HOUSING POLICY EXPLAINER

Discretionary Reviews

> *"Discretionary approval gives municipalities the ability to a) kill or downsize projects that they find unfavorable, b) shape projects (beyond what measurable dimensional requirements mandate), c) determine builder-led mitigation strategies to address possible negative impacts of projects on the community, and d) sometimes even capture value from lucrative developments (beyond what is needed for mitigation) and directing it towards public ends. Value capture and mitigation can include infrastructure upgrades, donations to funds, inclusion of deed-restricted affordable homes, and other benefits."*
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> Dian, Amy. "Exclusionary by Design." Boston Indicators. November 2023.

Discretionary Reviews: Production Roadblock

Because discretionary reviews require approval to work through a separate, more rigorous process, these reviews and approvals take longer than by-right approvals. Research by UCLA found that by-right approvals were granted 24-32% faster than discretionary reviews, depending on project type .

Discretionary reviews do not only prolong a project, but they can also result in a reduction in units or even prevent a project from being approved altogether. With any of these outcomes, housing production is negatively impacted.

Discretionary Reviews: Affordability Roadblock

Discretionary reviews in housing can add to the cost of housing in several ways. First, discretionary reviews can result in additional planning, engineering, and design work, both before entering the process and while working through the discretionary review as the project applicant seeks to prepare a project that will be able to obtain approval. The second is the cost of delays, such as the carrying cost of letters of credit.

Another important way discretionary reviews impact affordability is the terms and conditions imposed upon a project to obtain a discretionary approval. Getting diverted to a discretionary review opens the door to what is known as the "give-to-get" aspect of discretionary approvals. This is when a project applicant must give concessions or exactions to the municipality to get the approval, conditions which often increase the cost of housing.

As density plays a critical role in determining housing costs, the loss of density that results from the discretionary review can result in increased housing costs.

Discretionary Reviews and Exclusion

Many of the performance standards that trigger a discretionary review or are imposed upon a project as the result of a review are tied to policies that have their roots as exclusionary zoning tactics. These same tools are used today as a function of fiscal zoning, which uses zoning controls in increase housing costs to restrict housing access based upon socioeconomic status.

CONCLUSION

From multiple critical measures – affordability, production, and access – housing discretionary reviews pose a significant barrier. Moving to true by-right requires municipalities or states to set housing requirements and standards which are not too rigid. It also requires a level of awareness and interplay between all regulations to ensure that what is allowed on paper is also allowed in practice.