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GEO 4321: Cities and Urban Design
April 2012

Incentive Zoning: Executive Summary

Incentive zoning is a reward-based system to encourage development towards established goals, providing a way for governments and private developers to develop legal, mutually beneficial relationships. It is implemented by municipalities in the form of a zoning overlay, and developer participation is optional. Many see incentive zoning as an easy way to provide public amenities without direct cost to the government, but others see the public/private partnership as skewed in the developer's favor and even unethical.

The two main types of incentive zoning are as-of-right (also called "codified") and case-by-case. Both have advantages and disadvantages. As-of-right zoning writes specific incentives and amenities into the code, essentially in the format of "If a developer meets X criteria, then they automatically receive Y benefit." This form is predictable, expedient, and has much less overhead cost once it is established. It also protects against accusations of preferential treatment. Unfortunately, it can sometimes encourage developers to do just the bare minimum, thereby reducing the potential amount of public benefit. Case-by-case zoning, on the other hand, provides greater flexibility. Site-specific challenges can be addressed, and the overall project can be evaluated.

Some of the most common incentives for incentive zoning are density bonuses, fee waivers, expedited approval processes, tax abatements, reduced parking and set-back requirements, and transfer of development rights. The amenities provided to the public in exchange are even more diverse, including affordable housing, park space, child care facilities, street-level retail, and infrastructure improvements. With such a wide range of options for

incentive programs, it can be difficult to balance bonuses and amenities. A successful program will have incentives that improve a developer's bottom line enough that they will participate. It will also have amenities that the public feels are fair given the incentives. San Francisco provides an example of this imbalance; the city abolished their incentive zoning program after only a few years because of low participation from the private sector. The city chose instead to require provision of the amenities previously optional in the incentive program.

New York City, the second city to implement incentive zoning after Chicago, is an excellent case study in how these programs work—and how they don't. New York City's 1961 zoning ordinance established density maximums for the island, as well as creating an incentive zoning area to allow developers to get around those limits. Builders could increase their total floor area ratio allowed by providing public open space and pedestrian walkways in various forms. This was highly successful if measured by participation. 3.5 million square feet of public space was created, distributed throughout in New York City. A 1988 study found that the program had created $5 million in public spaces; the incentives received by developers, on the other hand, were equal to $100 million. However, as a pioneer in incentive policies, New York City didn't quite have it down. Design and signage standards were lax, and records to keep track of the designated spaces were virtually non-existent. Almost 40 years after the program was originally enacted, a book was published cataloguing and evaluating over 500 privately-owned public spaces (POPS) in New York City. It found that 41% were of marginal utility to the public. These spaces may be lacking essential amenities such as benches and shade; their status as public space may be unclear; or possibly they are being used illegally by building owners as delivery vehicle spaces. Design standards for these spaces have since been made stricter, enforcement has increased, and standardized signs with a specific logo have been distributed across the city.

In Austin, Texas, incentive zoning has been implemented for the purpose of ensuring affordable housing availability. Two special zoning districts, the Central Business District and Downtown Mixed Use area, give developers an opportunity to increase floor area ratios and height limits, as well as have various fees and permits waived. The requirements for these incentives are providing 10% affordable housing units, or paying into the Housing Assistance Fund.

I would propose expanding these incentive zoning districts to include areas east of Interstate 35 near downtown. This area is historically low-income and minority, but has recently been experiencing gentrification due to its proximity to downtown and the growth in Austin and Central Texas. As the city grows, expansion of densely-developed areas is inevitable, and certainly preferable to sprawling development on the outskirts of town. This incentive zoning area will also allow the city to direct dense development away from the environmentally sensitive area west of downtown, as well as allowing socioeconomic diversity to remain east of IH35.

As evidenced in the case of New York City, incentive zoning has the potential to make a lasting impact on the urban landscape. As with many planning decisions, this policy's visibility to the public makes it a target of controversy. The tension between public and private interests only heightens this issue. However, if incentives and amenities are balanced and appropriate to the area, incentive zoning can be a powerful tool for positive development. Continued success will require constant monitoring of the social and economic environment, and adjustments to the program accordingly. It will also require careful enforcement and ethical considerations to ensure that the public is benefitting from each case. The challenge for city officials will be continuing to hold the public good as the highest priority.