

Homelessness, Housing, and the Failures of the Regulatory Impulse

By Catherine Addington
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When it comes to homelessness, many communities' first instinct is to regulate the problem away. Making certain aspects of life on the street illegal, the approach goes, will force the homeless into city programs—or into other cities. This regulatory approach, sometimes referred to as the municipal criminalization of homelessness, includes the seizures of homeless Americans' private property through police sweeps, laws against panhandling, and restrictions (or even bans) on sharing food with the homeless in public. These measures end up wasting money through the overincarceration of the homeless for nonviolent crimes: according to the National Coalition for the Homeless, it costs up to three times as much to keep someone in jail for one night as it does to keep someone in a shelter.

But the approach, which only deals with the visibility of homelessness and not its root causes, is also fundamentally flawed in that it tends to manifest as merely a short-term bandage for a much more complex issue. The misguided strategy is exemplified by Honolulu mayor Kirk Caldwell's "war on homelessness," which has quickly devolved into a "war on the homeless" by seizing the property of the homeless, banning tents in public spaces, and drafting bills to authorize the police to harass anyone sleeping in public spaces. Though it is intended to improve the local economy by boosting tourism—and a booming local economy would be beneficial to the homeless population in the long run, to be sure—this regulatory approach provides no alternatives other than exodus for the homeless population. As Leah Libresco put it, "Hawaii, more than other states, shouldn't just try to *hide* their homeless, since, as an island state, they can't pull the trick other cities have used and hand out one-way bus tickets to shunt their homeless to another city."

That same regulating impulse on the local level is also driving up housing costs in cities across the country, likely contributing to homelessness. Scott Beyer recently illustrated how housing policy intersects with homelessness in D.C., where the public health crisis at the decrepit General Hospital shelter is contrasted with housing prices that are rising along with regulations slowing development. "Collectively, writes Cato Institute economist Randal O'Toole, these 'planning penalties' add \$135,000 to the costs per unit in D.C. Such expenses are paid upfront by businesses, but ultimately get passed

onto consumers, making the idea of owning — or even renting — housing impossible for many residents,” Beyer says. He notes that the situation is not specific to D.C. but has spread to politically similar cities like New York, San Francisco, Portland, and Seattle.

Even affordable housing requirements, meant as a regulated solution to those inflated housing costs, are handled in the same wasteful way. Josh Barro recently detailed the issue of inclusionary zoning, an attempt to increase affordable housing in New York City by offering Manhattan developers the ability to build more luxury apartments if some are allocated to lower rent levels. But while perhaps politically necessary, the strategy underperforms. According to Barro, “Inclusionary zoning generates fewer affordable housing units than a cash equivalent because luxury apartments make for an expensive form of affordable housing.”

Often individually well-intended regulations can easily spiral out of control, as with the hundreds of thousands of dollars in obscure fees that pile up on housing developers in D.C. In order to ensure that regulation is appropriate, but not overreaching, state and local governments can look to a historically successful national approach. When such problems of overregulation costs arose on the national level in the 1980s, the Reagan administration formalized the regulatory review process in order to reduce paperwork, financial waste, and unnecessary rulemaking. A similar process modeled after OIRA review on the local and state levels could have equally successful results, Edward Glaeser and Cass R. Sunstein have suggested. Many of the regulations driving up housing costs are based on one-time problems that are now costly, unnecessary, widespread rules, and such a review body could intercept these cases.

An unorthodox, but successful, nonregulatory approach to homelessness was tried by Gov. Jon Huntsman’s Republican administration in Utah, which started its “Housing Works” program in 2005 to give homes to the homeless, no strings attached. The government capitalized on low land costs in Utah, which made free housing a more viable approach than underfunded shelters or overrun prisons.

Homelessness is more complicated than mere housing affordability, but local governments’ failed strategies of driving up the costs of housing and homelessness alike through regulatory overreach present a straightforward opportunity to fix one of the many contributing factors.