



## One Cheer for Biden's Infrastructure Plan: Encouraging Better Zoning

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President Biden's infrastructure plan has agitated limited-government types. It is outrageously expensive, exaggerates the crisis, and funds several programs that have nothing to do with infrastructure. But at least one of its proposals, enticing municipalities to relax outdated zoning rules, holds great promise for free-market proponents.

With the Supreme Court's approval in 1926, suburbs across the country began using single-family and open-space requirements to preserve an aesthetic that by no accident kept out minorities and the working class. Prohibitions on multi-family dwellings used wealth disparities between WASPs and everyone else to keep the flight to the suburbs as well-to-do and white as possible. Deed covenants preempted selling homes to black and Jewish families, ensuring the market did not attract "unwelcome" neighbors with the economic means to move.

In 1948, the Court ruled these covenants unenforceable, and the explicit racism that motivated restrictive zoning is, fortunately, no longer in vogue. Yet those longstanding rules accomplished their original segregationist mission and zoning restrictions maintain those old residential patterns. From Seattle to Charlotte, many cities still reserve the majority of their land for single-family homes. For that matter, over 90 percent of zoned land in Connecticut is zoned single-family.

The housing part of Biden's massive bill aims to help erode the single-family paradigm, offering local governments federal funds to improve neighborhood infrastructure in exchange for easing their archaic zoning rules. The White House's immediate purpose is to relieve swollen demand in urban centers with more plentiful and therefore affordable housing in near-urban and suburban areas.

While it is unconstitutional to withhold promised funds to force a state to do something unrelated to the program funded, there is nothing inherently wrong with using carrots instead of sticks to incentivize reform. Still, some are upset with the White House's meddling in local affairs. This instinct is almost always correct. But unlike much federal involvement at the local level, this plan directly targets rather than creates market inefficiencies.

While libertarians prize a strong federalism, state and local rules can create market failures too. There is no perfect formula for guarding against federal overreach while ensuring free markets, though voluntary federal programs are far from the worst-case scenario.

Here, it might just provide the breakthrough housing needs to overcome barriers that, while of local creation, are no less deleterious to the cause of market freedom — arguably more so even than eminent-domain actions, which these days are by no means owner-friendly.

Indeed, as George Mason University law professor Ilya Somin points out, the social and economic costs of local exclusionary zoning run such a wide gamut that “whether you’re a libertarian, a conservative property rights advocate, a racial justice crusader, a progressive concerned about economic inequality, or just someone who wants to lower housing prices . . . this is a cause you have good reason to support.”

Some will lament the loss of their suburb’s quietude, arguing this cost outweighs the benefits of easing zoning restrictions. While losing the suburbs’ arcadian ideal is a legitimate concern, the answer is not to use artificial means to foreclose change where the market otherwise demands it.

As the country faces a massive housing shortage, the time is long past for removing entry barriers that, when not perpetuating racial segregation, stifle growth on a scale that cannot be measured until the market is finally free to do its thing.

Some lawmakers have begun to recognize that the old rules do not jibe with the population, wants, and needs of 21st-century Americans, with trends headed only further away from the Levittown ideal. Minneapolis upzoned its single-family zones to multi-family use in 2018. Oregon followed with a law allowing duplexes in most single-family zones.

Still others, like the uber-progressive Berkeley, where many residents continue to fight upzoning, need an extra nudge. Since the administration’s proposal is voluntary, communities that continue to prize exclusive single-family housing over the economic benefits of reform can be expected to forego the carrots.

To some, relaxed zoning spells the end of “the suburbs.” The truth is far from it. The nationwide easing of zoning rules that artificially restrict certain types of housing arrangements would make the market more efficient, sometimes changing where “the suburbs” are, but not the opportunity to live there.

Those who want the urban-suburban synthesis of multi-family housing interspersed with light commerce will no longer be shut out of huge swaths of the country. Families who do not can more efficiently concentrate in single-family neighborhoods, and eased zoning everywhere likely would reduce their costs of keeping multi-family uses out.

Gentle relaxation of exclusionary zoning rules will not erase the suburbs. It will simply mark the next stage in an inevitable evolution already in progress. As the country’s population grows and moves, and cultural tastes change, so too do its neighborhoods.

Biden’s proposal is a small step. Unlike the many bad ideas in his infrastructure bill, it points in the right direction. Perhaps its success stories will spur recalcitrant zoning boards to end their exclusionary rules before federal authorities use them as pretexts to intervene in local rules that do *not* impede the free market.

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