.S. Census Fact Sheet, *supra* note 64.

⁶⁸ See, e.g., Dennis Rodkin & Amy Rainy, *The A+ Team*, CHICAGO MAG., Oct. 2006, at 98 (identifying five elementary and middle schools located in Highland Park as among the top schools in the Chicago metropolitan area).

⁶⁹ *Id.* at 93.

⁷⁰ U.S. Census Fact Sheet, *supra* note 64.

⁷¹ *Id.*; Telephone Interview with Paul Levy, Attorney, Levy & Augustine (Oct. 30, 2006).

⁷² U.S. Census Bureau, Highland Park city, Illinois—Year Structure Built and Year Householder Moved into Unit, http://factfinder.census.gov/servlet/QTTable?_bm=y&-geo_id=16000US1734722&-qr_name=DEC_2000_SF3_U_QTH7&-ds_name=DEC_2000_SF3_U&-redoLog=false (last visited Aug. 28, 2008).

⁷³ *Id.*

new buildings on previously undeveloped land.⁷⁴ Indeed, in recent years, the suburb has not experienced high rates of residential building.⁷⁵ Between 1990 and 2000, its housing stock increased by only 226 housing units.⁷⁶

Although Highland Park's housing market primarily involves the sale of existing homes, rather than newly built ones, those properties still command a hefty price. In 2002, the median home sale price in Highland Park was \$430,000.⁷⁷ According to the city's own calculations, "[a] minimum household income of approximately \$141,900—or 188% of the 2002 Chicago area median income for a household of four—is needed to afford a home at that price."⁷⁸ Prices for the few new homes constructed in 2002 soared even higher: the median sales price for new single-family homes in 2002 was \$1,120,000, while the least expensive new single-family home sold that year was purchased for \$550,000.⁷⁹ As Table 1 indicates, the median price of owner-occupied housing in Highland Park is approximately twice that found in the six-county region.⁸⁰

*Table 1: Comparison of Income- and Housing-Related Statistics: Highland Park, Lake County, and the Northeastern Illinois Six-County Region*⁸¹

	<i>Highland Park</i>	<i>Lake County</i>	<i>Northeastern Illinois Six-County Region</i>
<i>Median family income</i>	\$117,235	\$76,424	\$60,272
<i>Median household income</i>	\$100,967	\$66,973	\$51,995
<i>Median value of owner-occupied units</i>	\$380,000	\$198,200	\$165,012
<i>Median gross rent</i>	\$931	\$742	\$680
<i>Percent of housing units that are owner-occupied</i>	82.1%	77.8%	64.5%
<i>Percent of housing units that are rented</i>	17.9%	22.2%	35.5%

⁷⁴ Telephone Interview with Paul Levy, *supra* note 71.

⁷⁵ See Housing Commission Memorandum, *supra* note 64.

⁷⁶ *Id.*

⁷⁷ Highland Park Housing Comm'n, Highland Park's Inclusionary Housing Program 1 (June 2005), http://www.cityhpil.com/pdf/commissions/housing_ihp.pdf.

⁷⁸ Housing Commission Memorandum, *supra* note 64.

⁷⁹ Highland Park Housing Comm'n, *supra* note 77, at 1.

⁸⁰ Housing Commission Memorandum, *supra* note 64.

⁸¹ *Id.*

The high cost of homes certainly served as a factor in the city's decision to adopt inclusionary zoning, but any understanding of how Highland Park came to adopt this policy must begin with an understanding of the town's character. From its earliest days of incorporation in the mid-nineteenth century,⁸² locals planned that Highland Park would be a "liberal and progressive" community characterized by an ethos of inclusiveness.⁸³ Indeed, in 1874, one of its first local newspapers glowingly described Highland Park as a tolerant place where "every one can find a habitation suited to his particular wants and means."⁸⁴ In the late nineteenth century, the town displayed an active "social conscience," offering a summer camp for poor children and permitting the construction of a home for disabled adults that other suburbs had turned away.⁸⁵ Local clubs, too, regularly hosted talks during the late nineteenth and early twentieth centuries on such progressive topics as voting rights for women, labor issues, and urban slums.⁸⁶ As these and similar activities continued to take place throughout the twentieth century, Highland Park firmly established a "well-deserved reputation for tolerance and acceptance."⁸⁷ That reputation still remains a cherished part of its public image today.⁸⁸

Perhaps because of its progressive political bent, Highland Park has long devoted special attention to issues of housing affordability and access.⁸⁹ In 1973, the City of Highland Park responded to a growing sense that its housing market was fast becoming too expensive and too exclusive by establishing the area's first municipal housing commission, a group dedicated to managing housing issues.⁹⁰ In 1976, the city also created a long-term master plan that included some attempts to stimulate the production of affordable housing. Although that plan did not propose anything approaching inclusionary zoning, it did eventually lead the city to develop some low- and moderate-income housing under section 8 of the United States Housing Act of 1937.⁹¹

⁸² EBNER, *supra* note †, at 36.

⁸³ *Id.* at 78–79.

⁸⁴ *Id.* at 78.

⁸⁵ *Id.* at 220.

⁸⁶ *Id.* at 221.

⁸⁷ *Id.* at 226.

⁸⁸ Telephone Interview with Nicholas Brunick, *supra* note 31.

⁸⁹ Telephone Interview with Betsy Lassar, *supra* note 11.

⁹⁰ No temporary fix, the commission remains in operation today and is closely involved with the inclusionary zoning program. See City of Highland Park, Housing Commission, <http://www.cityhpil.com/government/comm/housing.html> (last visited Aug. 28, 2008); Telephone Interview with Nicholas Brunick, *supra* note 31; Telephone Interview with Betsy Lassar, *supra* note 11.

⁹¹ Telephone Interview with Betsy Lassar, former Housing Planner, City of Highland Park (Sept. 12, 2006). See generally 42 U.S.C. § 1437 (2000). For more information on Highland Park's efforts to construct affordable housing in accordance with section 8 of the U.S. Housing Act, see City of Highland Park, *supra* note 90.

The city's modest efforts in the 1970s, however, did not prevent the prices of most homes from continuing to increase dramatically over the next two decades.⁹² During the latter half of the 1990s, its downtown area, once home to a good deal of moderate-income housing stock, was redeveloped into a fashionable commercial center.⁹³ To the extent that moderate-income stock was replaced, it gave way to a crop of very expensive new homes.⁹⁴ This downtown redevelopment, in the words of Highland Park's former housing planner, triggered "a real wake-up call" about the impact of the town's ever-rising home prices.⁹⁵ According to the City of Highland Park, the sky-high housing market prevented many local government and private sector workers from being able to afford to live in the community that they served.⁹⁶ In 2004, for example, only two of the Highland Park Department of Community Development's twenty-four full-time employees lived in Highland Park, while just 3% of the local fire department's employees and 16% of the police department's employees had Highland Park addresses that year.⁹⁷ Although these statistics do not necessarily lead to the conclusion that housing prices alone were responsible for keeping municipal employees out of Highland Park, anecdotal evidence suggests that local workers—both in the public and private sector—have chosen not to reside in Highland Park, at least in part, because housing there is simply too expensive.⁹⁸

Even while the suburb's housing market was growing more exclusive, Highland Park's progressive reputation suffered a serious blow. In early 2000, several former Highland Park Police Department employees leveled charges of racial profiling against the city in a lawsuit filed in federal court.⁹⁹ The high-profile lawsuit charged, among other things, that the police department leadership had encouraged officers to pull over "Hispanics wearing 'big cowboy hats'" and to "ticket or arrest blacks" who ventured into the suburb's business district.¹⁰⁰ Although these lawsuits were eventually settled,¹⁰¹ Highland Park endured a great deal of unflattering media at-

⁹² Telephone Interview with Betsy Lassar, *supra* note 11.

⁹³ Telephone Interview with Betsy Lassar, *supra* note 91.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See Housing Commission Memorandum, *supra* note 64.

⁹⁷ E-mail from Betsy Lassar, former Housing Planner, City of Highland Park, to author (Sept. 19, 2006, 21:38 CST) (on file with author).

⁹⁸ Prince, *supra* note 63. It should be noted here that this Comment does not purport to address whether Highland Park's pre-ordinance zoning policies amounted to exclusionary zoning.

⁹⁹ Megan O'Matz, *Highland Park Cops May Face Inquiry; City Reacts to Charges of Racial, Ethnic Bias*, CHI. TRIB., Jan. 9, 2000, § 2, at 1.

¹⁰⁰ Megan O'Matz, *Suburban Cop Feud Is Federal Case Now; Highland Park Labor Dispute Mushrooms into Racial Uproar*, CHI. TRIB., Jan. 17, 2000, § 1, at 1.

¹⁰¹ Editorial, *Following the Spirit of the Law*, CHI. TRIB., Jan. 8, 2004, § 1, at 20.

tention as a result of the profiling scandal.¹⁰² Importantly, these highly public charges of racism triggered an acute reputational crisis for the historically progressive community.¹⁰³

In the aftermath of this scandal, proponents of affordable housing, both within and without the city government, perceived a political opportunity for the city to contemplate and pass a law addressing racial and economic inclusion in Highland Park.¹⁰⁴ Accordingly, they proposed that the city adopt inclusionary zoning.¹⁰⁵ This postscandal political opportunity was enhanced by the fact that in 2001, the city had begun revising and updating its master plan.¹⁰⁶ This revision process, during which the city revisited and amended many of its long-term community planning strategies, thereby provided an additional window of opportunity in which to marshal a formal consideration of inclusionary zoning.¹⁰⁷ Eventually, these proponents were able to take advantage of this confluence of political opportunity to convince key players within the city to begin drafting an inclusionary zoning ordinance.¹⁰⁸

While the city constructed an inclusionary zoning policy, the municipal Department of Community Development devoted itself to managing potential opposition—namely, local developers.¹⁰⁹ To do this, it held a series of meetings with approximately six area developers at which city officials explained the workings of the proposed policy, the city's reasons for considering inclusionary zoning, and the types of incentives that the policy would provide to builders.¹¹⁰ The officials also did their best to respond to developers' concerns, which naturally focused on the economic burdens that inclusionary zoning might impose on them and the ability of program incentives to counteract those burdens.¹¹¹ Eventually, the city even sent

¹⁰² See, e.g., sources cited *supra* notes 99–101.

¹⁰³ See Telephone Interview with Betsy Lassar, *supra* note 91.

¹⁰⁴ See *id.*

¹⁰⁵ Highland Park's inclusionary zoning ordinance does not explicitly mention racial diversity, though the ordinance's introductory text does state that it is intended to preserve and promote a "culturally and economically diverse population." HIGHLAND PARK, ILL., CODE § 150.2100 (2003). Like many redistributive laws, however, the ordinance carries with it unmistakable racial overtones, as socioeconomic status can often serve as a rhetorical proxy for race. This is particularly true in the arena of "affordable" housing, which, as noted above, is often viewed as a remedy for racial injustices. See, for example, *Mount Laurel I*, in which the plaintiffs argued their case against exclusionary zoning using primarily racial rhetoric, but the court's opinion characterized and discussed the problem using purely economic language. 336 A.2d 713 (N.J. 1975); see also Stonefield, *supra* note 26, at 331 n.23.

¹⁰⁶ Telephone Interview with Betsy Lassar, *supra* note 91.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*; Telephone Interview with Nicholas Brunick, *supra* note 31 (noting that in Highland Park, the "political will was there to do something").

¹⁰⁹ Telephone Interview with Betsy Lassar, *supra* note 11.

¹¹⁰ *Id.*

¹¹¹ *Id.*

some developers a draft ordinance in order to gain their feedback.¹¹² Because of those efforts to build consensus around the ordinance, the political process leading to its enactment was significantly smoother than it might otherwise have been.¹¹³ By the time a final draft of the ordinance was completed, most of the six area developers had reconciled themselves to the policy.¹¹⁴ In fact, when the Highland Park City Council convened to discuss and vote on the ordinance on August 25, 2003, only one local developer came to the meeting to oppose its adoption.¹¹⁵ Notwithstanding this relatively minor opposition, the council unanimously passed the inclusionary zoning ordinance.¹¹⁶

Recognizing that the suburb's residential housing "generally is not affordable to low- and moderate-income households,"¹¹⁷ the ordinance sets forth a new zoning scheme. As of October 1, 2003, it requires that twenty percent of all residential development with five or more units¹¹⁸ must be sold at "affordable" prices set by the city.¹¹⁹ This mandate applies equally to new residential construction, conversions of existing rental property to condominiums, renovations of existing multiple-family structures that increase the number of residential units, and developments that put previously nonresidential buildings to residential uses.¹²⁰ In order to maintain these units' affordable status over time, the ordinance requires that developers record certain restrictive covenants against the property specifying that rental units remain affordable for twenty-five years and owner-occupied units remain affordable in perpetuity or for as long as is legally permissible.¹²¹ From the exterior, the affordable units must look substantially the same as market-rate units, and they must also be scattered throughout the development.¹²²

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*; Highland Park City Council, *supra* note 8.

¹¹⁶ Highland Park City Council, *supra* note 8; *see also* HIGHLAND PARK, ILL., CODE §§ 150.2100–.2113 (2003). While the City Council passed the ordinance unanimously, they also did so rather quietly. *See* Telephone Interview with Betsy Lassar, *supra* note 91 (stating that the ordinance was passed without any major effort to publicize it, though the city also did not take any action to shield it from the public's view).

¹¹⁷ HIGHLAND PARK, ILL., CODE § 150.2100 (2003).

¹¹⁸ *Id.* § 150.2102(A).

¹¹⁹ *Id.* § 150.2109(C).

¹²⁰ *Id.* § 150.2101.

¹²¹ *Id.* §§ 150.2104, .2112; *cf.* Young, *supra* note 2, at 691 (“[M]any programs include a covenant, deed restriction, or regulation that requires that affordable units created through the program remain affordable for a specified time period ranging from five years to infinity.”).

¹²² HIGHLAND PARK, ILL., CODE § 150.2107(A), (C) (2003).

Like several other inclusionary zoning programs around the country,¹²³ Highland Park’s is not a wholly inflexible program; the ordinance does make available certain alternatives to the construction of on-site affordable housing.¹²⁴ Builders whose developments contain nineteen or fewer units, for example, may avoid constructing affordable units by making payments-in-lieu to the city’s Affordable Housing Trust Fund.¹²⁵ Also like other inclusionary programs,¹²⁶ the ordinance also provides developers with a number of incentives to build.¹²⁷ These incentives include waivers of many applicable taxes, fees, and costs that the city would normally charge, as well as a density bonus¹²⁸ of up to one and one-half market-rate units for each affordable housing unit constructed.¹²⁹

¹²³ Padilla, *supra* note 7, at 553 (describing the alternatives provided in inclusionary zoning programs that were adopted by communities in California); Young, *supra* note 2, at 690.

¹²⁴ See, e.g., HIGHLAND PARK, ILL., CODE § 150.2102(C) (2003).

¹²⁵ *Id.* As of the writing of this Comment, only one development had taken advantage of this payment-in-lieu option; there, the developer constructed two affordable housing units, but it paid \$100,000 to the city in order to avoid constructing a third. Lake Cook Courts, LLC, Development Agreement (July 12, 2006) [hereinafter Lake Cook Courts Development Agreement] (on file with the City of Highland Park Department of Community Development).

¹²⁶ See Lerman, *supra* note 18, at 385; Young, *supra* note 2, at 686.

¹²⁷ Commentators have argued that the provision of such incentives as density bonuses safeguards inclusionary zoning programs against constitutional invalidation under the Takings Clause. See, e.g., Cecily T. Talbert & Nadia L. Costa, *Inclusionary Housing Programs: Local Governments Respond to California’s Housing Crisis*, 30 B.C. ENVTL. AFF. L. REV. 567, 579 (2003).

¹²⁸ Density bonuses operate by allowing developers to include more units per acre or more square footage per unit than municipal regulations would typically permit. Susan M. Denbo, *Development Exactions: A New Way to Fund State and Local Government Infrastructure Improvements and Affordable Housing?*, 23 REAL EST. L.J. 7, 30 n.115 (1994).

¹²⁹ HIGHLAND PARK, ILL., CODE §§ 150.2105–2106 (2003). Waivers of various city development fees were granted to the builders of at least four of the five postordinance developments that were in construction as of the writing of this Comment. See *infra* Table 3; see also Lake Cook Courts Development Agreement, *supra* note 125; Laurel Park, LLC, Development Agreement (May 26, 2006) (on file with the City of Highland Park Department of Community Development); Laurel Court Development Agreement (May 25, 2006) (on file with the City of Highland Park Department of Community Development); Compton-Livingston Development Agreement (May 18, 2006) (on file with the City of Highland Park Department of Community Development); 1675 Green Bay Road Development Agreement (April 20, 2006) (on file with the City of Highland Park Department of Community Development). Additionally, the city has granted developers variances from the zoning code for their postordinance development projects, including changes in applicable density rules, setback requirements, minimum horizontal space allowances between buildings, and requirements regarding the placement of air conditioning condenser units in side yards. See, e.g., Compton-Livingston Development Agreement, *supra* (city agreeing to rezone property from R1 “country estate” single-family to R6 “medium density” single-family); Highland Park, Ill., An Ordinance Granting a Special Use Permit and Approving a Planned Unit Development and an Inclusionary Housing Plan for the Laurel Court Townhomes (843–855 Laurel Ave.) (Jan. 9, 2006) (on file with the City of Highland Park Department of Community Development) (decreasing minimum required yard setbacks by up to 80%); Highland Park, Ill., An Ordinance Rezoning Certain Property from the R4 Low to Moderate Density Single Family Residential District to the Moderate to Medium Density Single Family Residential District (1973–221 Lake Cook Road) (draft copy, Apr. 5, 2006) (on file with the City of Highland Park Department of Community Development) (allowing the inclusion of air conditioning condenser units in side yards).

Highland Park's ordinance carefully specifies who is intended to live in these affordable units. First, as is common among inclusionary zoning ordinances, it requires that the units be directed toward households with certain gross annual income levels.¹³⁰ For residential development that will be owner-occupied, no fewer than half the available affordable housing units—and at least one of them—must be sold to households whose income is at or below 80% of Chicago's Area Median Income (AMI).¹³¹ The remaining units designated as affordable must be sold to households with incomes at or below 120% of the AMI.¹³² In rental developments, at least one-third of the affordable units must be leased to households whose income is at or below 50% of the AMI; no fewer than another third must be leased to households with incomes between 51% and 80% of the AMI; and the remainder—no more than one-third of the total number of affordable units—can be leased to those with incomes up to 120% of the AMI.¹³³ Table 2 shows the monetary values that correspond to these percentages.

Table 2: Chicago Area Median Income, 2008¹³⁴

	Household Size					
	1	2	3	4	5	6
80% AMI	\$42,200	\$48,250	\$54,250	\$60,300	\$65,100	\$69,950
100% AMI	\$52,800	\$60,300	\$67,900	\$75,400	\$81,400	\$87,500
120% AMI	\$63,360	\$72,360	\$81,480	\$90,480	\$97,680	\$105,000

Once applicant households are identified as income qualified, the ordinance then requires that they be sorted even further according to residency and employment status.¹³⁵ First priority is given to “households who live in Highland Park or households in which the head of the household or the spouse or domestic partner works” for one of the several local governmental bodies that serve Highland Park.¹³⁶ Second priority goes to “households in which the head of the household or the spouse or domestic partner works

¹³⁰ HIGHLAND PARK, ILL., CODE § 150.2109(A)–(B) (2003); *see also* Lerman, *supra* note 18, at 385 (establishing that this is commonly found in inclusionary zoning ordinances).

¹³¹ Highland Park Housing Comm'n, *supra* note 77, at 2. The AMI is determined annually by the U.S. Department of Housing and Urban Development and is adjusted for household size. *Id.*

¹³² *Id.*; *see also* Telephone Interview with Mary Ellen Tamasy, Executive Director, Highland Park Illinois Community Land Trust (Oct. 27, 2006).

¹³³ Highland Park Housing Comm'n, *supra* note 77, at 2.

¹³⁴ Highland Park Illinois Community Land Trust, Finding a Home, <http://www.hpict.org/index.php/find> (last visited Aug. 28, 2008).

¹³⁵ HIGHLAND PARK, ILL., CODE § 150.2110(A)–(B) (2003).

¹³⁶ *Id.*

in Highland Park for any other employer."¹³⁷ All other income-qualified applicants rank behind these two preferred groups.¹³⁸

The city has delegated implementation of this multi-tiered resident selection process, along with other related tasks, to the Highland Park Illinois Community Land Trust (HPICLT), a nonprofit organization created by the Highland Park City Council in 2003.¹³⁹ This organization, largely run by one staff member, is generally responsible for the everyday operation of the inclusionary zoning program. Its responsibilities include working with developers to market the program;¹⁴⁰ distributing and collecting resident applications for the affordable units; verifying applicants' eligibility and priority in terms of both income level and city residence or employment, if applicable; maintaining a ranked waiting list of applicants; and matching applicants with affordable homes.¹⁴¹ In this way, the HPICLT's day-to-day work represents the coalescence of an inclusionary zoning effort that has deep roots in local history, controversy, and advocacy. This Comment now turns to the impact of this effort on Highland Park.

III. THE IMPACT OF INCLUSIONARY ZONING WITHIN HIGHLAND PARK

To examine the impact of Highland Park's inclusionary zoning ordinance, this Comment inquires into the two main points of contention between critics and proponents of inclusionary zoning.¹⁴² First, in light of critics' claims that such ordinances will chill residential housing markets, it assesses the impact of Highland Park's ordinance on rates of homebuilding.¹⁴³ Both empirical and anecdotal evidence suggest that the ordinance did contribute to a standstill in residential development that lasted for approximately two years after the ordinance's effective date. After this period of adjustment passed, however, residential development resumed.

¹³⁷ *Id.*

¹³⁸ Telephone Interview with Mary Ellen Tamasy, *supra* note 132. According to the city's former housing planner, the City Council added this system of preferences because it wanted to ensure that the inclusionary zoning program benefited Highland Park's own workers and residents. Telephone Interview with Betsy Lassar, *supra* note 11. Beyond this, the city's other reasons—if others exist—for adopting this preference structure remain unclear.

¹³⁹ Telephone Interview with Mary Ellen Tamasy, *supra* note 132; Highland Park Illinois Community Land Trust, About Us, <http://www.hpict.org/index.php/about> (last visited Aug. 28, 2008).

¹⁴⁰ The HPICLT is responsible for publicizing not only the inclusionary zoning program, but also the suburb's other affordable housing programs. Telephone Interview with Mary Ellen Tamasy, *supra* note 132.

¹⁴¹ *Id.*; see also E-mail from Betsy Lassar, former Housing Planner, City of Highland Park, to author (Oct. 24, 2006, 13:28 CST) (on file with author).

¹⁴² See *supra* text accompanying notes 32–33.

¹⁴³ See generally BRUNICK, *supra* note 16, at 5 (evaluating the performance of several inclusionary zoning programs by examining private residential building activity).

Second, this Comment assesses the extent to which this relatively new ordinance might increase economic and racial integration in Highland Park over the coming years. To do this, it examines the ordinance's design and implementation, as well as the conditions that already existed in Highland Park before the ordinance was enacted, and asks whether these factors will tend to encourage racial and economic integration. Empirically speaking, the answer to this question remains uncertain, because as of the writing of this Comment, none of the new postordinance developments have yet been completed and thus are vacant.¹⁴⁴ This Comment's preliminary analysis, however, indicates that Highland Park's inclusionary zoning program may not result in significant changes in the suburb's racial and economic makeup. Therefore, it may ultimately fall short of the goal set by many proponents of inclusionary zoning: the promotion of more integrated communities.

A. *The Ordinance's Impact on Local Home-building*

Pre-ordinance rates of home-building in Highland Park provide a helpful point of reference against which to compare postordinance residential development. During the years before the ordinance took effect, Highland Park generally maintained a steady, albeit slow, pace of residential development.¹⁴⁵ Table 3 describes the last ten residential developments—representing at least 210 units of housing—that were proposed to and approved by the city before the ordinance took effect on October 1, 2003.¹⁴⁶

Table 3: Pre-Ordinance Residential Developments

<i>Development Type</i>	<i>Number of Units</i>	<i>Year in Which Development Was Built</i>
Condominiums	81	1997
Condominiums and Mixed Use	Data not available	1999 or 2000
Single-Family Homes	8	2001
Single-Family Homes	5	2001
Condominiums	10	2003
Condominiums	41	2003

¹⁴⁴ Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁴⁵ See *infra* Table 3.

¹⁴⁶ Interview with Peg Laemle, Staff Member, Highland Park Department of Community Development, in Highland Park, Ill. (Oct. 25, 2006). Unfortunately, the city does not maintain information regarding the precise dates on which housing proposals were first submitted. Telephone Interview with Betsy Lassar, *supra* note 11. Although some of these developments were actually constructed after the inclusionary zoning ordinance took effect on October 1, 2003, they were all proposed to the city before the ordinance took effect and thus did not have to comply with its requirements. Interview with Peg Laemle, *supra*.

Single-Family Homes	5	2003
Condominiums	45	2003–2004
Townhouses	6	2006
Condominiums	9	2006

On October 1, 2003, the inclusionary zoning ordinance took effect.¹⁴⁷ City officials estimate that after that date, about one and one-half to two years passed before they again received a residential building proposal.¹⁴⁸ Although it is possible that unrelated economic factors could have produced this temporary development lag, representatives of the city have stated explicitly that the lag was a direct result of the ordinance's passage.¹⁴⁹ It appears to have occurred, in large part, because both the city and area developers needed a period of adjustment in which to acclimate themselves to the new residential zoning requirements.¹⁵⁰ The city, for example, spent some of that time establishing a new bureaucratic infrastructure to deal with the program's administration.¹⁵¹ Furthermore, despite the fact that the city had made efforts to build support among local developers for the ordinance before its adoption, some skittishness remained among builders regarding the new policy's requirements and effects.¹⁵² Thus, during the development lag, area developers reviewed the new program and made sure they understood its implications for their own efforts to do business in Highland Park.¹⁵³ Also during that time, municipal planning staff met individually and informally with developers who were considering building homes in Highland Park to discuss the ordinance's new requirements.¹⁵⁴

Although this development lag does appear to have been caused by the ordinance, its duration must also be kept in proper perspective. Given Highland Park's relatively slow rate of residential home-building, a short lag in development is simply not that unexpected.¹⁵⁵ Indeed, Table 3 indicates that several two-year gaps existed between approved residential pro-

¹⁴⁷ Interview with Peg Laemle, *supra* note 146; Ross, *supra* note 12.

¹⁴⁸ Interview with Peg Laemle, *supra* note 146; Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁴⁹ Telephone Interview with Betsy Lassar, *supra* note 11. It should be acknowledged, for instance, that the lag may also have been connected to the general volatility permeating the regional and national housing markets at that time. See generally Kelly Yamanouchi & Genevieve Buck, *Housing Decline Is Biggest Since 1997*, CHI. TRIB., May 25, 2001, § 3, at 1. City representatives, however, ascribe the lag in significant part to the ordinance.

¹⁵⁰ Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See *supra* Table 3; cf. Telephone Interview with Betsy Lassar, *supra* note 11 (pointing out that no residential proposals were submitted to Highland Park the year before the ordinance was enacted, although two were submitted at the eleventh hour on the day before the ordinance was to take effect).

jects even before the ordinance was passed.¹⁵⁶ This brief standstill in residential development came to an end in 2005, as the city once again began to receive home-building proposals.¹⁵⁷ Table 4 shows the five residential proposals submitted to and approved by the City of Highland Park between the ordinance's effective date and October 2006.¹⁵⁸ Taken together, these postordinance proposals represent a total of 108 new units of housing. As of October 2006, none of these projects had yet been completed.¹⁵⁹

Table 4: Postordinance Residential Developments

<i>Development Type</i>	<i>Number of Market-Rate Units</i>	<i>Number of Affordable Units</i>	<i>Total Number of Units</i>	<i>Year Development Approved by City Council¹⁶⁰</i>
Townhouses and condominiums	28 townhouses, 7 condominiums	2 townhouses, 5 condominiums	42	2006
Condominiums	13	2	15	2006
Single-family homes	15	2 ¹⁶¹	17	2006
Condominiums	15	3	18	2006
Condominiums	13	3	16	2006

This postordinance data indicates that while Highland Park did experience a temporary standstill in residential development, some theorists' predictions of a long-term or total shutdown in residential development have

¹⁵⁶ *Supra* Table 3.

¹⁵⁷ Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁵⁸ This data represents those postordinance building proposals which were ultimately approved by the City Council and resulted in actual development. It does not account for any proposals that were submitted and rejected by the city. *See* Interview with Peg Laemle, *supra* note 146. For this reason, it cannot be used as a precise measure of developer interest after the ordinance was passed. This data can, however, be viewed at least as an approximation of developer interest. Moreover, the existence of any additional proposals beyond those included in this table would only more strongly demonstrate what this table already shows: that the inclusionary zoning ordinance did not result in a permanent development shutdown.

¹⁵⁹ Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁶⁰ The dates on which each of these proposals were first submitted to the city are unavailable, but according to city officials and records, the initial proposals for these five postordinance developments were submitted after the ordinance had been in effect for at least one and a half or two years. *See, e.g.*, Interview with Peg Laemle, *supra* note 146; Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁶¹ Under the ordinance, the developer of this project was originally responsible for providing three, rather than two, affordable units. It chose, however, to pay a \$100,000 fee-in-lieu rather than construct a third affordable unit, as permitted under the ordinance. Lake Cook Courts Development Agreement, *supra* note 125.

not come to pass. Indeed, the fact that development resumed in Highland Park after the lag is likely a consequence, at least in part, of the city's efforts during the lag to communicate with developers about the new policy.¹⁶² By trying to reassure developers and alleviate their concerns about inclusionary zoning's workings and requirements, the city may have avoided a more prolonged development shutdown.¹⁶³ Thus, communication between municipal officials and developers may have played an important role in managing and ending the postordinance development lag.

Although the data appears to indicate a rather robust resumption in home-building rates, it is nevertheless difficult to claim conclusively that, even in the long term, home-building rates have not been affected at all by the ordinance. There exists a counterfactual possibility that, had the ordinance not been enacted, rates of building in the past few years might have been even higher, though there is no evidence supporting such a proposition. At the very least, however, this data does unequivocally show that the postordinance development lag was followed by a clear resumption in residential development.

*B. The Ordinance's Projected Impact on Highland Park's
Economic and Racial Makeup*

Because it appears that residential building has resumed in Highland Park, and both affordable and market-rate units are consequently being constructed under the new ordinance, this Comment next assesses who might move into the affordable units. In particular, it examines whether the new units will be occupied by low-income or minority households, as many inclusionary zoning proponents hope, so that Highland Park's neighborhoods become more economically and racially integrated.¹⁶⁴

The answer to this inquiry is ultimately unclear, because as noted above, none of the postordinance developments have yet been completed,¹⁶⁵ therefore, none of the contemplated new residents have moved in as of the writing of this Comment. Several early indications nevertheless suggest that due to its design and implementation—and due also to preexisting conditions in Highland Park—this ordinance may have only a limited ability to bring about economic and racial integration.¹⁶⁶

¹⁶² See Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁶³ See *id.*

¹⁶⁴ See Wish & Eisdorfer, *supra* note 15, at 1280 (asking and answering a similar question).

¹⁶⁵ See Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁶⁶ Cf. Florence Wagman Roisman, *Opening the Suburbs to Racial Integration: Lessons for the 21st Century*, 23 W. NEW ENG. L. REV. 65, 77–78 (2001) (observing that neither New Jersey's nor Massachusetts's inclusionary zoning programs have brought about significant residential racial integration). As previously noted, this Comment offers no opinion on whether Highland Park's zoning policies have ever amounted to exclusionary zoning. See *supra* note 98.

1. Factors Affecting Economic Integration.—Certain aspects of the ordinance’s design may curb the extent to which it can promote economic integration. For owner-occupied developments, the ordinance requires at least half of the affordable units to be sold to households earning up to 80% of the AMI and the remainder to be sold to households earning up to 120% of the AMI.¹⁶⁷ This means that even the lowest priced affordable units could be sold to four-person households earning nearly \$60,000 annually.¹⁶⁸ Although these households are by no means wealthy—especially when compared with most households in Highland Park—this ordinance does nothing to require the allocation of some affordable homes to far poorer families.¹⁶⁹

Just as problematically, the ordinance appears to be resulting in the construction of relatively expensive “affordable” units. Although several postordinance developments are not yet ready to be finally priced and presold, preliminary prices have been set for at least one project.¹⁷⁰ In that development, preliminary asking prices for market-rate townhouses, as reported by the developer to the city, hover between \$890,000 and \$1.2 million.¹⁷¹ The development’s two affordable units, on the other hand, have asking prices of \$230,905 and \$282,827.¹⁷² Even though these affordable units cost more than two-thirds less than their market-rate counterparts, they still will be far too expensive for some low-income households to afford. For a \$250,000 home, a standard twenty percent down payment requirement means that the purchaser will have to produce \$50,000 upon buying the home. Moreover, debt service for a \$200,000 thirty-year mortgage will amount to just under \$1200 per month (assuming a fixed interest rate of six percent).¹⁷³ Many low-income households will simply be unable to pay these prices.

¹⁶⁷ See *supra* text accompanying notes 131–134.

¹⁶⁸ See *supra* Table 2. As of the writing of this Comment, all of the units constructed under the ordinance are planned to be owner-occupied, not rental, units. See Telephone Interview with Mary Ellen Tamasy, *supra* note 132.

¹⁶⁹ The gulf between the households who could benefit from the ordinance and the desperately poor can be seen by comparing families of four earning \$60,000, for example, against households living in poverty; in 2004, the average poverty threshold for a family of four was only \$19,307. Press Release, U.S. Census Bureau, Income Stable, Poverty Rate Increases, Percentage of Americans Without Health Insurance Unchanged (Aug. 30, 2005), available at http://www.census.gov/Press-Release/www/releases/archives/income_wealth/005647.html.

¹⁷⁰ Telephone Interview with Betsy Lassar, *supra* note 11.

¹⁷¹ Laurel Park Inclusionary Housing Plan (Nov. 21, 2005) (on file with the Highland Park Department of Community Development).

¹⁷² *Id.* The affordable and market-rate units in that particular development have comparable numbers of bedrooms, although the affordable units have fewer bathrooms—2.5, as opposed to 3.5 or 4.5 in the market-rate units—and are significantly less spacious at 2150 square feet versus the market-rate units at 2980 to 5394 square feet. *Id.*

¹⁷³ See generally Bankrate.com, Mortgage Calculator, <http://www.bankrate.com/brm/mortgage-calculator.asp> (last visited Mar. 26, 2008).

The unaffordability of the ordinance’s “affordable” housing is compounded by the fact that all applicants for the inclusionary units must qualify for mortgages on their own, facing the same financial requirements as any other home purchaser.¹⁷⁴ This requirement could filter out poorer families who might not have the ability to readily qualify for a mortgage.¹⁷⁵ Moreover, the HPICLT, which administers the inclusionary zoning program, requires applicants to have legal counsel review those parts of the purchase contract that govern resale of the house.¹⁷⁶ This is done to ensure that the applicants understand that the restrictive covenants recorded against the property require it to be sold at an “affordable” price in perpetuity and thus significantly limit a homeowner’s ability to recover appreciation value from the home.¹⁷⁷ Although the goal of making sure that a homebuyer is informed is laudable, this requirement may impede low-income individuals from taking advantage of this program, as they may have difficulty quickly locating and paying for an attorney’s services.

At best, then, these aspects of the program’s design indicate that the inclusionary zoning policy will only result in partial economic integration. In other words, it will integrate only certain lower-income households into Highland Park: those that can afford the program’s relatively high housing prices, qualify for a mortgage independently, and pay for an attorney.¹⁷⁸ The area’s lowest income households may remain effectively priced out of the market.

2. *Factors Affecting Racial Integration.*—Highland Park’s inclusionary zoning ordinance may also have difficulty promoting racial integration. First, the ordinance’s limited ability to promote economic integration may well translate into a limited ability to further racial integration. This is because in the Chicago metropolitan area, like many other areas across the country,¹⁷⁹ racial and ethnic minorities make up a disproportionately high percentage of low-income households.¹⁸⁰

¹⁷⁴ Telephone Interview with Mary Ellen Tamasy, *supra* note 132.

¹⁷⁵ *Cf.* Padilla, *supra* note 7, at 571.

¹⁷⁶ Telephone Interview with Mary Ellen Tamasy, *supra* note 132.

¹⁷⁷ *Id.*

¹⁷⁸ In this sense, it is true that Highland Park’s ordinance may encourage the few lower-income families who are able to meet these requirements to move into Highland Park. Any such marginal integration, however, is hardly the type of widespread and meaningful economic integration for which inclusionary zoning proponents advocate. *See* Cummins, *supra* note 46, at 342–51.

¹⁷⁹ *See* Young, *supra* note 2, at 667–68.

¹⁸⁰ *See, e.g.,* CHI. URBAN LEAGUE ET AL., WORKING POOR FAMILIES IN CHICAGO AND THE CHICAGO METROPOLITAN AREA: A STATISTICAL PROFILE BASED ON THE 1990 AND 2000 CENSUSES 12 (2004), available at <http://www.roosevelt.edu/ima/pdfs/workingPoor.pdf> (pointing out that in 2000, 63.2% of the metropolitan Chicago area’s working poor population—in other words, 63.2% of the area’s families whose employed members worked over half the year but whose income still totaled less than 150% of the poverty level—were Latinos and African-Americans).

Beyond this, however, a few specific aspects of Highland Park's inclusionary zoning program pose additional challenges for racial integration. For example, the ordinance is designed so that applicants must independently qualify for mortgages, as described above. This requirement may prove to be especially onerous for minority applicants, who could face discrimination in their attempts to obtain mortgage insurance and related products and services.¹⁸¹ The program's mortgage qualification requirement, thus, may ultimately filter out minority applicants and reduce the likelihood that they will move into the affordable units.

Moreover, the way in which the city publicizes its inclusionary zoning program may undercut the ordinance's ability to advance racial integration. Indeed, many area minorities may simply not be aware that the program exists, since Highland Park does not publicize it in a way that targets minority audiences. In order to promote the homes built under inclusionary zoning, the HPICLT regularly places advertisements in the *Pioneer Press*, a Chicago-area suburban newspaper.¹⁸² Although this undoubtedly reaches a broad audience, the HPICLT's use of a suburban newspaper to publicize the program means that information might not reach the residents of the City of Chicago itself, where most of the area's minority residents are concentrated.¹⁸³ The HPICLT also publicizes the program by posting information on the city's website¹⁸⁴ and, more prominently, on the HPICLT website.¹⁸⁵ This method of advertising, too, is unlikely to reach racial minorities, who as a group have a well-documented lack of access to the Internet.¹⁸⁶

In addition to the aforementioned problems with the ordinance's design and implementation, certain preexisting conditions in Highland Park might also hamper the ordinance's ability to bring about racial integration. Even if Highland Park clearly and genuinely invites minorities to move into truly

¹⁸¹ See Willy E. Rice, *Race, Gender, "Redlining," and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950-1995*, 33 SAN DIEGO L. REV. 583, 611 (1996) ("Insurers frequently refuse to sell mortgage insurance to a disproportionately high percentage of minority and low-income consumers.").

¹⁸² Telephone Interview with Mary Ellen Tamasy, *supra* note 132.

¹⁸³ See Univ. of Chi., Major "Racial" Groups and Hispanic Population by Census Tract: Chicago and Vicinity, 2000, <http://www.lib.uchicago.edu/e/su/maps/chicityeth2000.jpg> (last visited Aug. 28, 2008).

¹⁸⁴ See City of Highland Park, Affordable Housing Opportunities, <http://www.cityhpil.com/community/housing.html> (last visited Aug. 28, 2008) (publicizing the general availability of affordable housing in Highland Park); Highland Park Housing Comm'n, *supra* note 77 (describing the workings of inclusionary zoning program).

¹⁸⁵ Highland Park Illinois Community Land Trust, *supra* note 134.

¹⁸⁶ For example, statistics indicate that African-American and Hispanic households are approximately one-half as likely as Asian or Caucasian households to have a home computer. NAT'L TELECOMM. AND INFO. ADMIN., U.S. DEP'T OF COMMERCE, FALLING THROUGH THE NET: DEFINING THE DIGITAL DIVIDE (1999), <http://www.ntia.doc.gov/NTIAHOME/FTTN99/appendix.html#c>. Further, African-American and Hispanic households are approximately two-fifths as likely as Caucasian households to have home Internet access. *Id.*

affordable homes there, the very fact of its identity as an affluent, largely Caucasian suburb might deter minorities from taking up that offer.¹⁸⁷ Local developers and scholars alike have observed that some minorities might simply feel uncomfortable moving into a predominantly white community.¹⁸⁸ Scholars examining New Jersey's post-*Mount Laurel* inclusionary zoning efforts, in fact, have noted concrete instances of this phenomenon. There, despite the successful development of affordable units in Caucasian neighborhoods and suburbs, minorities simply were not moving into those units.¹⁸⁹ Furthermore, minority leaders in New Jersey were openly reluctant to encourage minority citizens to move into that new housing, because they feared that diffusion of minorities throughout various suburbs would produce a similar diffusion—and subsequent weakening—of political power.¹⁹⁰ One can readily imagine similar objections arising in the context of many other inclusionary zoning programs, including that of Highland Park.

3. *Factors Generally Affecting both Economic and Racial Integration.*—Broadly speaking, Highland Park's inclusionary zoning ordinance manifests a certain insularity that may limit its ability to further both economic and racial integration. As described above, the ordinance gives priority to housing applicants who already live in Highland Park and to applicants who work for a local business or governmental entity.¹⁹¹ The preference for current residents, of course, works against integrationist goals, because by establishing that preference, the ordinance decreases the chances that any outsiders—let alone minority or low-income households—will move into the new affordable units. The same conclusion, however, is not as clear with respect to the program's secondary preference for Highland Park private- and public-sector workers, as very little data is available regarding the places of residence, income levels, or ethnicities of local workers. The most one can conclude, then, is that the ordinance's preference for local residents indicates that it will not bring about an increase in racial or economic diversity, but its preference for local workers does not clearly support the same conclusion.

What these residency and employment preferences do make clear, however, is that the ordinance will probably not help significant numbers of

¹⁸⁷ See Sheryll D. Cashin, *Civil Rights in the New Decade: The Geography of Opportunity*, 31 CUMB. L. REV. 467, 471 (2001).

¹⁸⁸ Telephone Interview with Paul Levy, *supra* note 71; *cf.* Wish & Eisdorfer, *supra* note 15, at 1301–02.

¹⁸⁹ Wish & Eisdorfer, *supra* note 15, at 1301–02 (finding, for example, that in New Jersey, as a result of post-*Mount Laurel* affordable housing programs, “[o]f the White occupants who previously lived in cities, 65% moved to the suburbs. By contrast, 86% of the Black occupants of [urban affordable housing units] previously lived in cities. Only 5% [of Blacks] moved to the suburbs”).

¹⁹⁰ CHARLES M. HAAR, *SUBURBS UNDER SIEGE: RACE, SPACE, AND AUDACIOUS JUDGES* 165 (1996).

¹⁹¹ See *supra* notes 135–138 and accompanying text.

outsiders gain entry to Highland Park.¹⁹² Instead, it will enhance Highland Park homeownership and rental opportunities primarily for people who already have gained some entry into the elite suburb, either by living there or obtaining employment there.¹⁹³ Accordingly, the ordinance's insular design suggests that it will only reinforce Highland Park's existing racial and economic status quo, rather than making the suburb more diverse.¹⁹⁴ This conclusion is supported by the comments of Highland Park Councilmember Steve Mandel, who told a local newspaper that when the city passed the inclusionary zoning ordinance, it had not been focused on increasing diversity.¹⁹⁵ Even more explicitly, while contemplating passage of the inclusionary zoning policy in 2002, unnamed local officials reportedly stated that the city's approach to affordable housing would "not likely . . . change the racial landscape of Highland Park or help poor families."¹⁹⁶

Finally, certain characteristics of Highland Park's home-building market—characteristics that existed prior to and separate from the ordinance—may well work to inhibit the ordinance's ability to increase both economic and racial integration. Recall that Highland Park does not experience high rates of residential development, as it is an older suburb and most of its land is already improved.¹⁹⁷ Those development projects that do occur in Highland Park take place relatively infrequently.¹⁹⁸ At least one area developer has accordingly characterized Highland Park's inclusionary zoning ordinance as almost meaningless, because it proposes to achieve change by affecting new residential development—and yet new residential development is quite scarce.¹⁹⁹ Consequently, even if this program were designed and implemented in a totally inclusive fashion, the small scale of building in

¹⁹² Interestingly, this feature of the ordinance stands in marked contrast to Highland Park's historically inclusive attitude.

¹⁹³ The cohort of intended beneficiaries apparently includes Highland Park residents who have recently experienced income reductions due to divorce or retirement, as well as municipal employees and young adult children of Highland Park residents. See Prince, *supra* note 63.

¹⁹⁴ So far, it appears that Highland Park's status quo largely will be maintained, despite the purportedly inclusionary program. Although specific demographic information regarding housing applicants is not available, the waiting list of applicants for the new affordable units does indicate that a strong majority of the program's applicants are Highland Park "insiders," insofar as they already have substantial ties to the community. As of the writing of this Comment, twenty-seven households were on the HPICLT's inclusionary zoning waiting list; members of nineteen of those households either lived or worked in Highland Park. Moreover, some of the eight remaining households appear to have had preexisting ties to Highland Park, notwithstanding the fact that members of those households had neither lived nor worked there. For example, one couple on the waiting list lived in North Carolina and wanted to move to Highland Park to be closer to their children, who resided there. Telephone Interview with Mary Ellen Tamasy, *supra* note 132.

¹⁹⁵ Prince, *supra* note 63.

¹⁹⁶ *Id.*

¹⁹⁷ See *supra* notes 71–76 and accompanying text.

¹⁹⁸ See *supra* Tables 3 and 4.

¹⁹⁹ Telephone Interview with Paul Levy, *supra* note 71.

Highland Park would mean that the suburb's demographics would remain largely unchanged.

Taken together, these factors suggest that this ordinance's impact on Highland Park's racial and economic makeup will be, at best, quite limited.²⁰⁰ Thus, even though Highland Park's ordinance has not permanently halted home-building in the community, the "affordable" units produced under the ordinance may not be allocated to low-income or minority residents.²⁰¹

IV. THE ORDINANCE'S EXTRATERRITORIAL IMPACT

Although most scholars have confined their discussions of inclusionary zoning to its effects within the jurisdictions that have adopted it,²⁰² this case study would be incomplete if it did not acknowledge that the impact of Highland Park's ordinance extends far beyond the suburb's boundaries. Indeed, Highland Park's ordinance has wielded a great deal of influence over other communities across the Chicago metropolitan area, which have used and continue to use it as a model for their own efforts to enact inclusionary zoning.

After Highland Park became the first community in the region to adopt inclusionary zoning, several other Chicago-area suburbs followed suit by considering or adopting inclusionary zoning themselves.²⁰³ These other communities, of course, did not turn to inclusionary zoning simply because Highland Park had done so, but their decisions were substantially informed by Highland Park's experience.²⁰⁴ Highland Park's ordinance, for example, provided guidance to at least three other communities by serving as a tex-

²⁰⁰ Cf. Roisman, *supra* note 166, at 77–78 (observing that neither New Jersey's nor Massachusetts's inclusionary zoning programs have brought about significant residential racial integration).

²⁰¹ See *id.* at 84 (“[S]imply siting housing in the suburbs, even if the housing would not otherwise be built, is not necessarily a good thing [I]f we simply produce suburban housing and do not make that suburban housing available in an integrative and equitable way, we will be doing more harm than good.”).

²⁰² See generally Dietderich, *supra* note 6; Ellickson, *supra* note 1; Wish & Eisdorfer, *supra* note 15; Young, *supra* note 2 (all focusing solely on the effects of inclusionary zoning policies within the jurisdictions that adopted them).

²⁰³ Telephone Interview with Nicholas Brunick, *supra* note 31.

²⁰⁴ *Id.* Many of these communities might be considering inclusionary zoning because of the new requirements imposed by Illinois's relatively new Affordable Housing Planning and Appeal Act. 310 ILL. COMP. STAT. 67/1 (2004). This law requires Illinois municipalities with less than ten percent affordable housing to have developed affordable housing plans prior to April 1, 2005. The plans must, among other things, adopt one of three goals for increasing the stock of affordable housing: (1) at least fifteen percent of all new development must be affordable, (2) the overall percentage of affordable housing must increase by three percentage points, or (3) the overall percentage of affordable housing must increase to ten percent of the total housing stock. *Id.*; see also BUS. & PROF'L PEOPLE FOR THE PUB. INTEREST, THE AFFORDABLE HOUSING PLANNING AND APPEAL ACT, <http://www.bpichicago.org/documents/factsheet625.2724.966.pdf>.

tual model for their proposed ordinances.²⁰⁵ Evanston, an inner-ring northern suburb of Chicago that is home to Northwestern University, used Highland Park's ordinance as a pattern for its own inclusionary zoning program,²⁰⁶ which it adopted on October 23, 2006.²⁰⁷ The northern suburb of Lake Forest also recently enacted an inclusionary zoning ordinance that bears very strong similarities to that of Highland Park.²⁰⁸ Finally, St. Charles, a far-western suburb of Chicago, also used Highland Park's ordinance as a starting point for the creation of its own inclusionary zoning scheme.²⁰⁹ In addition to using the ordinance's text as a model, these other communities have also emulated the way in which Highland Park built political support for its ordinance by meeting with developers before enacting the ordinance and by continuing to meet with them and to address their concerns after enacting it.²¹⁰

Not only has Highland Park's ordinance served as a textual and political model for other communities, but Highland Park has also helped to reduce the chance that other towns might experience certain negative effects after adopting inclusionary zoning. Of the many Chicago-area municipalities, Highland Park was particularly well-situated to withstand the risk often associated with such ordinances: the risk that developers might respond by leaving town. Because it was able to effectively manage and overcome that risk, Highland Park reduced the likelihood that other communities who subsequently adopt inclusionary zoning might face a similar development shutdown.

Highland Park was well-positioned to manage and minimize the risk of a prolonged development shutdown, for example, because the suburb's "situational monopoly" may have provided strong incentives for developers to adapt to the ordinance's new requirements rather than leave town and do business elsewhere.²¹¹ As described above, Highland Park is widely re-

²⁰⁵ Telephone Interview with Nicholas Brunick, *supra* note 31.

²⁰⁶ *Id.*

²⁰⁷ Evanston Planning & Dev. Comm., Meeting Agenda (Nov. 13, 2006), available at <http://www.cityofevanston.org/government/minutes/pd/pdf/2006/11-13-06.pdf>. Evanston's new ordinance requires developers to set aside ten percent of all planned unit developments for affordable housing or, in the alternative, to pay a fee to the city. E-mail from Nicholas Brunick, Attorney, Applegate & Thorne-Thomsen, P.C., to author (Nov. 15, 2006, 16:07 CST) (on file with author).

²⁰⁸ Telephone Interview with Nicholas Brunick, *supra* note 31; E-mail from Nick Brunick, *supra* note 207. While its overall design is very similar, Lake Forest's ordinance does vary slightly from that of Highland Park. For example, Lake Forest requires fifteen percent of the units in residential developments with five or more units to be affordable, compared to twenty percent in Highland Park. Another key difference is that Lake Forest's ordinance does not apply to developments that consist of single-family detached homes. See E-mail from Nicholas Brunick, *supra* note 207.

²⁰⁹ Telephone Interview with Nicholas Brunick, *supra* note 31. As of the writing of this Comment, St. Charles had not actually enacted its proposed inclusionary zoning program.

²¹⁰ *Id.*

²¹¹ Cf. Clayton P. Gillette, *Local Redistribution, Living Wage Ordinances, and Judicial Intervention*, 101 NW. U. L. REV. 1057, 1082 (2007) ("Cities will be better able to implement benign redistribu-

garded as a desirable place to live,²¹² and its home sale prices are already very high. Thus, developers' incentives to stop building there were probably quite low, despite the costs imposed by the inclusionary zoning ordinance. After all, building market-rate units in Highland Park is a dependably profitable venture, even if those units have to be accompanied by a few less profitable "affordable" units.²¹³ Highland Park's situational monopoly, therefore, may have motivated developers to give building under the ordinance a chance, instead of simply abandoning efforts to build there. It may even have prompted area developers to meet with the city and discuss the ordinance's ramifications during the postordinance development lag—a critical communication process that, as observed above, may have contributed to the eventual resumption in home-building. Other suburbs that lack a similarly long-established and well-known situational monopoly, however, might have had more difficulty managing and ending a development shutdown had they been in Highland Park's position.

Furthermore, Highland Park was particularly well positioned financially to weather a postordinance development lag. Such a lag could pose a serious fiscal risk to a municipality whose budget relies heavily on revenue from builders' fees or from taxes tied to growth. Highland Park's treasury, on the other hand, probably did not severely suffer for lack of this revenue during the development lag, since it is a relatively wealthy town that has substantial revenue from other sources.²¹⁴ Moreover, since residential building occurred fairly infrequently and irregularly in Highland Park even before the ordinance was enacted,²¹⁵ it is likely that the city did not heavily rely on these correspondingly infrequent and irregular sources of revenue. The same, however, might not be true of other suburbs, where builders' fees and other development-related revenue sources might be larger—and more indispensable—parts of budgets.²¹⁶

tion, that is, if they can exploit a situational monopoly that discourages residents from departing and encourages potential new subsidizing residents to immigrate, notwithstanding redistributive taxes.'). The incentives provided by Highland Park's situational monopoly, of course, exist in addition to the incentives provided by the inclusionary zoning program itself, such as fee waivers and density bonuses.

²¹² See EBNER, *supra* note †, at 77–78 (explaining that the physical beauty of Highland Park makes it a very desirable place to live, even as compared against other suburbs located on the shores of Lake Michigan).

²¹³ See Telephone Interview with anonymous developer (Nov. 3, 2006) (noting that his development company passed the costs of inclusionary zoning, at least in part, on to the purchasers of market-rate units); *cf.* Padilla, *supra* note 7, at 575–76 (describing how developers' costs associated with inclusionary zoning programs can be transferred to market-rate purchasers).

²¹⁴ See MOODY'S INVESTORS SERV., MOODY'S ASSIGNS AAA RATING TO THE CITY OF HIGHLAND PARK, ILLINOIS' \$10 MILLION G.O. BONDS, SERIES 2005A AND \$2.075 MILLION G.O. REFUNDING BONDS, SERIES 2005B (2005), <http://www.cityhpil.com/pdf/finance/moodyReport.pdf> (indicating that Highland Park has a strong tax base and "healthy" financial reserves).

²¹⁵ See *supra* Table 3.

²¹⁶ Such suburbs might include, for example, exurban communities experiencing high levels of real estate development. See *infra* note 224 and accompanying text.

Highland Park's ability to withstand and overcome a postordinance development lag may prove quite valuable to other regional communities. By convincing developers to resume building there, Highland Park has ensured that many area developers will become accustomed to working under an inclusionary zoning ordinance.²¹⁷ As a result, when other communities subsequently adopt inclusionary zoning, they may not face development lags of similar scope or duration.²¹⁸ Highland Park may therefore have made other communities more likely to adopt inclusionary zoning by significantly reducing the possibility that they might experience full-blown development shutdowns.²¹⁹ Of course, this is not to say that Highland Park has made it simple for other communities to adopt inclusionary zoning—each municipality must navigate its own set of political hurdles—but at the least, it has mitigated the potentially serious obstacle of developer resistance.

One other dimension of this ordinance's extraterritorial impact merits attention as well. By making it easier for other regional communities to adopt inclusionary zoning, it is possible that Highland Park's ordinance will ultimately further racial and economic integration on a regional scale. This is because inclusionary zoning policies adopted in the region's other towns might more effectively promote integrationist goals, provided that they avoid the various pitfalls—a pricing scheme that leads to still-expensive “affordable” homes, prioritization of local residents and workers, and so forth—that inhibit the Highland Park ordinance's ability to advance integration.

As mentioned above, even the most perfectly designed inclusionary zoning ordinance still might not be able to promote either racial or economic integration in Highland Park because of two preexisting obstacles that exist entirely separate from the ordinance.²²⁰ First, the town's slow home-building rate means that not many affordable units will be produced.²²¹ Additionally, such an ordinance might still struggle to encourage

²¹⁷ See discussion *supra* Part III.A (indicating that the postordinance lag in Highland Park was caused in part by developers needing time to adjust to the new ordinance). Despite the fact that home-building occurs fairly slowly in Highland Park, the few projects that occur there are split among a rather large number of developers. Thus, many developers will have experience building under Highland Park's inclusionary rules. See Interview with Peg Laemle, *supra* note 146.

²¹⁸ Cf. Telephone Interview with Betsy Lassar, *supra* note 11. Of course, other communities may have different situational monopolies—such as booming housing markets—that will also affect their likelihood of experiencing postordinance development lags. Highland Park's role is merely one factor among many that will affect the likelihood of such lags.

²¹⁹ A municipality that adopts inclusionary zoning will unavoidably require time to establish a bureaucratic apparatus to administer it. Hopefully, though, a municipality could make most administrative arrangements before the ordinance's effective date in order to minimize any postordinance development lag. See discussion *supra* Part III.A (ascribing the postordinance development lag in part to the fact that the City of Highland Park needed time to establish a set of administrative procedures, and the concomitant bureaucracy, necessary to run its inclusionary zoning program).

²²⁰ See *supra* Part III.B.

²²¹ See *supra* text accompanying notes 197–199.

racial integration, in particular, because some minorities have demonstrated uncertainty about moving into a predominantly Caucasian suburb.²²² These two obstacles, however, might be easier to overcome in other regional communities, such as Chicago’s exurbia—the fast-growing, young communities that have recently been popping up on the fringes of this and other established metropolitan areas.²²³

In many exurban communities, residential development is booming,²²⁴ consequently, an inclusionary zoning ordinance would likely have a very substantial effect on the amount of affordable housing produced.²²⁵ Indeed, unlike Highland Park’s “meaningless” program, an exurban inclusionary zoning policy might have a real opportunity to create hundreds or even thousands of affordable units over time.²²⁶ If lower-income households or members of racial minorities move into those units, they could integrate into exurban communities on a significant scale and—as hoped by inclusionary zoning proponents—share in and benefit from the opportunities available in those communities.²²⁷

Moreover, members of minority groups might feel more comfortable moving to young exurbs that are still in the process of forming a community identity. Because of their relative youth, many exurban locales are less likely to have the same deeply embedded history of exclusiveness that can be found in some older communities.²²⁸ Indeed, exurban communities might not be as inclined or as able to construct ordinances that protect the communities’ status quo, as Highland Park’s ordinance does, because in these young and rapidly changing towns, an identifiable status quo simply may not yet exist.

²²² See *supra* text accompanying notes 187–190.

²²³ See Ryan Santicola, *Encroachment: Where National Security, Land Use, and the Environment Collide*, ARMY LAW., July 2006, at 1, 1 (defining and describing exurban sprawl). In the Chicago metropolitan area, municipalities such as Aurora, Huntley, and others have been commonly identified as exurbs. See Greg Burns, *Rough Ride in Rockford*, CHI. TRIB., Oct. 23, 2005, § 3, at 1 (identifying Huntley, Illinois, as a “fast-growing Chicago exurb”); *Bush Calls for More Spending on Science*, USA TODAY, Jul. 8, 2006, http://www.usatoday.com/news/washington/2006-07-08-bush-radioaddress_x.htm (identifying Aurora, Illinois, as one of Chicago’s exurbs).

²²⁴ See, e.g., Siegan, *supra* note 5, at 292–93 (“[M]ost construction occurs in the outer portions of the metropolitan areas.”).

²²⁵ See Telephone Interview with Paul Levy, *supra* note 71. But see Orfield, *supra* note 29, at 877 (“Urban sprawl tends to exacerbate residential racial segregation because unchecked development at the fringe permits rapid abandonment of inner-suburban and central-city housing stocks as White residents move into expanding suburban developments.”).

²²⁶ See Telephone Interview with Paul Levy, *supra* note 71.

²²⁷ See generally *id.*

²²⁸ Unfortunately, exurbs are more commonly thought of as predominantly Caucasian communities. See Klint Alexander & Kern Alexander, *Vouchers and the Privatization of American Education: Justifying Racial Resegregation from Brown to Zelman*, 2004 U. ILL. L. REV. 1131, 1132. If young exurban communities were to institute mandatory inclusionary zoning early in their development, however, they might develop more racially integrated identities.

This second obstacle might also be more surmountable in those Chicago-area towns that are already more racially diverse, such as Evanston.²²⁹ In those communities, unlike the predominantly Caucasian Highland Park,²³⁰ minorities may not face the daunting trio of wealth, race, and social status that can cause feelings of discomfort or unwelcomeness.²³¹ Therefore, members of racial minority groups may be more likely to move into affordable housing units that are constructed in those communities.²³²

Thus, by facilitating the spread of inclusionary zoning across the region, Highland Park may ultimately increase the opportunity for racial and economic integration to take place in other Chicago-area communities. The ordinance's potential extraterritorial impact stands in marked contrast, then, to the fact that it might not be able to effectively encourage economic and racial integration at home. Indeed, these extraterritorial effects indicate that when its impact is considered from a regional perspective, Highland Park's ordinance—despite its flaws—may be adjudged quite capable of advancing inclusionary zoning proponents' integrationist goals.

V. CONCLUSION

This Comment's analysis of Highland Park's inclusionary zoning ordinance seeks to contribute in three ways to the scholarly debate over the effects of inclusionary zoning. First, it shows that Highland Park's inclusionary zoning ordinance resulted in a temporary development lag, although residential development has since resumed. This finding partially supports the theories of inclusionary zoning critics, who have predicted that a slowdown—or even a shutdown—in residential development will occur after the adoption of such an ordinance.²³³ This finding also suggests, however, that such development lags are not necessarily permanent or irreversible. By communicating with developers and reassuring them about the new zoning requirements, the City of Highland Park may have helped end the lag and encourage the resumption of home-building.

Second, this Comment argues that this ordinance may disappoint inclusionary zoning proponents, because it may have only a limited ability to increase economic and racial integration within Highland Park.²³⁴ For example, the ordinance's pricing scheme, which produces still-expensive “affordable” homes, may impede meaningful economic integration and pre-

²²⁹ U.S. Census Bureau, Evanston Illinois Fact Sheet, http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&geo_id=&_geoContext=&_street=&_county=evanston&_cityTown=evanston&_state=04000US17&_zip=&_lang=en&_sse=on&pctxt=fph&pgsl=010 (last visited Aug. 28, 2008).

²³⁰ See *supra* text accompanying note 70.

²³¹ See *supra* text accompanying notes 187–190.

²³² See *id.*

²³³ See, e.g., Ellickson, *supra* note 1, at 136–37.

²³⁴ See, e.g., Cummins, *supra* note 46, at 342–51; Seitles, *supra* note 50, at 111.

vent often poorer members of racial minority groups from moving into Highland Park. Communities that adopt inclusionary zoning in the future should attempt to avoid the design and implementation problems identified in this Comment so that they can construct policies more capable of furthering economic and racial integration.

Third, this Comment suggests that Highland Park's ordinance has had important extraterritorial effects, as it may have improved the ability of other regional communities to adopt inclusionary zoning programs of their own. For example, Highland Park's ordinance has served as a model for at least three other Chicago suburbs that either have adopted or are considering adopting inclusionary zoning. By helping area developers grow accustomed to building under an inclusionary system, Highland Park may also have reduced the chance that other regional communities might experience development lags if they adopt inclusionary zoning. These other communities might thus be more likely to adopt inclusionary zoning—and their policies, in turn, could be more capable of furthering racial and economic integration. Moreover, the fact that Highland Park's ordinance may ultimately exert a significant influence on the region suggests that legal scholars should not overlook, as often happens, the extraterritorial impacts of inclusionary zoning ordinances.²³⁵ Instead, by examining the various effects of inclusionary zoning policies both inside and outside of the jurisdictions that adopt them, the legal community can build a more complete understanding of the effects of these programs and what can be done to improve them.

²³⁵ See generally Dietderich, *supra* note 6; Ellickson, *supra* note 1; Wish & Eisdorfer, *supra* note 15; Young, *supra* note 2.

