Sustainable Communities or the Next Urban Renewal?

Moira O'Neill, Giulia Gualco-Nelson & Eric Biber*

Inadequate housing supply in California's most expensive metro areas drives a statewide housing crisis that challenges climate policy implementation, fair housing goals, and poverty reduction. Many scholars and policy makers agree that increasing dense infill transit-oriented residential development (TOD) in high-cost metro areas could address this housing crisis while also mitigating the impacts of climate change. But some advocates and scholars liken state policy that promotes TOD to twentieth century urban renewal—contending that state-incentivized TOD disproportionately displaces lower income communities. To explore this issue, and to examine the relative influence of both state law promoting TOD and local law regulating land use in generating inequitable outcomes like displacement, we collected land use and housing data from high-cost cities across California.

Our data show that cities approve the majority of their dense housing in neighborhoods with a history of disinvestment, though not enough dense housing, particularly affordable housing, to advance climate and fair housing policy. In some neighborhoods, building new TOD housing demands demolition of existing housing, including rent stabilized housing, and this physically displaces at least some existing tenants. We conclude that state-level environmental law and planning incentives to promote infill TOD, however, are

DOI: https://doi.org/10.15779/Z38G73746X

* Moira O'Neill is a Senior Research Fellow, Center for Law, Energy, and the Environment and Associate Research Scientist, Institute for Urban and Regional Development, University of California, Berkeley; Associate Research Scholar, Urban Community and Health Equity Lab, Columbia University, and Sabin Center for Climate Change Law, Columbia Law School. Giulia Gualco-Nelson is a Research Fellow, Law and City Planning, Institute for Urban and Regional Development, University of California, Berkeley. Eric Biber is a Professor of Law, University of California, Berkeley School of Law. We would like to thank the Silicon Valley Community Foundation, Chan Zuckerberg Initiative, California Community Foundation, and Long Beach Community Foundation for providing funding for this research. We want to acknowledge the support of a team of talented research staff, Raine Robichaud and Kenneth Warner, and students, Kasey Chatterji-Len, Collette Rosenberg, and Luke Zhang. We want to thank Chris Elmendorf, Nick Marantz, Paavo Monkkonen, and Dave Owen, for their feedback on an early draft. Human Subjects Statement: The Institutional Review Board for Human Subjects Research at University of California at Berkeley and Columbia University reviewed and approved all research protocols.

unlikely to be drivers of these outcomes. Rather, exclusionary zoning at a neighborhood level is the probable culprit.

Exclusionary zoning within cities reduces the land available for dense housing; this directly limits all dense TOD to the same neighborhoods where cities have allowed dense residential development for decades. Cities reinforced early discriminatory land use policy through redevelopment initiatives that predate state-led TOD policy and seem remarkably untouched by state climate policy. Thus, local choices appear to dictate the amount, location, and pace of TOD housing development, and whether new TOD housing displaces communities. We recommend a more careful balancing between localism and state-level control over land use and zoning to correct inequitable housing outcomes and achieve California's climate and fair housing goals.

INTRODUCTION

California's persistent housing crisis begins with a basic fact: The cost of living within specific cities is extraordinarily high. Home prices are 2.5 times the national average and rents are 50 percent higher.[1] Many households within high-cost California cities cannot keep pace with housing costs,[2] which are now the leading cause of poverty statewide.[3] News articles recount working families living in cars and city councils debating "safe parking" strategies to accommodate growing homeless encampments.[4] This unacceptable reality disproportionately impacts people of color—more than a third of California households struggle to meet their basic needs without public or private support, and households of color make up 72 percent of all households unable to meet their basic needs without assistance.[5] Researchers and advocates have also linked

1. *See* ALAMO ET AL., LEGISLATIVE ANALYST'S OFFICE, CALIFORNIA'S HIGH HOUSING COSTS CAUSES AND CONSEQUENCES 3 (2015) [hereinafter LAO REPORT].

2. *See* MALO HUTSON, THE URBAN STRUGGLE FOR ECONOMIC, ENVIRONMENTAL AND SOCIAL JUSTICE: DEEPENING THEIR ROOTS (Routledge ed. 2016); *see also* LAO REPORT, *supra* note 1. For example, in 2018, the earnings threshold for a family of four to be considered a low-income household (and thus to qualify for subsidized housing programs within San Francisco) was $117,400. *See* CAL. DEPT. OF HOUS. AND CMTY. DEV., MEMORANDUM FROM ZACHARY OLMSTEAD, DEPUTY DIRECTOR DIVISION OF HOUSING POLICY DEVELOPMENT TO INTERESTED PARTIES (May 9, 2017), *available at* http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2019.pdf (providing the State Income Limits used to determine household eligibility for specific housing support programs such as Public Housing or the Section 8 Housing Choice Voucher Program).

3. LAO REPORT, *supra* note 1.

4. *See e.g.*, Grace Hase, *Life inside a cramped van: A look at San Jose's safe parking program*, SAN JOSE SPOTLIGHT (Jan. 31, 2019), https://sanjosespotlight.com/life-inside-a-cramped-van-a-look-at-san-jose-safe-parking-program/ (describing family with children living within a van); *California's Biggest Cities And Counties May Not Provide Safe Parking Lots for Homeless*, CBS SACRAMENTO (May 27, 2019, 10:36 AM), https://sacramento.cbslocal.com/2019/05/27/safe-parking-program-bill/; Maggie Angst, *Despite ACLU challenge, Mountain View plans to ban overnight RV dwellers*, MERCURY NEWS (June 12, 2019, 12:31 PM), https://www.mercurynews.com/2019/06/12/despite-aclu-challenge-mountain-view-will-ban-overnight-rv-dwellers/; Melia Robinson, *Photos show what it's like for Silicon Valley's 'working homeless' who live down the street from tech giants*, BUS. INSIDER (Dec. 6, 2017, 11:00 AM), https://www.businessinsider.com/photos-of-silicon-valley-homeless-population-2017-12#in-the-same-affluent-suburban-cities-where-google-apple-facebook-and-tesla-built-their-headquarters-thousands-of-people-work-regular-jobs-and-come-home-to-cars-and-rvs-2; *Homeless "Safe Parking" For Veterans Program*, SANTA MONICA MIRROR (Apr. 16, 2018), https://smmirror.com/2018/04/homeless-safe-parking-veterans-program/; Benjamin Oreskes, *Living in a beat-up Jeep after mounting hardship, a homeless veteran and his wife cling to hope, waiting for a place to call home*, L.A. TIMES (July 29, 2018, 5:00 AM), https://www.latimes.com/local/la-me-ln-homeless-and-waiting-20180729-htmlstory.html.

5. Private support refers to financial support from a family member, friend, church or other private individual or group, in contrast with public assistance. *See* JHUMPA BHATTACHARYA & ANNE PRICE, THE COST OF BEING CALIFORNIAN: A LOOK AT THE ECONOMIC HEALTH OF CALIFORNIA FAMILIES , INSIGHT (2018), *available at* https://insightcced.org/wp-content/uploads/2018/04/Cost_of_Being_Californian_April_2018_final.pdf; *see also* CALIFORNIA SELF-SUFFICIENCY STANDARD FACT SHEET, INSIGHT, *available at* https://insightcced.org/wp-content/uploads/2018/04/SFCounty-FactSheet-FINAL. pdf.

high housing costs within urban areas to economic and racial residential segregation at a "megaregional" level.[6]

The severity of the state's housing crisis is matched by the disruptive and deadly impacts of climate change—including back-to-back severe wildfire seasons.[7] Scientists repeatedly warn that policymakers must act now "if we want to keep the Quite Horrible from becoming Truly Terrible."[8] California, the nation's largest state by size of population and economy, and its major cities have all committed to reducing greenhouse gas emissions (GHG).[9] In California, the sector that produces the largest share of greenhouse gas emissions is transportation, more specifically, trips by individual passenger cars.[10] The California Air Resources Board[11] has made clear that reducing emissions from transportation is critical to achieving the state's climate change goals.[12] Reducing emissions requires reducing total vehicle miles traveled (VMT),

6. *See generally* URBAN DISPLACEMENT PROJECT, http://www.urbandisplacement.org/research (last visited Jan. 24, 2021); *see also* UC BERKELEY'S URBAN DISPLACEMENT PROJECT & THE CALIFORNIA HOUSING PARTNERSHIP, RISING HOUSING COSTS AND RE-SEGREGATION IN THE SAN FRANCISCO BAY AREA (2019), *available at* http://www.urbandisplacement.org/sites/default/files/images/bay_area_re-segregation_rising_housing_costs_report_2019. pdf (analyzing the Bay Area and finding a correlation between increased concentration of poverty and racial residential segregation within the "outer edges" of high-cost metropolitan regions and increased housing costs with core cities, and showing increased poverty and demographic shifts between Bay Area and the Central Valley (Stockton, etc.)); TONY ROSHAN SAMARA, URBAN HABITAT, RACE, INEQUALITY, AND THE RESEGREGATION OF THE BAY AREA (2016), *available at* https://urbanhabitat.org/sites/default/files/UH%20Policy%20Brief2016.pdf. For a definition of megaregion; *see What are Megaregions?*, UNIV. OF TEXAS, http://sites.utexas.edu/cm2/about/what-are-megaregions/ (last visited Apr. 26, 2021); *see also* Sam Tepperman-Gelfant, *Local Preferences Require Local Analysis*, NYU FURMAN CTR. (Nov. 2015), https://furmancenter.org/research/iri/essay/local-preferences-require-local-analysis (arguing "Gentrification and displacement is the new frontier of racial exclusion, and it is driving re-segregation of cities and regions. As opportunity increases in urban neighborhoods, people of color are generally forced out to low-opportunity suburbs and exurbs.").

7. Gabrielle Lurie, *The unprecedented devastation of the Camp Fire*, S.F. CHRON. (Nov. 13, 2018, 6:00 AM) https://projects.sfchronicle.com/.2018/visuals/camp-fire-devastation/; Derek Watkins et al., *How Santa Rosa's Tubbs fires spread, hour by hour*, THE PRESS DEMOCRAT, (Jun. 22, 2020) https://www.pressdemocrat.com/multimedia/7567543-181/santa-rosas-tubbs-fire-spread; Jaclyn Cosgrove, *Must Reads: Firefighters' fateful choices: How the Woosley fire became an unstoppable monster*, L.A. TIMES (Jan. 6, 2019, 3:00 AM), https://www.latimes.com/local/lanow/la-me-woolsey-resources-20190106-htmlstory.html.

8. Dan Zak, *Life at the (possible) end of the Earth: 'Everything is not going to be okay'*, WASH. POST, (Jan. 24, 2019), https://www.washingtonpost.com/lifestyle/style/everything-is-not-going-to-be-okay-how-to-live-with-constant-reminders-that-the-earth-is-in-trouble/2019/01/24/9dd9d6e6-1e53-11e9-8b59-0a28f2191131_story.html.

9. *See* A.B. 32, 2005-2006 Leg., Reg. Sess. (Cal. 2006); *see also* COUNTY OF SAN DIEGO, *Climate Action Plan*, https://www.sandiegocounty.gov/pds/advance/climateactionplan.html (last visited Aug. 8, 2019); CONTRA COSTA COUNTY, *Climate Action Plan*, http://www.co.contra-costa.ca.us/4554/Climate-Action-Plan (last visited Aug. 8, 2019).

10. *See generally* CALIFORNIA AIR RESOURCES BOARD, 2018 PROGRESS REPORT: CALIFORNIA'S SUSTAINABLE COMMUNITIES AND CLIMATE PROTECTION ACT 22 (2018), *available at* https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_S.B.150_112618_02_Report.pdf.

11. The agency in charge of reducing the state's greenhouse gas emissions.

12. CALIFORNIA AIR RESOURCES BOARD, CALIFORNIA'S 2017 CLIMATE CHANGE SCOPING PLAN 5 (2017), *available at* https://ww2.arb.ca.gov/sites/default/files/classic//cc/scopingplan/scoping_plan_2017.pdf.

which, in turn, requires rebuilding urban and suburban areas in California to become less car-centered and more oriented around mass transit and walkable neighborhoods (known as infill transit-oriented development (TOD)). Accordingly, more than a decade ago, California enacted legislation requiring the adoption of sustainable, integrated regional transportation and community planning strategies.[13] Scholars and policy makers broadly agree that infill development[14] within cities is critical to combating climate change.[15]

Addressing the housing crisis and statewide goals to reduce GHG suggests the state should invest heavily in dense residential infill TOD in metro areas.[16] But there is no consensus on *how* to do this. Scholars and advocates warn that policy promoting infill TOD without an equity focus risks "environmental gentrification."[17] Infill TOD requires increased investment into transit-

13. S.B. 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008).

14. We are referring to infill development that incorporates smart growth, new urbanism, and transit-oriented development. *See, e.g.*, Patricia E. Salkin, *Sustainability and Land Use Planning: Greening State and Local Land Use Plans and Regulations to Address Climate Change Challenges and Preserve Resources for Future Generations*, 34 WM. & MARY ENVTL. L. & POL'Y REV. 121 (2009). We define infill development as development occurring on land already served by existing infrastructure (utilities, roads, etc.) and surrounded by sites with existing improvements. There are multiple definitions of infill development. *See* NATHANIEL DECKER ET AL., RIGHT TYPE, RIGHT PLACE: ASSESSING THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF INFILL RESIDENTIAL DEVELOPMENT THROUGH 2030 15 (Mar. 7, 2017), *available at* http://ternercenter.berkeley.edu/uploads/right_type_right_place.pdf.

15. Michael Negron, *Limited Authority, Big Impact: Chicago's Sustainability Policies and How Cities Can Push an Agenda Amidst Federal and State Inaction*, 7 HARV. L. & POL'Y REV. 277, 278 (2013) (citing a 2011 United Nations report that finds cities are responsible for up to 70 percent of the world's carbon emissions and a World Health Organization report stating that the globe's urban population is growing, and by 2030, approximately 60 percent of the world's people will live in cities of at least 100,000 people). PAUL L. KNOX, URBANIZATION: AN INTRODUCTION TO URBAN GEOGRAPHY 394 (2d Ed. 2005); *see* John R. Nolon, *Shifting Paradigms Transform Environmental and Land Use Law: The Emergence of the Law of Sustainable Development*, 24 FORDHAM ENVTL. L.J. 242, 243, 255–58 (2013). For an argument that urban sprawl is widely accepted as harmful, *see* Timothy J. Dowling, *Reflections on Urban Sprawl, Smart Growth, and the Fifth Amendment*, 148 U. PA. L. REV. 873, 874–75 (2000). Writer David Owen argues that living in high-density, mixed-use urban cities (using New York City as a model) is the most ecologically sustainable way of living. DAVID OWEN, GREEN METROPOLIS: WHY LIVING SMALLER, LIVING CLOSER, AND DRIVING LESS ARE KEYS TO SUSTAINABILITY (2010).

16. Scholars and policy makers recognize that creating infill housing development in TOD areas to reduce GHG (by increasing transit usage and reducing VMT) is an essential (and preferred) sustainable development strategy. *See* NATHANIEL DECKER ET AL., *supra* note 14; *see also* Arefeh Nasri & Lei Zhang, *The Analysis of Transit-Oriented Development (TOD) in Washington, DC and Baltimore Metropolitan Areas*, 32 TRANSP. POL'Y 172, 172–79 (2014).

17. *See e.g.*, HUTSON, *supra* note 2, at 20 (citing Melissa Checker, *Wiped Out by the Greenwave*, 23 CITY & SOC'Y 210, 210 (2011), observing "While it appears as politically-neutral, consensus-based planning that is both ecologically and socially sensitive, in practice, environmental gentrification subordinates equity to profit-minded development . . . ."); Hamil Pearsall, *Moving out or Moving in? Resilience to Environmental Gentrification*, 17 LOC. ENV'T 1013, 1013 (2012) (arguing "Sustainability initiatives and environmental improvements that lack adequate attention to the social justice dimension of environmental change produce environmental gentrification . . . ."); M. Tanner Clagett, *If It's Not Mixed-Income, It Won't Be Transit-Oriented: Ensuring Our Future Developments Are Equitable & Promote Transit*, 41 TRANSP. L.J. 1, 2–6 (2014); Jennifer L. Rice et al., *Contradictions of the Climate Friendly City: New Perspectives on Eco-Gentrification and Housing Justice*, INT'L J. URB. & REG'L RES. 145, 159 (2019).

accessible neighborhoods—and some of these neighborhoods have been disproportionately impacted by past discriminatory land use policies and disinvestment.[18] In this context, without intentional affordable housing policy, advocates and scholars argue that residential TOD might displace existing lower income residents.[19]

California's housing crisis, therefore, generates robust debates about the comparative role that local discretion over land use[20] and state-level

18. KAREN CHAPPLE & ANASTASIA LOUKAITOU-SIDERIS, TRANSIT-ORIENTED DISPLACEMENT OR COMMUNITY DIVIDENDS? UNDERSTANDING THE EFFECTS OF SMARTER GROWTH ON COMMUNITIES 2 (MIT Press 2019).

19. *See e.g.*, Michael Rawson & Mona Tawatao, *Growing Smaller & Cooler Without Exclusion or Displacement*, 4 DUKE F. L. & SOC. CHANGE 65, 88–90 (2012) (arguing that state climate policies that encourage TOD will exacerbate gentrification and exclusion); Community Development Project at Public Counsel, *Getting There Together: Tools to Advocate for Inclusive Development Near Transit*, 21 J. AFFORDABLE HOUS. & CMTY. DEV. L. 101 (2012); CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 267–72 (finding that TOD may cause displacement depending on local contexts and concluding that it is critical that policy ensure that existing residents in transit accessible neighborhoods are protected from displacement that may occur because of TOD); Alice Kaswan, *Climate Change, Consumption, and Cities*, 36 FORDHAM URB. L. J. 253, 307 (arguing that policies promoting infill development that displace low-income households may cause inequitable outcomes and fail to reduce VMT). Urban planning scholars also warn that displacement of low-income households from transit-accessible neighborhoods may undermine the policy goal of reducing GHG emissions by increasing the number of long-distance commuters to job centers. Notably, recent ridership data suggest that if low-income communities that have historically lived in central city neighborhoods and used transit at the highest rates are displaced from central cities, TOD investment may not achieve its intended policy goals. Robert Cervero, *Transit-Oriented Development's Ridership Bonus: A Product of Self-Selection and Public Policies*, 39 ENVIRON. PLAN. 2068, 2068–85 (2007); *see also* Jyothi Chava et al., *Gentrification of Station Areas and its Impact on Transit Ridership*, CASE STUDIES ON TRANSP. POL'Y 1, 1–10 (2018) (finding declines in transit use with gentrification of TOD in an Indian city); Stephanie Pollack et al., *Maintaining Diversity in America's Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change*, BOSTON: DUKAKIS CENTER FOR URBAN AND REG'L POL'Y 1 (2010) (finding that TOD can price out low-income residents who are greater users of transit). The decline of transit ridership in Los Angeles, despite new investments in public transportation and upzoning around these stations, is a possible example. *See* MICHAEL MANVILLE ET AL., S. CAL. ASS'N OF GOV'TS, FALLING TRANSIT RIDERSHIP: CALIFORNIA AND SOUTHERN CALIFORNIA (2018). Likewise, the California's Legislative Analyst's Office reported that low-income families that work within coastal communities, but cannot afford housing near their work, commute 10 percent further than commuters elsewhere, and concluded that high housing costs that result in longer commutes risk undermining the goals of recent legislation intended to address climate change. *See* LAO REPORT, *supra* note 1, at 3; PATRICK KALLERMAN & MICAH WEINBERG, BAY AREA COUNCIL ECON. INS., ANOTHER INCONVENIENT TRUTH (2016), http://www.bayareaeconomy.org/report/another-inconvenient-truth/; *cf.* CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 214 (finding that low-income transit residents drive less than high-income transit residents; that moving towards transit increases driving a little for low-income and reduces slightly for high-income; and that when low-income residents move away from transit, their driving goes up a lot more than high-income residents who move away from transit). *But see*, Daniel Chatman et al., *Does Transit-Oriented Gentrification Increase Driving?*, 39 J. PLAN. EDUC. & RSCH. 482–95 (2019) (finding that if gentrification is associated with increased density, vehicle usage will still decline).

20. Discretionary review, or local discretion over land use, refers to a local government's authority to impose subjective standards when deciding on whether to approve proposed development, as compared to ministerial review, which employs an objective standard that requires a local government approve a proposed development so long as it conforms to the objective standards. Local discretion grants the local government the power to reject a proposed development for subjective reasons and a ministerial review does not. Ministerial review is often referred to as "by right" or "as of right" development and involves

environmental regulation each play in contributing to inadequate housing supply and inequitable outcomes—and which area of law should be the focus of legal reform. Some argue eliminating or expediting state-mandated environmental review is critical to increase housing supply;[21] others argue the state should limit local authority over dense residential development[22] and residential infill development near transit[23] to increase housing supply. Debates about the equity impacts of each strategy abound. Legal scholarship has attributed potential displacement impacts to state law that promotes TOD through existing environmental review streamlining incentives but fails to require affordable housing development.[24] Similarly, scholars and advocates also argue that reducing local control over land use will exclusively benefit market-rate luxury development to the disadvantage of low-income communities already struggling to stay in place.[25] Still others argue that eliminating local barriers to development

approvals in which a government agency applies law to fact without using subjective judgment. Proposed housing that is subject to ministerial review is also not subject to environmental review under the California Environmental Quality Act. *See* Moira O'Neill et al., *Developing Policy From the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates*, 25 HASTINGS ENV'T L. J. 1, 10–12 (2019). *See also* Friends of Westwood Inc. v. City of Los Angeles, 235 Cal. Rptr. 788, 803 (Ct. App. 1987).

21. We refer here to environmental review required by the California Environmental Quality Act. For more discussion about when projects are subject to environmental review *see* O'Neill et al., *supra* note 20, at 10–12. For arguments that California Environmental Quality Act litigation blocks infill development, and particularly infill housing supply, and requires reform, *see e.g.*, Jennifer Hernandez, David Friedman & Stephanie DeHerrera, *In the Name of the Environment*, HOLLAND & KNIGHT (2015); Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 HASTINGS ENVTL. L.J. 21, 23 (2018), *available at* https://perma.cc/J7GV-TB48; Jennifer Hernandez, *California Getting In Its Own Way: In 2018, Housing Was Targeted in 60% of Anti-Development Lawsuits*, *available at* https://www.chapman.edu/communication/_files/ca-getting-in-its-own-way.pdf. *But see* Sean Hecht, *Anti-CEQA Lobbyists Turn to Empirical Analysis, But Are Their Conclusions Sound? Influential Attacks on California's Environmental Impact Law Aren't Supported By the Data*, LEGAL PLANET (Sept. 28, 2015), https://legal-planet.org/2015/09/28/anti-ceqa-lobbyists-turn-to-empirical-analysis-but-are-their-conclusions-sound/.

22. *See* Chang-Tai Hsieh & Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y. TIMES (Sept. 6, 2017), https://perma.cc/9DBQ-28JF; Liam Dillon, *Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes, It Depends on the Project*, L.A. TIMES (Sept. 25, 2017), https://perma.cc/Y4BS-FBZQ; Angela Hart, *Here's Why California's Historic Housing Legislation Won't Bring Down Costs Anytime Soon*, SACRAMENTO BEE (Sept. 27, 2017), https://perma.cc/P8FT-8T2P; THE WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 2 (Sept. 2016), https://perma.cc/P4YM-LYPK.

23. *See* S.B. 827, 2017–2018 Leg., Reg. Sess. (Cal. 2018) (California bill that would have limited local authority in specific urban locations over proposed housing that would facilitate dense TOD); Scott Wiener, *My Transit Density Bill (S.B. 827): Answering Common Questions and Debunking Misinformation*, MEDIUM (Jan. 16, 2018), https://perma.cc/GN94-NFAK; *see also* S.B. 50, 2019-2020, Leg., Reg. Sess. (Cal. 2019).

24. Rawson & Tawato argue that displacement impacts from TOD or sustainable development might constitute a discriminatory effect and a violation of civil rights under the Fair Housing Act. *See* Rawson & Tawatao, *supra* note 19, at 83–84.

25. *See e.g.*, CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 270–71 (summarizing the S.B. 827 debate); LESLIA GORDON ET AL., URBAN HABITAT & EAST BAY COMMUNITY LAW CENTER, ROOTED IN HOME COMMUNITY BASED ALTERNATIVES TO THE BAY AREA HOUSING CRISIS (2019), *available at* https://urbanhabitat.org/sites/default/files/Rooted%20in%20Home.pdf; *see also*, Andres Rodriguez-Pose

is the only feasible way to increase housing opportunities in high-cost urban neighborhoods.[26]

These debates raise multiple questions, among them: What is the relative influence of state law promoting TOD, and of local law regulating land use, in generating inequitable outcomes like displacement? Proposed regulatory reform target both state and local land use regulatory processes, but there is little empirical research on how local or state-led regulation that works to facilitate TOD housing operates and interacts to perpetuate or ameliorate historical patterns of spatial inequality.[27] Accordingly, we conducted case study research in sixteen California cities (Folsom, Fresno, Inglewood, Long Beach, Los Angeles, Mountain View, Oakland, Palo Alto, Pasadena, Redondo Beach, Redwood City, Sacramento, San Diego, San Francisco, San Jose, and Santa Monica) to analyze project-level data on entitlement (the local approval process required before obtaining a building permit) for residential or mixed-use development of five or more units approved in any year during a four-year period (2014, 2015, 2016, 2017).[28]

& Michael Storper, *Housing, urban growth, and inequalities: The limits to deregulation and upzoning in reducing economic and spatial inequality*, 57 URB. STUD. at 243 (2020) ("It is our view that too much is being promised to policymakers about the supposed potential benefits of housing market de-regulation. At the same time, in the rush to promote an oversimplified vision of 'density near transit stops,' too little consideration is being given to the policies that would promote affordability for the right people in the right places."); Andrés Rodriguez-Pose & Michael Storper, *Dodging the burden of proof: A reply to Manville, Lens, and Mönkkönen*, URB. STUD. at 9 (2020) (" . . . [T]here is a strong reason to believe that an affordability strategy based principally on deregulation will fail. It is likely to improve the quality or size of housing for those in such areas already, and thus attract more skilled, high-wage in-migrants to those neighborhoods.").

26. *See* Letter from Sheryll D. Cashin et al., to Mike McGuire & Jim Beall (Apr. 5, 2018), *available at* https://perma.cc/4DPJ-UCWP (letter from fair housing experts endorsing S.B. 827 as "a major step towards promoting integration and reducing racial residential segregation."); Letter from Amanda Eaken et al., to Scott Wiener (Mar. 23, 2018), *available at* https://perma.cc/S84A-8YTX (endorsing S.B. 827 as "a key element in achieving California's climate goals" on behalf of the Natural Resources Defense Council, Climate Resolve, and Environment California).

27. We define spatial inequality as it is defined in the public health and urban planning literature to mean that where a person lives may limit a person's access to economic, educational, and quality housing opportunities, which in turn impacts health and life outcomes. *See* Moira O'Neill, *Increasing Community Engagement in Collective Impact Approaches to Advance Social Change*, CMTY. DEV. (forthcoming) (on file with authors). Also, we distinguish the emerging law literature on the relationship between climate mitigation policy and spatial inequality from the legal scholarship that describes structural racism within land use and local government law and the limits of fair housing law. *See supra* text accompanying notes 24–29. The latter often employs an interdisciplinary approach to critique legal theory and draws on data from urban planning, urban economics, sociology, and other social science disciplines. *See e.g.*, john powell, *Sprawl, Fragmentation, and the Persistence of Racial Inequality: Limiting Civil Rights by Fragmenting Space*, in URBAN SPRAWL: CAUSES, CONSEQUENCES & POLICY RESPONSES (The Urban Inst. 2002); Michelle Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 975 (2010); John O. Calmore, *Racialized Space and the Culture of Segregation: Hewing a Stone of Hope from a Mountain of Despair*, 143 U. PA. L. REV. 1233 (1995); SHERYLL D. CASHIN, PLACE NOT RACE: A NEW VISION OF OPPORTUNITY IN AMERICA (Beacon Press 2014).

28. Entitlement refers to the approval process applicable to proposed development that is subject to discretionary review, though that process may involve a few or several approval steps. *See* O'Neill et al., *supra* note 22, at 7, 11–12. After entitlement, a landowner may apply for a building permit. Once a

Consistent with the concerns raised by scholars and advocates, we found that the majority of dense residential development is concentrated in neighborhoods that have been burdened by discriminatory land use policy, and at least some of the proposed new TOD we studied may physically displace existing tenants. We also found that some of these same neighborhoods that once experienced disinvestment and that are now receiving new TOD units are also higher opportunity neighborhoods. Although the proposed TOD generates more housing, very little of the proposed new housing includes affordable units. These development patterns do align with some of the concerns about TOD policy raised by affordable housing advocates.

We found, however, that these entitlement patterns in our cities reflect local zoning choices that concentrate permissive density (zoning that allows for housing of all income levels) in neighborhoods impacted by past discriminatory land use policy. These local choices appear to predate current state law and policy promoting TOD—sometimes by decades. Several of our study cities have limited permissive zoning citywide, maintaining low-density zoning in significant portions of land area with access to transit, including areas that today offer residents more economic and educational opportunities. Thus, local choices about whether and where to allow dense residential development within city boundaries rather than state-led TOD policy appear to drive inequitable outcomes.

These findings are important for three reasons. First, the legal scholarship that theorized that current state-led TOD policies responsive to climate change might risk displacing vulnerable communities lacked the data to measure the comparative role of state and local land use regulations in potentially generating these impacts.[29] Second, where most legal scholarship has focused on inter-jurisdictional conflicts and metropolitan fragmentation[30] as primary drivers of

landowner obtains a building permit and incurs substantial costs in reliance on that permit, the landowner has the vested right to construct those improvements regardless of changes in the public agency's land use regulations. *See* Avco Community Developers v. South Coast Reg'l Comm'n (1976) 17 Cal. 3d 785, 793.

29. *See e.g.*, Rawson & Tawatao, *supra* note 19, at 78–79 (arguing that state climate policies that encourage TOD will exacerbate gentrification and exclusion but do not have original data to determine if displacement is occurring); James A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and Their Impact on Poor and Minority Ethnic Populations*, 21 UCLA J. ENVTL. L. & POL'Y 45, 67 (2002) (observing that "The success of [urban infill and revitalization] carries the alternative image of gentrification and displacement of the poor."); Sarah Fox, *Environmental Gentrification*, 90 U. COLO. L. REV. 803, 806 (2019) (noting the potential for environmental improvements to spur displacement of vulnerable communities). There are some studies that examine how TOD development might shape development, *see, e.g.*, CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 269; Jyothi Chava et al., *supra* note 19, at 1–10; Stephanie Pollack et al., *supra* note 20. However, these studies do not collect data that address the policy context that produces that development.

30. *See e.g.*, Christopher Serkin & Leslie Wellington, *Putting Exclusionary Zoning in Its Place: Affordable Housing and Geographical Scale*, 40 FORDHAM URB. L.J. 1667, 1672–73 (observing that "When people think or write about exclusionary zoning, then, they often have this form of inter-local competition at least implicitly in mind: suburbs using large-lot zoning and other density controls to prevent affordable housing options, forcing lower-income households to remain in the urban core. . . . What is often missing from the debates and discussion . . . is recognition that exclusion happens at different

spatial inequality,[31] we provide evidence that the fight for equity also occurs within city boundaries—not just across municipal lines. Third, our findings indicate that current state law promoting TOD is unlikely to be the driver of inequitable outcomes in these cities—the problem appears to be entrenched local exclusionary zoning practices. Instead, state law and policy that aims to incentivize infill residential TOD appears unable to overcome local exclusionary zoning.

These findings are relevant beyond the borders of our study cities. The debate over reforming local land use law to respond to housing pressures and improve spatial equity is a national one.[32] The dynamics we study in these cities are present at varying levels around the country. Similarly, the push for TOD is a broad phenomenon. Nationally and globally, planners emphasize the production of additional TOD.[33]

This article proceeds in three parts. Part I summarizes scholarship relevant to infill development and spatial inequality, drawing on urban planning, urban studies, and urban economics literature where needed to frame and inform legal reform debates. Part II summarizes our relevant findings—that exclusionary zoning within cities is the legal driver of development patterns within our study cities, that these local zoning decisions often predate more recent state-level policy to address climate change, and that these current local zoning decisions perpetuate twentieth century discriminatory land use policy. Part III argues that solutions necessitate a careful balancing between localism and state-level control and a recognition of the interplay of multiple areas of law that touch housing. In certain contexts, local authority over land use might allow for more prescriptive and nuanced solutions to a range of issues that communities are tackling. In other

geographical scales."); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 369–70 (1990) (noting that "If the region is the proper focus of planning concerns, why are individual localities empowered to zone at all?"); Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1991–96 (2000); powell, *supra* note 27.

31. We define spatial inequality as referring to scholarly work that finds that where a person lives may limit a person's access to economic, educational, and quality housing opportunities, and may impact health and life outcomes. *See e.g.*, Malo A. Hutson et al., *Metropolitan Fragmentation and Health Disparities: Is There a Link?*, 90 MILBANK Q. 187, 201 (2012) (observing that "where individuals live and grow up can determine their access to health care, economic opportunities, and lack of such critical resources as quality housing and educational opportunities, all of which can directly or indirectly influence their health [citations omitted]" and finding that metropolitan areas with higher levels of fragmentation are associated with higher morbidity and mortality among African American working-age adults and children).

32. The State of Oregon and the City of Minneapolis both have eliminated or sharply constricted local zoning rules that restrict residential neighborhoods to single-family homes. *See* Henry Grabar, *Minneapolis Confronts Its History of Housing Segregation*, SLATE (Dec. 7, 2018, 4:48 PM) https://slate.com/business/2018/12/minneapolis-single-family-zoning-housing-racism.html; Liam Dillon, *Oregon vowed not to become California—and passed sweeping housing crisis legislation*, L.A. TIMES (July 19, 2019, 10:00 AM) https://www.latimes.com/california/story/2019-07-19/oregon-lessons-california-housing-crisis.

33. CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 16–18; *see also* ROBERT FREILICH, FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, AND ENVIRONMENTAL SYSTEMS (1999).

contexts, state intervention in local control over zoning is long overdue. But in all cases, our findings indicate that the current system of broad, unchecked local control over residential development in California presents equity concerns that warrant action.

I. BACKGROUND

A. The Racialized History of Local Land Use Control

Power over the built environment is decentralized. Most legal authority over land begins with the state, and the state in turn delegates legal authority to local governments.[34] Planning and zoning took hold early in the twentieth century as a government tool to manage land use with the outward goal of resolving nuisances associated with unrestrained development, undisputedly with the intent to preserve private property values.[35] Private property values have also long been intertwined with racist and classist preferences.[36] After cities could no longer enact zoning ordinances that explicitly segregated by race,[37] cities employed effective, indirect ways to promote racial segregation. Scholars have noted the use of specific elements of ostensibly "neutral" land use regulation, namely the use of discretionary review over land,[38] low-density zoning,[39] and permit caps[40] to facilitate segregation. Scholars describe the use of these and similar tools, collectively, to exclude low-income people and people of color as

34. *See generally* GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS (1999); GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION (Cornell Uni. Press, 2008); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990); Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, *supra* note 30.

35. *See* WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLITICS (2001) at 51–52. For accounts of the history of zoning and planning in the United States, *see also* YALE RABIN, EXPULSIVE ZONING: THE INEQUITABLE LEGACY OF EUCLID, IN ZONING AND THE AMERICAN DREAM 103–07 (Charles M. Haar & Jerold S. Kayden eds., 1989) (recounting historical development of zoning, including that of the New York ordinance); SONIA A. HIRT, ZONED IN THE USA: THE ORIGINS AND IMPLICATIONS OF THE AMERICAN LAND USE REGULATION (2014); FRUG, *supra* note 34, at 143–45.

36. *See e.g.*, JESSICA TROUNSTINE, SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES 34 (2018) (arguing that "white property owners turned to suburbanization as their primary mechanism for protecting property values. . . . "); *id.* at 38 (noting that development of white suburbs was response to loss of white political power in central cities and ability to exclude minorities from public goods); powell, *supra* note 27, at 76–79.

37. *See* Buchanan v. Warley, 245 U.S. 60 (1917). Lower courts heard challenges to zoning ordinances that explicitly segregated by race well into the 1940s. *See* Baker v. City of Kissimmee, 645 F. Supp. 571, 579 (M.D. Fla. 1986) (noting that racial zoning was enforced well into the 1940s); Monk v. City of Birmingham, 87 F. Supp. 538 (N.D. Ala. 1949), *aff'd*, 185 F.2d 859 (5th Cir. 1950) (invalidating Birmingham racial-zoning statutes enacted in 1926).

38. *See* TROUNSTINE, *supra* note 36.

39. *See generally* Jonathan Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44 URB. AFF. REV. 779; Rolf Pendall, *Local Land Use Regulation and the Chain of Exclusion*, 66 JAPA 125 (2000).

40. Pendall, *supra* note 39.

exclusionary zoning. Slightly less familiar, but also notable, is the use of "expulsive" zoning, the use of zoning to place industrial and commercial uses in existing residential areas occupied by communities of color, often with the intent of forcing those communities to move.[41]

The familiar and undisputed narrative in the academic literature around exclusionary zoning is often set within the suburban-urban paradigm: suburban communities incorporated to control land[42] and promote residential development patterns that favored single-family residences[43] and disfavored multi-family dwellings, grouping the latter with commercial and industrial land uses.[44] Scholars find associations between local government formation post-World War II and racial residential segregation.[45] The relative ease of local government formation and power over land use contributed to the metropolitan fragmentation, segregation,[46] and spatial inequality that dominated land

41. *See* RABIN, *supra* note 35; *see also* Vicki Been, *Locally undesirable land uses in minority neighborhoods: Disproportionate siting or market dynamics?*, 103 YALE L.J. 1383 (1994); Luke Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19.4 ECOLOGY L.Q. 619 (1992).

42. FISCHEL, *supra* note 35 arguing that "[t]he history of local government formation demonstrates that zoning is an essential ingredient of municipal formation and function."); PAUL KANTOR, THE DEPENDENT CITY REVISITED: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT AND SOCIAL POLICY 163–65 (1995) (stating that the desire to control land use and fiscal impacts of development leads to suburban incorporation and exclusionary zoning); Briffault, *Our Localism: Part II—Localism and Legal Theory*, *supra* note 30, at 367 (observing that "Suburban '[r]esidents perceived incorporation as a means of neighborhood protection[]' and many incorporated in order to zone.").

43. RICHARD F. BABCOCK, THE ZONING GAME 3, 6 (1966) (observing that "zoning has provided the device for protecting the homogeneous, single-family suburb from the city. . . . [the] central goal [of zoning is] insulation of the single-family district.").

44. Briffault, *Our Localism: Part II—Localism and Legal Theory*, *supra* note 30, at 370 (noting judicial deference to local ordinances that "lumped together apartments and other multifamily dwellings with industrial or commercial uses and excluded them from the locality as threats to the local residential character"). The link between the ease of government formation, exclusionary zoning, and, subsequently, racial segregation is well-established by others. *See e.g.*, FRUG, *supra* note 34, at 4, 8, 134 (arguing that local government powers facilitate segregation and that a limited vision of local governance as privatized, focused on protecting property, has led to segregation; also identifying local government formation as important in advancing segregation); GARY J. MILLER, CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION, 172–203 (1981).

45. NANCY BURNS, THE FORMATION OF AMERICAN LOCAL GOVERNMENTS: PRIVATE VALUES IN PUBLIC INSTITUTIONS (1994); *see* TROUNSTINE, *supra* note 36; *see also*, powell, *supra* note 27, at 81–82 (observing that "[r]acialized localism, which local racial discrimination and violence exemplify, has been strengthened through the most important and unprecedented feature of urban sprawl following World War II—the creation of fragmented metropolitan areas in which the central cities are divided from the surrounding suburbs by municipal and jurisdictional boundaries. . . . [A]s cities became associated with low-income people and racial minorities, who were considered dangerous, border areas separated themselves from the city by forming their own governments and refusing to allow the city to absorb them. The result was a tremendous increase in local governments, tax jurisdictions, school districts, and municipal boundaries, so that metropolitan areas became patchworks of small jurisdictions [citations omitted].").

46. *See e.g.*, Eric J. Branfman et al., *Measuring the Invisible Wall: Land Use Controls and the Residential Patterns of the Poor*, 82 YALE L.J. 483 (1973) (finding that higher levels of governmental fragmentation in a metro area are correlated with higher levels of income segregation); PETER DREIER ET AL., PLACE MATTERS: METROPOLITICS FOR THE TWENTY-FIRST CENTURY 44, 100 (2001) (arguing that

development patterns during the latter half of the twentieth century.[47] In sum, the relevant literature has broadly described how communities have used local control over land to exclude and promote segregation.[48]

B. The Emergence of the Expensive Urban Core and the Regional Resorting of People

The traditional late twentieth century pattern of metropolitan fragmentation with racial and economic residential segregation between suburbs and central city populations assumed the presence of a distressed urban core or central city.[49] In some parts of the country, this remains true: Central cities or urban core areas continue to face decline but may abut more affluent exclusive suburban communities.[50] But by the close of the twentieth century, another important paradigm emerged—an increasing preference for city living over sprawl[51] that has contributed to revitalization, increased investment, or increased development in some central cities that offer residents direct access to a regional economic hub and quality cultural amenities.[52] Revitalization, increased investment, and new development offered "improved amenities, an improved tax base, and an

fragmentation of local government facilitates economic segregation and noting exclusionary nature of suburbs); powell, *supra* note 27, at 78–90; Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1831, 1860–78 (1994) (describing how the creation and boundary setting of suburban cities in the United States facilitated and entrenched racial segregation after World War II).

47. FRUG, *supra* note 34; *see* powell, *supra* note 27, at 81–83; Cashin, *supra* note 30, at 1988–89; *see also* Branfman et al., *supra* note 46 (noting that increased metropolitan fragmentation is correlated with both economic and racial residential segregation).

48. *See* MICHAEL N. DANIELSON, THE POLITICS OF EXCLUSION (1976); ANTHONY DOWNS, NEW VISIONS FOR METROPOLITAN AMERICA 19–21 (1994); Richard Schrager, *Consuming Government*, 101 MICH. L. REV. 1824, 1849 (2003); Kenneth A. Stahl, *Reliance in Land Use Law*, 2013 BYU L. REV. 949, 987–90; FRUG, *supra* note 34, at 4; GARY J. MILLER, CITIES BY CONTRACT: THE POLITICS OF MUNICIPAL INCORPORATION 85–97, 118–20 (1981).

49. DAVID RUSK, CITIES WITHOUT SUBURBS 46 (4th ed. 2013).

50. *See* powell, *supra* note 27, at 102–04; *see also* Michelle W. Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118 (2014).

51. *See* KNOX, URBANIZATION, *supra* note 15, at 394; Nolon, *supra* note 15. For an argument that sprawl is widely accepted as harmful, *see* Dowling, *supra* note 15, at 874–75. David Owen argues that living in high-density, mixed-use urban cities (using New York City as a model) is the most ecologically sustainable way of living. *See* OWEN, *supra* note 15. *See also*, LANCE FREEMAN, A HAVEN AND A HELL: THE GHETTO IN BLACK AMERICA, 216–27 (2019) ("By the late twentieth century . . . deindustrialization and urban renewal had transformed many downtowns into gleaming office towers replete with museums, restaurants, and other cultural amenities. Many ghetto neighborhoods, formerly disdained for their proximity to the dirt and grit of industrial-era downtowns, were now conveniently located near these resurgent downtowns. For these reasons, the ghetto seemed ripe for gentrification.").

52. *See* HUTSON, *supra* note 2 (citing U.S. EPA, RESIDENTIAL CONSTRUCTION TRENDS IN AMERICA'S METROPOLITAN REGIONS: 2012 EDITION (2012), http://www.epa.gov/smartgrowth/pdf/residential_construction_trends.pdf); *see also* Derek S. Hyra, *Conceptualizing the New Urban Renewal: Comparing the Past to the Present*, 48 URB. AFF. REV. 498 (2012).

increase in public services to formerly blighted areas."[53] But advocates and scholars raise concerns that this trend may displace of low income residents.[54]

C. Is Sustainable Infill Development Policy Causing Displacement?

Advocates argue current policy promoting infill development may lead to gentrification and displacement.[55] Specifically, climate mitigation strategies that constrain sprawl by reducing the amount of developable land within a metro area and focus development around transit will raise housing costs if they are not offset by increased density and affordable housing development.[56] When advocates caution against gentrification-induced displacement, they are borrowing terms from decades of research in urban planning and urban studies that have examined whether revitalization, public and/or private investment, or new-build and market-rate development in historically disinvested central city neighborhoods causes displacement. To provide a background for our discussion of the legal and policy issues here, we briefly discuss relevant elements from the urban planning and urban studies literature on gentrification-induced displacement.[57]

Urban studies scholars appear to agree that past publicly sponsored revitalization efforts (like urban renewal and redevelopment) led to the direct displacement of low-income households[58] with severe adverse outcomes for impacted communities.[59] Although legal advocates draw parallels between

53. HUTSON, *supra* note 2, (citing KNOX, *supra* note 15, at 395).

54. *See e.g.*, Zuk, et al., *Gentrification, displacement and the role of public investment: a literature review* (Federal Reserve Bank of San Francisco 2015); Lance Freeman, *Displacement or Succession? Residential Mobility in Gentrifying Neighborhoods*, 40 URB. AFF. REV. 463 (2005).

55. *See also* Rawson & Tawatao, *supra* note 19, at 65–66, 71–72; Community Development Project at Public Counsel, *supra* note 19 at 103.

56. *See e.g.*, Rawson & Tawatao, *supra* note 19, at 88–89; Kushner, *supra* note 29, at 67.

57. We cannot synthesize more than five decades of research, but for recent summaries of this body work, *see* Zuk, et al., *supra* note 54; *see also* CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18.

58. Zuk, et al., *supra* note 54 at 23; CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 48–49.

59. *See e.g.*, MINDY FULLILOVE, ROOTSHOCK (2004); *see also* D.E. Keene & A.T. Geronimus, *"Weathering" HOPE VI: The Importance of Evaluating the Population Health Impact of Public Housing Demolition and Displacement*, 88 J. URB. HEALTH 430–31 (2011) (finding that "relocated HOPE VI residents have experienced few improvements to the living conditions and economic realities that are likely sources of stress and illness among this population. . . . In particular, relocation has threatened geographically rooted social ties that can mitigate the health consequences of structural disadvantage and protect against weathering. . . . It is also important to note that the consequences of HOPE VI era displacement will likely compound the cumulative effect of serial displacement that has occurred in African American communities."); *see also* Edward Goetz, *Gentrification in Black and White: The Racial Impact of Public Housing Demolition in American Cities*, 48 URB. STUD. 1581, 1600 (2011) (noting that "[p]ublic housing demolition is playing a significant role in current patterns of gentrification in the U.S. Local officials have energetically pursued demolition of older public housing projects in many cities to clear away the physical and social impediments to renewed private-sector investment in inner-city neighbourhoods. These efforts have displaced hundreds of thousands of very-low-income families since the 1980s and have had a disproportionate impact on African Americans."); *see also* Hyra, *supra* note 52, at 498.

urban renewal and gentrification associated with infill development,[60] the urban studies scholars that study gentrification disagree about whether contemporary gentrification causes displacement, let alone the type of displacement associated with urban renewal.[61]

The mixed results within urban studies appears partly attributable to data challenges, differing methods,[62] and differing definitions of gentrification. Depending on the study, the definition of gentrification may focus on neighborhood change—the influx of more affluent, white residents with higher educational achievement into neighborhoods that have historically been low-income communities of color—or the ways in which new investment changes the built environment.[63] More importantly, some scholars incorporate displacement into the definition of gentrification, while others do not.[64] Linking

60. Rawson & Tawatao, *supra* note 19, at 65–66; *see also* Clagett, *supra* note 19, at 65 (arguing that S.B. 375 related "[t]ransit-oriented development without affordable housing could become just another iteration of urban renewal that leaves lower-income communities behind" and observing tension between climate and affordable housing policy).

61. *See e.g.*, Ingrid Gould Ellen & Lei Ding, Ellen, *Advancing our Understanding of Gentrification*, 18 CITYSCAPE 3 (2016) (noting that "[t]he term gentrification inevitably generates controversy and disagreement. People disagree about its definition, its causes, and, above all, its consequences."); CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 66; Vicki Been, *What More Do We Need to Know about How to Prevent and Mitigate Displacement of Low- and Moderate-Income Households from Gentrifying Neighborhoods?*, in A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY 368 (Christopher Herbert, Jonathan Spader, Jennifer Molinsky, and Shannon Rieger, eds., Cambridge Joint Ctr. for Hous. Studies, 2018) (observing that "[T]he extent to which gentrification results in the displacement of low- and moderate-income households from neighborhoods undergoing significant change is still the subject of study and debate among urban policy researchers."); FREEMAN, *supra* note 51, at 222 ("The evidence on whether gentrification actually forces many people out of their homes is mixed. A number of studies have found little difference in mobility rates between the poor or renters living in gentrifying neighborhoods and the poor or renters residing in low-income neighborhoods. At least two studies found that those in gentrifying neighborhoods are more likely to move due to reasons we associate with displacement. But, overall, the empirical evidence on widespread physical displacement is thin.").

62. *See e.g.*, CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 65–73 (noting that scholars recognize the limits of quantitative research in this area, and the inability of models to capture the full impact of a gentrification process).

63. CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 46, 52. *See also* Freeman, *supra* note 54, 216–17 (defining gentrification as referring to a "process whereby, older, inner-city neighborhoods that have suffered from disinvestment experience an influx of residents of higher socioeconomic status and investment."). Notably, legal advocates also use different definitions of gentrification. *See, e.g.*, Rachel D. Godsil, *Transforming Gentrification into Integration*, *in* THE DREAM REVISITED: CONTEMPORARY DEBATES ABOUT HOUSING, SEGREGATION, AND OPPORTUNITY 324–25 (Ingrid Gould Ellen & Justin Steil, Eds., Colum. Univ. Press, 2019) (noting that "[f]or many concerned about gentrification, the most obvious signal is the growing number of high-income Whites moving into their neighborhood."); Tepperman-Gelfant, *supra* note 6 (observing that "[p]rivate tastes, profit-seeking, and government policies are again embracing urban living, inundating long-neglected areas in many cities with new buildings, new money, and new residents.").

64. Zuk, et al., *supra* note 54, at 34. For examples of research that defines gentrification to include displacement, *see* Kathe Newman & Elivin Wyley, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD. 23, 25 (2006) (noting that "redevelopment, renewal, revitalisation, regeneration and reinvestment are good, but these are understood to be different from gentrification, which involves direct, conflict ridden displacement."). For studies that distinguish between gentrification and displacement, examining whether gentrification leads to displacement, *see* Freeman, *supra* note 54; Lance Freeman & Frank Braconi, *Gentrification and Displacement*, 70 JAPA 39

displacement to either neighborhood change or increased investment requires establishing why people move in and out of a neighborhood and demonstrating a relationship between the two events, but people move for a variety of reasons.[65] Moreover, examining the impact of destruction and replacement of older housing stock with new-build development is different than examining the impact of constructing new-build development on vacant or formerly non-residential land. Studying the latter might produce findings that new-build development on formerly vacant land mitigates against displacement.[66] Different definitions of

(noting that "[i]f it proceeds without widespread displacement, gentrification also offers the opportunity to increase socioeconomic, racial, and ethnic integration"); *see also* Ingrid Gould Ellen, *Can Gentrification Be Inclusive? in* A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY 334, 335 (Christopher Herbert, Jonathan Spader, Jennifer Molinsky, & Shannon Rieger, eds., Harv. Joint Ctr. for Hous. Studies, 2018) (observing "most papers on the topic have found scant evidence that gentrification fuels displacement.").

65. CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 40, 48–52; *see e.g.*, Rowland Atkinson, *Measuring Gentrification and Displacement in Greater London*, 37 URB. STUD. 149, 150 (2000) (noting that "[w]hile some have acknowledged that displacement from gentrification has been both prevalent and socially harmful . . . little research has been conducted in Britain to measure its extent. This is despite the fact that extensive gentrification has occurred over the past 30 years or so in areas like London. Perhaps the most obvious reasons for this research gap is that it is very difficult to track displacees."); Freeman & Braconi, *supra* note 64, at 40–42 (describing the limitations of prior research on displacement, noting, for example, that succession studies cannot be used to determine whether a household was displaced because they "do not consider other reasons that households might move."); *see also* Ellen, *supra* note 64, at 335 (arguing that "[o]ne shortcoming of existing analyses is that they typically used residential mobility rates to capture displacement. But mobility does not necessarily equal displacement; many residential moves are voluntary and take people to better neighborhoods and homes.").

66. For example, advocates and scholars disagree about whether increasing new market-rate supply within a gentrifying neighborhood raises other rents and exacerbates the risk of economic displacement or helps improve overall affordability through filtering, though there is some consensus that affordable housing strategies are necessary to support low-income households. *See* Vicki Been et al., *Supply Skepticism: Housing Supply and Affordability*, 29 HOUS. POL'Y DEBATE, 25–40 (2018). Filtering refers to the concept of housing stock 'filtering down' through income levels—as new housing becomes available, buyers who purchase new housing and vacate their less expensive housing will open up the less expensive housing for purchase or rent to households with lower incomes, who will in turn open up their housing stock to households with even lower incomes. *See, e.g.*, John M. Quigley & Steven Raphael, *Is Housing Unaffordable? Why Isn't It More Affordable?*, 18 J. ECON. PERSPECT. 191, 205 (2004); *see also* William C. Baer & Christopher B. Williamson, *The Filtering of Households and Housing Units*, 3 J. PLAN. LITERATURE 127, 128–29 (1988). For discussion about whether increasing new market-rate supply within a gentrifying neighborhood mitigates or exacerbates displacement pressures exists within California, compare LAO REPORT, *supra* note 1 (using data from The Displacement Project to conclude that increasing supply of market-rate housing would curtail displacement of low-income households) with Miriam Zuk & Karen Chapple, *Housing Production, Filtering and Displacement: Untangling the Relationships*, BERKELEY IGA RES. BRIEF (2016), https://perma.c c/SJX5-YP3S (responding to this report and offering a more nuanced analysis: the data showed market-rate and subsidized housing reduce displacement pressures at the regional level, but not at the block level, at least not in San Francisco, and that market-rate production is associated with higher housing costs for low-income households, but lower median rents, in subsequent decades); *see also* Miriam Zuk et al., *S.B. 827 2.0, What are the implications for communities in the Bay Area?*, THE URB. DISPLACEMENT PROJECT (2018), https://perma.cc/3H9A-AJKT (finding that proposed state legislation that would have reduced discretionary review of certain types of infill development near transit would also have resulted in a six-fold increase in feasibility of market-rate housing in affluent areas and a seven-fold increase in inclusionary housing in moderate income areas, but that 60 percent of the financially feasible development was located in gentrifying or low-income areas, and over 65 percent of residential demolitions for development would have occurred

displacement also shape research findings.[67] Some studies limit definitions of displacement to direct physical or economic displacement, whereas others use a broader definition of displacement to incorporate the possibility that market development might make housing markets that were once affordable inaccessible to lower-income individuals ("exclusion").[68]

The mixed results in the urban studies and urban planning literature on whether gentrification causes displacement complicates legal debates about how to regulate infill development. For example, proposals that would reduce local authority over land use and allow for more market-rate supply within already gentrifying neighborhoods in California raise questions as to whether such changes would exacerbate displacement of low-income households or help mitigate against displacement through filtering.[69] Theoretically, unmet demand that might cause rent increases and direct displacement of renters may be resolved by increasing overall market rate supply.[70] There is some research that examines the role of new-build development on gentrification and displacement. This research finds that generally, at a regional level, new market-rate supply helps affordability, with some mixed results on whether new market-rate supply offers the same benefit at the neighborhood level in cities like San Francisco.[71]

in these neighborhoods). For a broader discussion of how new housing supply might impact affordability, *see* Shane Phillips, et al., *Research Roundup: The Effect of Market-Rate Development on Neighborhood Rents*, *available at* https://escholarship.org/uc/item/5d00z61m (summarizing six recent working papers that examine the effect of new market-rate housing supply on affordability, with five papers finding that new supply makes nearby housing more affordable and one paper finding mixed results).

67. Peter Marcuse provides four definitions of displacement. *See* Peter Marcuse, *Gentrification, Abandonment, and Displacement: Connections Clauses, and Policy Responses in New York City*, 28 J. URB. & CONTEMP. L. 195, 195–248, 204–08 (1985).

68. We note that this literature encompasses a notion of exclusion resulting from a change in conditions. In other words, at one time the neighborhood was accessible to people who are now excluded, and this is a form of displacement. *See* CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 50; *see also* Marcuse, *supra* note 67, at 206.

69. *See* Quigley & Raphael, *supra* note 66 (defining "filtering"). There are a range of hypotheses about how increasing market-rate supply impacts American cities with strong, high-cost housing markets. *See* Vicki Been, *City NIMBYs*, 33(2) J. LAND USE & ENVTL. L. 217, 229 (Aug. 2018); CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 50, 52; *see also* Zuk et al., *supra* note 54 (summarizing literature and agreement).

70. John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91, 95, 119–20 (2014). Economists, however, have noted that filtering may be an inefficient tool to support increased housing for low-income households in markets with high development costs. In such contexts, any gains in affordable housing stock might be accompanied by harms associated with downgrading and abandonment of neighborhood environments providing the low-income housing stock. *See* Galster & Rothenberg, *Filtering in Urban Housing: A Graphical Analysis of a Quality-Segmented Market*, 11 J. PLAN., EDUC. & RES. 37, 48–49 (1991). Filtering is also not a substitute for needed subsidized housing. *See* MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 302–12 (2016). Recent working papers suggest that increasing market-rate supply improves affordability at the neighborhood level. *See* Phillips, et al., *supra* note 66.

71. *See* Kyle Nelson, et al., *Spatial Concentration and Spillover: Eviction Dynamics in Neighborhoods of Los Angeles, California, 2005–2015*, HOUS. POL'Y DEBATE at 4 (2021) ("It is typically very difficult to empirically evaluate whether displacement is a result of new construction, because new construction is strongly correlated with current and predicted future rents [citation omitted]. Several studies . . . confirm that increasing housing supply on a regional scale reduces or stabilizes regional

If, however, increasing market supply through new-build development involves demolishing existing housing to produce new units, then new-build development could also directly displace residents.

Assuming gentrification causes displacement, there is also the challenge of how varying definitions of displacement inform legal reform debates. Consider four different definitions of displacement in the literature: (1) exclusionary displacement (the inability to move into a neighborhood because of reasons outside of a household's control—like high housing costs);[72] (2) direct physical displacement (eviction or demolition); (3) direct economic displacement (when price increases force an individual or a family's departure from home); and (4) symbolic or cultural displacement (when transitions in the physical and social environment of gentrifying neighborhoods cause a once familiar place to become unfamiliar, resulting in long-term residents feeling politically and socially marginalized or unsafe).[73] Direct physical and economic displacement implicate eviction, demolition, and rental increases—which can be addressed through tenant protections and rent stabilization.[74] Crafting legal remedies to address exclusionary displacement might involve increasing deed restricted affordable development in gentrifying neighborhoods, but there is no guarantee that new affordable housing will accommodate former residents.[75] Addressing symbolic

housing prices [citations omitted]. This literature is divided . . . on the extent to which new housing eases burdens nearby.").

72. *See* Zuk, et al., *supra* note 54, at 26 (citing PETER MARCUSE AND GRIER, MEMO: URBAN DISPLACEMENT: A RECONNAISSANCE, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (1978)); *see also* CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 50 (citing Marcuse, *supra* note 67).

73. *See* Rowland Atkinson, *Losing one's place: Narratives of Neighbourhood Change, Market Injustice and Symbolic Displacement*, 32 HOUS., THEORY & SOC'Y 4, 373–88 (2015); Derek Hyra, *The Back-to-the-City Movement: Neighbourhood Redevelopment and Processes of Political and Cultural Displacement*, 52 URB. STUD. J., 1753, 1753–73 (2015); Trushna Parekh, *"They want to live in the Tremé, but they want it for their ways of living": gentrification and neighborhood practice in Tremé, New Orleans*, 36 URB. GEOGRAPHY, 201–20 (2015); Kate S. Shaw & Iris W. Hagemans, *"Gentrification without displacement" and the consequent loss of place: The effects of class transition on low-income residents of secure housing in gentrifying areas*, 39 INT'L J. URB. & REGIONAL RES. 323, 327–28 (2015); Ayobami Laniyonu, *Coffee shops and street stops: Policing practices in gentrifying neighborhoods*, 54 URB. AFF. REV. 898, 898–931 (2017); *see also* Been *supra* note 66, at 369 (finding that "residents of gentrifying neighborhoods who have not been psychically displaced may experience what feels to them as displacement—changes in the look, feel or culture of the neighborhood, or a feeling of being unwelcomed by, or unconnected to, recent arrivals in the neighborhood"); Freeman, *supra* note 54, at 223–37 (describing examples of cultural and political displacement that is "not necessarily the physical displacement of residents but the displacement of the vernacular culture and the loss of political power that contribute to feelings of being pushed out.").

74. *See* A.B. 1482, 2019-2020 Leg., Reg. Sess. (Cal. 2019) (establishing a state-wide rental cap and just cause requirement for eviction passed in 2019. S.B. 50 had proposed restrictions on demolition and eviction).

75. Proposals to address exclusionary displacement include increasing deed-restricted affordable housing in gentrifying or gentrified neighborhoods. *See* Lance Freeman, *Creating Integrated Communities is More than Preventing Displacement*, *in* THE DREAM REVISITED: CONTEMPORARY DEBATES ABOUT HOUSING, SEGREGATION, AND OPPORTUNITY 327, 328 (Ingrid Could Ellen & Justin Steil eds., Colum. Univ. Press, 2019) (arguing that "[t]o maintain housing affordability and consequently racial and ethnic and socioeconomic diversity in gentrifying neighborhoods we need affordable housing that is open to both current and future residents of the neighborhood. One way of doing this would be to fund a community-

displacement is even less straightforward, as that implicates law and policy outside of land use.

Finally, we also highlight that some urban studies scholars argue that the role of past land use policy is important to consider when examining gentrification and displacement and whether a neighborhood is susceptible to gentrification.[76] For example, historical maps such as the Home Owners' Loan Corporation[77] (HOLC) maps provide evidence of racial redlining practices in past land use policy. During the 1930s and 40s, HOLC examiners consulted with local bank loan officers, city officials, appraisers, and realtors to create "Residential Security" maps of cities—more than 150 of which still exist.[78] Loan officers and real estate professionals used these maps were to determine where the federal government would provide support for private residential mortgage markets. The examiners systematically graded neighborhoods based on criteria that included residents' ethnic and racial composition. Neighborhoods were color-coded on maps: green for the "Best" (Class A), blue for "Still Desirable" (Class B), yellow for "Definitely Declining" (Class C), and red for "Hazardous" (Class D).[79] The examiners classified some land area as "Industrial." The HOLC

based organization [CBO] to help provide affordable housing in a gentrifying community."). In the context of California's cities, requiring cities to adequately plan for and subsidize affordable housing sufficient to address exclusionary displacement presents major financial hurdles. *See, e.g.*, Christopher S. Elmendorf et al., *Making it Work: Legal Foundations for Administrative Reform of California's Housing Framework*, 47.4 ECOLOGY L.Q. 973, 984 (observing that "[p]rices for new market-rate housing in the city are far beyond the reach of even 'moderate income' households, so the moderate as well as the lower income portions of the city's [Regional Housing Needs Assessment or RHNA] target must be accommodated by 'planning for' subsidized, below-market-rate housing. Most of this housing will not be built for decades, if ever. It will not be built because meeting the city's lower and moderate-income RHNA targets would require public subsidies on the order of $1 billion a year, roughly 50 [percent] of the city's entire discretionary general fund. . . . When famously rich and progressive San Francisco adopted its current housing element, the city's annual affordable housing budget was about $50 [million].").

76. Zuk, et al., *Gentrification, Displacement and the Role of Public Investment: A Literature Review*, *supra* note 54; CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 68 (citing Peter Marcuse, *Gentrification, Abandonment, and Displacement*, *supra* note 67, at 228); GENTRIFICATION OF THE CITY 153–177 (Neil Smith & Peter Williams eds., 1986). There is mapping that identifies current gentrification and displacement risks in formerly redlined areas. *Redlining and Gentrification: The Legacy of Redlining*, URB. DISPLACEMENT PROJECT, https://www.urbandisplacement.org/redlining.

77. The Home Owners' Loan Corporation, established in 1933, was a component of the New Deal that restructured the mortgage lending industry to stabilize lending and avoid foreclosure. *See* Home Owners' Loan Act of 1933, Pub. L. 73-43, § 4(a) 48 Stat. 128 (1933). But it also well known for creating redlining, which in turn limited mortgage lending primarily to native-born White families nationwide and facilitated residential segregation. *See* powell, *supra* note 27, at 77. For maps and area descriptions, see Robert K. Nelson et al., *Mapping Inequality*, *AMERICAN PANORAMA* (Robert K. Nelson & Edward L. Ayers eds.), https://dsl.richmond.edu/panorama/redlining/.

78. BRUCE MITCHELL & JUAN FRANCO, HOLC 'REDLINING MAPS:' THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 5 (2018), *available at* https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf. HOLC maps document how loan officers, appraisers, and real estate professionals evaluated mortgage lending risk. Neighborhoods considered high risk were often 'redlined' by lending institutions. Redlining denied these neighborhoods access to capital to improve the housing and economic opportunity of residents.

79. "A" areas were "'hot spots'. . . where good mortgage lenders . . . [were] willing to make their maximum loans." "B" areas were not as desirable but 'still good'." "C" areas had reached "the transition

maps indicate past disinvestment by public and private sources that promoted racial residential segregation, disinvestment that continued decades after the creation of HOLC maps as the federal government endorsed redlining and racial segregation policies well into the late 1960s.[80]

Research establishes that the negative impacts from HOLC redlining maps, specifically disinvestment and racial segregation, persist.[81] For gentrification, displacement, and law debates, this matters. It could be that past discriminatory land use policy continues to influence land values and development in certain neighborhoods in a way that drives gentrification and displacement.[82] On the other hand, current land use law could act as a contributing factor, mitigating against or exacerbating the impact of past discriminatory land use policy. In California, urban planning and legal scholarship both suggest the latter, attributing at least some gentrification and displacement to the application of state sustainable infill development law and policy in neighborhoods impacted by past discriminatory land use controls.[83]

D. Should the State Override Local Authority For Specific Types of Development?

Research that examines the cause of gentrification or displacement within California's high-cost cities implicates fundamental questions about the appropriate scope and relative impact of local authority over land use. Regardless of whether new-build TOD or inadequate TOD housing supply causes gentrification and displacement, gentrification and displacement events do not

period" where they were in decline due to factors such as "age, obsolescence, and change of style" as well as "infiltration of a lower grade population." Finally, "D" areas had fully declined and were "characterized by detrimental influence in a pronounced degree". Robert K. Nelson, *Introduction: Race and Redlining in Richmond*, *AMERICAN PANORAMA* (Robert K. Nelson & Edward L. Ayers eds.), https://dsl.richmond.edu/panorama/redlining/.

80. *See* PETER HALL, CITIES OF TOMORROW: AN INTELLECTUAL HISTORY OF URBAN PLANNING AND DESIGN 350 (Wiley Blackwell ed., 4th ed. 2014). For instance, the federal government required developers to include covenants excluding people of color from housing developments in order to receive federal loan guarantees, ensuring that the residents of redlined neighborhoods would find it difficult or impossible to move out of those neighborhoods into new suburban communities. *See* RICHARD R. W. BROOKS, & CAROL ROSE, SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS 105–12 (Harv. Univ. Press 2013).

81. *See, e.g.*, Daniel Aaronson, Daniel Hartley, & Bhashkar Mazumder, *The Effects of the 1930s HOLC "Redlining" Maps*, FED. RES. BANK OF CHICAGO WP 2017-12 (2019), https://www.chicagofed.org/publications/working-papers/2017/wp2017-12 (finding negative impacts persistent until at least 2010); *see also* Anthony L. Nardone et al., *Associations between historical redlining and birth outcomes from 2006 through 2015 in California*, 15 PLOS ONE 1, 10 (2020) (finding worsening HOLC grade was associated with adverse birth outcomes); S. Hoffman Jeremy et al., *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, 8 CLIMATE 12 (2020) (finding that elevated land surface temperatures in formerly redlined areas relative to their non-redlined neighbors by as much as seven degrees Celsius and concluding that historical housing policies "may, in fact, be directly responsible for disproportionate exposure to current heat events.").

82. Freeman, *supra* note 54, at 217–21.

83. CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 132; *see* Rawson & Tawatao, *supra* note 19, at 66–72.

occur in a regulatory vacuum. Broadly, land use regulation governs the pace, type, and rate of new-build TOD. It also governs the demolition of existing housing to allow for new supply and requirements for legally restricted affordable housing. Presently, California law confers nearly all decision-making power over land use to cities. State TOD policy relies heavily on incentives—not mandates—to encourage local governments to advance infill TOD.

If new-build TOD causes gentrification and displacement, it may be true that state incentives play a role in local choices about how to regulate dense TOD. Specifically, California has bold greenhouse gas reduction goals that demand a massive reduction in vehicle miles travelled (VMT). Infill development is broadly seen as critical to advancing these sustainability goals,[84] so S.B. 375 incentivizes local and regional governments to adopt sustainable, integrated regional transportation and community planning strategies.[85] Jurisdictions that can demonstrate compliance with these Sustainable Community Strategies are eligible for a variety of incentives, such as streamlined environmental review for certain infill developments[86] and priority transportation funding.[87]

To facilitate sustainability plans, cities can direct dense development into locations with existing transit or with planned transit investment. For instance, a city can use a neighborhood-level planning processes (often called a "specific plan") to help accelerate environmental review and entitlement timelines for dense development that is proposed in and consistent with the plan area.[88] Or a city can pass a local ordinance that places types of development into a ministerial process (which only allows a city to reject a project for specified reasons and eliminates environmental review)[89]—thereby reducing the capacity for public opposition to individual proposed developments.[90] Still, a city retains local authority, and can choose to take some, all, or none of these approaches; or a city can take an entirely different approach.[91] Determining whether new-build TOD may generate gentrification and displacement, therefore, requires examining the

84. Infill housing development properly focused in TOD areas can reduce GHG in part by increasing transit usage, *see* NATHANIEL DECKER ET AL., *supra* note 14, and reducing VMT, *see* Nasri & Zhang, *supra* note 16, at 172–79; KNOX, *supra* note 15, at 394; *see* Nolon, *supra* note 15, at 255–58. For an argument that sprawl is widely accepted as harmful, *see* Dowling, *supra* note 15, at 874–75. Writer David Owen argues that living in high-density, mixed-use urban cities (using New York City as a model) is the most ecologically sustainable way of living. OWEN, *supra* note 15.

85. S.B. 375, 2007–2008 Leg., Reg. Sess. (Cal. 2008).

86. S.B. 862, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

87. Cal. Pub. Res. Code § 21155.2.

88. For a more complete discussion of California land use law relevant to infill residential development, *see* O'Neill et al., *supra* note 20, at 7–35.

89. *Id.*

90. *See e.g.*, SAN DIEGO MUN. CODE § 143.0915; City of Los Angeles, *Transit Oriented Communities Guidelines* 4 (2017), https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf. Ministerial review in California involves a decision without judgement, which means that a proposed project will not require environmental review under the California Environmental Quality Act. O'Neill et al., *supra* note 20, at 10.

91. *See* O'Neill et al., *supra* note 20, at 93.

relative impact of state TOD policy in relationship to local authority over land use.

The relative impact of local control over land on spatial equity is not just a subject of academic debate. Because local governments have substantial power to say no to proposed housing development, some policy reform proposals to increase housing supply aim to limit local authority over land use. But limiting local authority, even to increase infill housing supply or affordable development, has proven politically difficult. Although scholarly and grey literature describe local control over land as a tool for segregation, not all proponents of eliminating racial residential segregation and increasing affordable housing opportunities within high-cost cities have embraced reducing local control over land use. Arguably, because local control over land has been a tool for segregation, eliminating or reducing local control[92] or shifting land use control to a regional authority[93] to support regionalism and regional equity[94] would seem a desirable option from an equity perspective.[95] In the California policy arena, however, proposals to reduce even some local authority over land use to facilitate infill housing supply evoked a heated debate and divide between scholars,[96] community advocates,[97] and politicians that are otherwise ideologically aligned. Why the divide?

92. *See generally* TROUNSTINE, *supra* note 36.

93. Briffault, *Our Localism: Part II—Localism and Legal Theory*, *supra* note 30, at 369–70 (asking "[i]f the region is the proper focus of planning concerns, why are individual localities empowered to zone at all?"); Cashin, *supra* note 30, at 1991–96.

94. PETER CALTHORPE & WILLIAM FULTON, THE REGIONAL CITY 61–62 (2001); RUSK, *supra* note 49, at 3–4; ANDRES DUANY ET AL., SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM 226–29 (2000) (calling for regional government); KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 278 (1985); William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 FORDHAM L. REV. 57, 94–97 (1999) (arguing that lack of regional government is a main driver of sprawl, and suggesting creation of special regional districts focused on the problem).

95. In addition, reducing local control has long been advocated as a way to advance infill development and reduce sprawl. *See, e.g.*, Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1133–41 (1996); *see also* CALTHORPE & FULTON, *supra* note 94, at 61–62, 185 (promoting regional-scale planning for smart growth and noting that most argue regional governance should be at the state-level).

96. *See* Letter from Sheryll D. Cashin et al., to Mike McGuire & Jim Beall (Apr. 5, 2018), *available at* https://perma.cc/4DPJ-UCWP (letter from fair housing experts endorsing S.B. 827 as "a major step towards promoting integration and reducing racial residential segregation."); CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 269–71.

97. *See* Letter from Kyle Jones, to State Senator Scott Wiener (Jan. 18, 2018), *available at* https://perma.cc/9HCE-2RS4 (opposing S.B. 827 on behalf of the Sierra Club California as "a heavy-handed approach . . . that will ultimately lead to less transit being offered and more pollution generated"); Letter from Rich Gross & Jaqueline Waggoner, to Scott Wiener (Apr. 9, 2018) (on file with authors) (opposing S.B. 827 on behalf of Enterprise Community Partners "unless it is amended to explicitly serve the housing needs of low-income Californians"); Letter from Brian August et al., to Scott Wiener (Mar. 20, 2018) (on file with authors) (opposing S.B. 827 on behalf of California Rural Legal Assistance Foundation, Housing California, and Western Center on Law & Poverty "unless it is amended to address the proposal's impact on gentrification and exclusion"); Letter from Amanda Eaken et al., to Scott Wiener (Mar. 23, 2018), *available at* https://perma.cc/S84A-8YTX (endorsing S.B. 827 as "a key element in

One reason for objections to reducing local authority over land use might be uncertainty about whether the state government is more hospitable to equity arguments than local governments or whether the state will produce better housing policy and outcomes. Elevating decision making to the state level will reduce opportunity for local public participation that many equity advocates see as essential for community empowerment and better outcomes.[98] Scholars have argued that while state law may confer local power over land, a local government's legal authority is modified or amplified by a jurisdiction's relative political and economic power within a region vis-à-vis other local governments.[99] If this is true, reducing local control over land may not reduce the relative power advantage of private property interests within wealthier, whiter jurisdictions, and in turn the power of these same interests at the state level; reduced local control would not only reduce participation at the local level, but also risk increased harm to vulnerable populations that may find regional or state-level coalition building more challenging than coalition building at the local level. The outcome of reduced local authority for vulnerable groups would be less political power over land use in general, as powerful private property interests and the market would continue to manage the land development process through their influence at the state level.[100]

Another concern about reducing local control may be that greater state-level power over local land use decisions, even if desirable to address exclusionary zoning, may not lead to better equity outcomes. State law significantly constrains local fiscal policy, and these fiscal constraints may counteract the benefits of

achieving California's climate goals" on behalf of the Natural Resources Defense Council, Climate Resolve, and Environment California).

98. *See, e.g.*, Letter Opposing S.B. 50 Unless Amended from advocacy organizations California, at p. 2 (Jan. 24, 2020) *available at* http://allianceforcommunitytransit.org/S.B.-50-update-read-housing-equity-groups-oppose-unless-amended-letter-to-senator-wiener/ (arguing that "S.B. 50's preemption of local zoning and planning must not repeat and exacerbate the deliberate harms that have shaped our state's legacy. To protect sensitive communities, S.B. 50 must accurately identify all sensitive communities *and* preserve meaningful self-determination in those communities so that they can plan for an inclusive future.").

99. *See* Briffault, *Our Localism: Part I—The Structure of Local Government Law*, *supra* note 34, at 24; Briffault, *Our Localism: Part II—Localism and Legal Theory*, *supra* note 30, at 346; *see also* Cashin, *supra* note 47, at 1988–89.

100. Theoretically, it is less clear that reduced local control would similarly limit equity or advocacy planning. *See generally* Paul Davidoff, *Advocacy and Pluralism in Planning*, 31 J. AM. INST. PLANNERS 331 (Dec. 2007), *but see* Richard Schragger, *The Perils Of Land Use Deregulation* 3, 22 (Va. Law and Econ. Research Paper No. 2021-11, Va. Pub. Law and Legal Theory Research Paper No. 2021-20), https://ssrn.com/abstract=3821094 (arguing "exclusionary zoning in the suburbs has detrimental effects, but there is no reason to believe that a state's land use regime—even one motivated by an affordability impulse—will not come to reflect similar political pathologies. . . .To the extent that suburban homeowners dominate local politics they are also likely to dominate state politics."). However, there are some examples to support concern that the political power of a vulnerable group would be diffused at a higher level of government. *See* Romer v. Evans, 517 U.S. 620 (1996) (holding that a state constitutional amendment that precluded cities from taking any action to recognize sexual orientation as a protected class violated the Fourteenth Amendment); *see also* Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163 (2018). For a discussion on the role of advancing progressive policy at a local level see David J. Barron, *Foreword: Blue State Federalism at the Crossroads*, 3 HARV. L. & POL'Y REV. 1, 4–6 (2009) (discussing the role of progressive decentralization to advance policy).

increasing state control over land use to promote spatial equity. Even if municipal governments may hold considerable planning and zoning power that directly shapes the built environment, state law limits how cities may raise revenue. The limitation on how cities may raise revenue makes cities dependent on the revenue potential of land development, which scholars refer to as the fiscalization of land use.[101] These state law constraints on how cities raise revenue influences local housing policy and even impacts the capacity to provide middle class housing.[102] Without addressing this existing constraint on local authority, reducing local authority over land use to increase housing supply and reduce housing costs might not redress spatial inequities. Instead, it might simply expedite local approval of market-rate development that can afford to subsidize infrastructure and other related development (passing costs on to renters and buyers) without generating sufficient low-income and moderate-income housing supply. Increasing low- and moderate-income housing supply would require more deliberate policy interventions that adequately consider taxation, infrastructure, and redistributive policy.[103]

Most arguments about what might happen if the state limited local land use control remain untested.[104] There is insufficient empirical research exploring

101. Fiscalization of land use refers to local government land use decision making being driven by the fiscal impacts of those land use decisions. In particular, it may occur when state law limits local governments from collecting sufficient revenue through property taxes (as is the case in California under Proposition 13), local governments tend to disfavor residential uses—that require infrastructure, schools, and other services—and tend to favor commercial and other land uses that may generate other sources of revenue (such as sales tax). *See* Paul G. Lewis, *Retail Politics: Local Sales Taxes and the Fiscalization of Land Use*, 15 ECON. DEV. Q. 21 (2001); *see also* Jonathan Schwartz, Note, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV. 183 (1997); CALTHORPE & FULTON, *supra* note 94, at 85–86 (noting the importance of fiscal zoning); William A. Fischel, *The Evolution of Zoning Since the 1980s: The Persistence of Localism*, 259, 264–65, *in* PROP. IN LAND AND OTHER RES. (Daniel H. Cole & Elinor Ostrom eds., 2012) (stating that exclusionary zoning is a response to fiscal pressures on publicly provided services and public goods that are created when low-income residents move into jurisdictions).

102. *See* FRUG, *supra* note 34, at 118–20.

103. Relatedly, Solomon Greene and colleagues at the Urban Institute analyzed the potential impact of the 2020 Proposition 15 ballot measure, a measure to change California's property tax system under Proposition 13, on housing supply in California. They found that a 'split roll' tax reform requiring local jurisdictions to reassess many commercial and industrial properties at their current market value would more likely increase California's housing supply than constrain it but would not resolve the housing supply shortage or affordability crisis without additional policy reforms. *See* Solomon Greene et al., *Housing and Land Use Implications of Split-Roll Property Tax Reform in California*, URB. INST. (Sept. 30, 2020) https://www.urban.org/research/publication/housing-and-land-use-implications-split-roll-property-tax-reform-california. The measure failed.

104. The Urban Displacement Project modeled the potential impacts of both S.B. 827 and S.B. 50 on market feasibility (the capacity to develop housing) in relationship to its existing metrics of risk of displacement in the San Francisco Bay Area. Modeling the potential impact of S.B. 827, the research team found that nearly half of what would have been the developable land under S.B. 827 is located in neighborhoods experiencing gentrification or displacement pressures, whereas only 11 percent of the land area covered by S.B. 827 is located in more affluent neighborhoods. *See* The Urban Displacement Project, Policy Brief, *S.B. 827 2.0: What are the implications for communities in the Bay Area? available at* https://www.urbandisplacement.org/sites/default/files/images/udp_mapcraft_sb_827_policy_brief. pdf. The same team modeled the potential impacts of S.B. 50, finding that S.B. 50 could have quadrupled market-

how current land use law operates within cities to influence existing development patterns, or whether current law might influence gentrification in neighborhoods burdened by past discriminatory land use policy and prior disinvestment. To address the gap in prior research, we collected our own data to explore questions about how existing land use law influences development patterns.

II. EXCLUSIONARY ZONING WITHIN CITIES RESTRICTS DENSE INFILL DEVELOPMENT

Answering the questions we discussed in Part I requires understanding how individual state and local laws interact to influence housing development patterns at a city or regional scale over time. We draw on our data and analysis from ongoing case study research[105] of land use regulatory processes within selected California cities[106] to answer these questions. This research involved analyzing local planning and zoning codes for each of our study cities to determine the density and use provisions as well as which types of projects were subject to discretionary or ministerial processes. Then, we collected data on discretionary or ministerial approvals that cities issued in 2014, 2015, 2016, and 2017 for residential or mixed-use projects that proposed five or more units of housing in each study city. We collected data on 1,907 approvals for dense housing development across our first sixteen study cities. We gathered information on a range of project characteristics, among them the timeframes for approvals, the number of units cities approved (both market-rate and affordable), the location of projects, and the local land use approval processes used to approve the project.[107]

Using this data, we first counted the number of projects approved in our study period.[108] Second, we identified the frequency of certain project

feasibility for market rate supply and quintupled capacity for on-site inclusionary units (or deed-restricted affordable units) in the impacted land area—including more affluent neighborhoods—with unknown potential impacts on existing rental housing stock. *See* The Urban Displacement Project, Policy Brief: S.B. 50, *available at* https://www.urbandisplacement.org/sites/default/files/images/sb50_udp_mapcraft_policybrief.pdf. Both proposed state senate bills failed.

105. For more detail about our methodological choices and data collection, *see* O'Neill et al., *supra* note 20*; see also* O'Neill et al., *Examining Entitlement in California to Inform Policy and Process: Advancing Social Equity in Housing Development Patterns, Report Prepared for the California Air Resources Board and the California Environmental Protection Agency in fulfillment of contract #3900-19STC005*, March 18, 2021 (on file with authors) [hereinafter CARB Interim Report].

106. Folsom, Fresno, Inglewood, Los Angeles, Long Beach, Oakland, Mountain View, Palo Alto, Pasadena, Redondo Beach, Redwood City, Sacramento, San Diego, San Francisco, San Jose, Santa Monica. *Id.*

107. We did this by collecting and coding data that document stages of the approval process, such as staff reports, planning commission and city council meeting agendas and minutes, and through public records requests. For more information about this methodology, *see id.* at 36–48.

108. In other writing, we detail entitlement timeframes and entitlement rates. Analyzing entitlement rates and timeframes answers questions about the impact of process on housing costs; urban planning and urban economics research has found that, generally, protracted approval processes decrease permitting levels and increase housing costs. *See generally* Kristoffer Jackson, *Do land use regulations stifle residential development? Evidence from California cities*, 91 J. URB. ECON. 45, 54 (2016); John M.

characteristics, including the existing use at the time of application or the presence of demolition permits. This allowed us to determine whether there was a risk of physical displacement, and whether the proposed development included deed-restricted affordable housing, to answer questions about whether the proposed development would house low-income residents. We identified the geographic coordinates for each approval in our data to support mapping.

We also gathered the available historical redlining (HOLC) maps for cities within our study, which exist only for a subset of our study cities: Fresno, Long Beach, Los Angeles, Oakland, Pasadena, Sacramento, San Diego, San Francisco, San Jose, and Santa Monica. This allowed for more in-depth research on past discriminatory land use policy within this group of our study cities. Analyzing base zoning with entitlement data and HOLC maps answers questions about where cities allow dense development to be built in relationship to past discriminatory land use policy, and whether some, most, or all proposed development is sited in neighborhoods with a history of disinvestment.

Where we observed high rates of demolition of rent-stabilized housing units in formerly redlined neighborhoods, we also identified whether the new development would include deed-restricted affordable housing units and, if so, at what rates. We also used California Fair Housing Task Force Opportunity Mapping for 2019 (TCAC maps) to better understand the current socio-economic conditions within our study cities that had high rates of demolition of rent-stabilized housing. The TCAC maps, used by the California Tax Credit Allocation Committee and California's Department of Housing and Community Development, provide information about whether a neighborhood has more or less opportunity, using multiple indicators of opportunity (educational attainment, employment rates, poverty rates, median home values, and other demographic information).[109] Finally, we also gathered historical zoning maps and ordinances, where available, to compare against our base zoning analysis; this helped answer questions about the role of state-led TOD policy, local zoning, and planning in directing TOD development into historically vulnerable neighborhoods.[110]

We explain below how we arrive at the conclusion that at least some new dense TOD housing is likely physically displacing tenants, and why much new housing does not seem accessible to lower income households. Most importantly, we explain how our data indicates that local exclusionary zoning—and choices

Quigley et al., *Measuring Land Use Regulations and their Effects in the Housing Market*, LINCOLN INST. LAND & POL'Y 295 (May 2009). Although we coded our project entitlement data, we did not use statistical analysis, such as linear regression, to find associations or control for confounding variables.

109. For more information about the Opportunity Mapping, *see* California Fair Housing Task Force Opportunity Mapping Methodology, (Nov. 27, 2018) *available at* https://belonging.berkeley.edu/2021-tcac-opportunity-map.

110. We provide selected findings relevant to this discussion that are elaborated on in a series of other writing in which we detail our methods for analysis as well as data collection.

about where to place dense multi-family housing that appear to predate state TOD policy—seems responsible for these outcomes.

A. Local Zoning Directs the Amount, Pace, and Placement of TOD Housing

More than 80 percent of the proposed development across all of our study cities went through a discretionary process. Although four of our study cities use a ministerial (or "as of right") process to approve a proposal for five or more housing units of any housing type (market rate or affordable), and one city (Santa Monica) allows for a ministerial process for 100 percent affordable development multi-family housing only of fifty units or less, we were only able to find data on use of a ministerial process to approve proposed housing of five or more units in one city—the City of Los Angeles. Even within Los Angeles, approximately 73 percent of all proposed development of five or more units in Los Angeles still went through a discretionary process.[111]

This signaled that two different elements of local regulation over land use—discretionary processes and what we refer to as base zoning, the underlying use and density restrictions of a zoned area—operate together to promote or constrain housing development, including deed-restricted affordable development. Los Angeles's ministerial process, for example, allows for residential development of up to forty-nine units as of right[112] (which eliminates state mandated environmental review) if the proposed development conforms to the base zoning, or underlying density and use provisions of the zoning. Santa Monica's ministerial process for 100 percent affordable development up to forty-nine units (adopted in June 2015) operates the same way, but none of the affordable units in our dataset came from a 100 percent affordable development subject to a ministerial process. This finding indicates that legal reform that eliminates discretionary review or shortens discretionary review processes (such as streamlining incentives) may not, alone, produce dramatic changes in the amount of dense housing across all of our cities. Discretionary review processes may be the drivers of time lags to development approvals, and create opportunities for neighborhood opposition, but base zoning likely determines where developers even propose projects.[113] We therefore explored the base zoning within a subset

111. For complete information about the number of approvals, and the type of approvals, in this study, *see* O'Neill et al., CARB Interim Report, *supra* note 105. We also reproduce some of the tables that provide information about the total number of approvals within the data at the end of this article.

112. Los Angeles was one of four of the sixteen study cities that allows housing consisting of five or more units as of right if the underlying zoning allows for the proposed density and use—but only Los Angeles had a sufficient number of as of right projects to offer comparative analysis with projects subject to discretionary review.

113. For example, the City of Los Angeles's local efforts to increase dense TOD housing focuses on both increasing density (incentive zoning) and streamlining. Notably, a recent report out of the City of Los Angeles's Planning Department indicates overall increased applications and approvals between 2018 and 2020 with a notable uptick in use of a ministerial administrative review process whereas discretionary approvals decreased over the same period. *See* Los Angeles City Planning, *Annual Report 2020*, at 16–

of our study cities to determine whether and how it might promote or constrain TOD housing, and where developers are proposing to build dense market rate and affordable development.

1. Zoning Restricts Dense Residential TOD—Even in High-Quality Transit Areas

We analyzed how much land area within a subset of our study cities had high-quality transit areas (HQTA), as well as whether and where cities allow dense residential development near transit (by calculating the percent of land area of different base zoning categories within the HQTA).[114] Land zoned for high-density residential development is one prerequisite for creating compact TOD communities. Multi-family dense zoning in high-quality transit areas is also a prerequisite for affordable TOD. Relatively limited HQTA within many cities indicates the need for increased transit investment.

To explore the extent to which zoning would allow multifamily residential development, we identified zoning that allows development at a density high enough to meet state guidelines to accommodate housing affordable to all income levels, which we call "permissive density."[115] Table 1 indicates that in some cities, very little zoned land area is both within a HQTA and zoned for all income levels. Unsurprisingly, in cities where less than a third of the zoned land area is in a HQTA, the percentage of land area citywide that is both within a HQTA and satisfies the default density standards is low. Fresno, for example, has 3.18

17, *available at* https://planning.lacity.org/odocument/98030feb-8406-419f-8118-ec071a8cfb96/202009_AnnualReport2020.pdf. As the report notes, use of a ministerial process depends on the proposed development conforming to the underlying zoning code. *See ibid.* at 17. In short, the underlying zoning has to allow for the density in the first place before a developer can take advantage of a ministerial process.

114. High-quality transit area (HQTA) refers to areas within half-mile of major transit stop (MTS) or a quarter mile of a high-quality transit corridor (HQTC). MTS means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of fifteen minutes or less during the morning and afternoon peak commute periods. *See* Cal. Pub. Res. Code § 21064.3. HQTC means a corridor with fixed route bus service with service intervals no longer than fifteen minutes during peak commute hours. *See* Cal. Pub. Res. Code § 21155(b). We chose the quarter-mile buffer for the HQTC instead of the half-mile buffer to be consistent with proposed state laws that would have allowed significant increases in density near transit, like S.B. 827 and S.B. 50. *See* S.B. 50, 2019-2020 Leg., Reg. Sess. (Cal. 2019); S.B. 827, 2017-2018 Leg., Reg. Sess. (Cal. 2018). In Los Angeles, we were unable to obtain a shapefile that reflects current HQTA boundaries, so we used the boundaries of the city's Transit Oriented Communities program, which are coterminous with the boundaries of the MTS. *See* CITY OF LOS ANGELES, TRANSIT ORIENTED COMMUNITIES GUIDELINES 4 (2017), *available at* https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf. While we refer in this article to the Los Angeles layer as an HQTA, it does not include the HQTC and thus underrepresents the full extent of the HQTA in Los Angeles. We focus on HQTAs in our base zoning analysis because this is where TOD would presumably be occurring in these cities, and to make our analysis more tractable.

115. Specifically, we set the threshold at the level under state law that would satisfy the default density standards that demonstrate that a city is able to accommodate its regional need for all income levels. The threshold of density to allow for low-income households is thirty dwelling units per acre for jurisdictions within metropolitan county in a Metropolitan Statistical Area of 2,000,000 or more. Twenty dwelling units per acre is the threshold for suburban jurisdictions. *See* Cal. Gov't. Code § 65852.2.

percent of its total zoned land area in a HQTA and zoned for all income levels, which translates to less than three square miles. Fresno also zones less than 10 percent of all of its zoned land area for all income levels. This indicates Fresno needs more transit investment and more density. Even more troubling for climate policy, this analysis also suggests that some cities are not maximizing the limited HQTA that exists. For example, 55.34 percent of Long Beach's zoned land area is within an HQTA, but only 3.88 percent (or 1.55 square miles) also satisfies the default density standards for all income levels.

Table 1 also indicates that San Francisco and Santa Monica are exceptions in that both have high percentages of their zoned land area within HQTAs (91.07 percent and 87.71 percent respectively) and higher proportions of permissive density within these HQTAs, 31.77 and 15.66 percent respectively. A ministerial process in these two local contexts might lead to comparatively higher rates of dense housing being processed (if adjusted for city size), although this would not necessarily address whether spatial distribution of dense development is equitable.[116] But San Francisco has no ministerial process for any housing—including single family housing. Santa Monica's ministerial processes applied to single-family housing only and then post-2015 Santa Monica passed an ordinance to apply a ministerial process to 100 percent affordable development of fifty units or less of housing that conformed to underlying base zoning.[117]

116. We have found some evidence that ministerial processes change the spatial distribution of proposed development in Los Angeles, for example. This finding may have equity implications. It may also provide useful guidance for other cities and inform process-focused reform debates. We will address these implications in future writings.

117. Santa Monica revised its local ordinances in 2015 to provide an as-of-right process for 100 percent deed restricted affordable development of up to forty-nine units. *See* Santa Monica Municipal Code § 9.40.020(B), adopted June 23, 2015.

Table 1: Percentage of Residential Land Uses within the HQTA and Citywide with Permissive Density and Single Family Only (Denominator is Total Zoned Area)

	% Total Zoned Land Within HQTA	% HQTA Zoned for Single Family Only	HQTA Zoned for Single Family Only mi^2	% HQTA Zoned for 30 du/acre and above	HQTA Zoned for 30 du/acre and above mi^2	% Entire City Area within HQTA and Zoned for 30 du/acre and above
Fresno	9.06%	25.01%	2.11	33.47%	2.94	3.18%
Long Beach	55.34%	34.63%	7.64	7.02%	1.55	3.88%
Los Angeles	26.18%	26.66%	28.38	28.50%	30.33	8.08%
Oakland	28.48%	27.08%	5.15	23.09%	4.39	5.68%
Pasadena	33.85%	33.30%	2.07	29.01%	1.81	9.82%
Sacramento	26.48%	39.35%	8.65	15.67%	3.45	4.39%
San Diego	27.66%	46.03%	34.74	9.24%	6.97	2.56%
San Francisco	91.07%	25.19%	8.11	34.89%	11.18	31.77%
San Jose	18.93%	33.69%	9.70	9.33%	2.69	3.18%
Santa Monica	87.71%	26.60%	1.39	19.66%	1.03	15.66%

2. Permissive Density and Development Are Often Limited to Formerly Redlined HQTA

Understanding whether TOD is disproportionately sited in neighborhoods impacted by past discriminatory land use policy involved a multi-step analysis of zoning applicable during our study period in relation to historic redlining maps (HOLC maps). To start, we used HOLC maps to calculate how much HQTA in each city overlaps with land area in different HOLC classifications. Table 2 shows that HOLC classifications exist for the majority of the HQTA in six out of ten study cities.[118] We then examined the current use and density limitations for HQTA in relationship to HOLC classifications. Table 3 indicates that HQTA which was once Class A or Class B is primarily zoned for low density.[119] By contrast, permissive density in HQTA is located primarily in areas that were once Class C, D, or Industrial.

We then compared past redlining to current entitlements. Consistent with these zoning patterns, Table 4 indicates that for these ten study cities, in the aggregate, about 72 percent of approved units are located in formerly Class C, D, or Industrial Areas that are adjacent to what were C or D neighborhoods. The variation across cities exists because in four cities much of the HQTA does not

118. *See infra*, Table 2. We found HOLC maps for Fresno, Long Beach, Los Angeles, Oakland, Pasadena, Sacramento, San Francisco, San Diego, San Jose, and Santa Monica. However, more than two-thirds of the HQTA in Fresno, Sacramento, San Diego, and San Jose were uncategorized within the HOLC maps.

119. *See infra*, Table 3.

overlap with HOLC mapping, not because cities approved housing in former class A or B areas (for example, about 21 percent of units in Long Beach are located in formerly redlined areas whereas about 99 percent of units are in Pasadena—but neither city approved units in formerly Class A or B neighborhoods). In some cities, census tracts that were once Class D and Industrial are part of the same residential neighborhood.[120] Depending on the neighborhood, clustering proposed development in these formerly Industrial census tracts may have a similar impact on the neighborhood as clustering development in the adjacent formerly Class D census tract. Though some study cities entitled dense housing in neighborhoods that were formerly Class B, none of these cities entitled the dense housing at high rates. This is notable because while little of the HQTA is formerly Class A in most cities, census tracts once classified as Class B form a substantial percentage of the HQTA land area in these five cities. This indicates that most dense development is sited in neighborhoods historically burdened by past discriminatory land use policy.

One possible explanation for this finding is path dependence: In some cities with limited HQTA citywide, formerly Class C, D, and Industrial areas comprise the majority of the HQTA. Existing transit infrastructure may operate to limit TOD to neighborhoods that were historically burdened by discrimination and disinvestment.[121] For example, less than a third of the land area in Los Angeles, Oakland, Sacramento, and San Diego is HQTA. Further, HQTA that was formerly Class A represents less than 4 percent of most of these cities' total HQTA land—Pasadena is the only exception. Much higher percentages of HQTA are formerly Class C and D in most of our study cities.

Even in San Francisco and Santa Monica, two cities with larger HQTAs and higher percentages of HQTA that were once classified as A or B, we still found that very little dense development goes into formerly Class A or B neighborhoods. In San Francisco, for example, over 15 percent of the total HQTA land area was once Class B, yet not a single entitlement went into a Class B area. In Santa Monica, over 16 percent of the total HQTA land area was Class B, yet only one higher-density development (consisting of eight units) is sited in

120. The Prescott neighborhood in West Oakland, which had the fourth highest concentration of proposed dense development in Oakland during our study years, is an excellent example. This neighborhood, historically majority African American, contains census tracts that were classified as D (with early zoning allowing for the densest residential uses) and Industrial (with early zoning limiting the use to Heavy Industrial) on the HOLC, but there were non-conforming residential uses in the formerly Industrial census tracts (that are today receiving a large proportion of proposed development) well before rezoning to allow for residential use. These formerly Industrial non-conforming tracts are receiving a large proportion of proposed development today.

121. We also note a range of types of path dependence in land use development in cities that likely shape the patterns of entitlement that we observed: Modern mass transit often uses historic railroad rights-of-way that are located in former industrial and redlined neighborhoods, and past zoning for industrial and commercial uses may shape the size and availability of parcels that can facilitate large-scale infill residential development. Additional research on the importance of these factors would be valuable to help further understand how history is shaping current TOD efforts. *See* CHAPPLE & LOUKAITOU-SIDERIS, *supra* note 18, at 92.

this area. In both cities, new TOD is disproportionately concentrated in HQTA formerly classified as Industrial—in San Francisco, almost 90 percent of entitlements are concentrated in 17 percent of the city's HQTA.

Table 2: Percentage of Land Area Within HQTA by HOLC Class*

	% HQTA that is "A"	% HQTA that is "B"	% HQTA that is "C"	% HQTA that is "D"	% HQTA that is "I"	% HQTA that is Uncategorized
Fresno	0.00	1.76	16.57	5.32	5.97	70.39
Long Beach	1.11	5.84	23.75	18.37	4.63	46.30
Los Angeles	2.96	9.92	30.81	16.42	7.51	32.38
Oakland	0.38	9.26	27.62	22.28	3.81	36.65
Pasadena	10.45	11.34	39.80	5.86	16.62	15.94
Sacramento	0.29	3.30	10.88	3.07	7.06	75.40
San Diego	2.09	4.46	9.36	12.20	4.03	67.86
San Jose	0.25	1.69	5.88	6.91	1.69	83.58
San Francisco	3.55	15.53	16.19	15.98	17.00	31.79
Santa Monica	0.00	16.26	27.36	27.54	10.92	17.91

*****The original maps used both letters and color coding to classify neighborhoods: A, which was also blue, refers to "Best"; B, or green, to "Still Desirable"; C, or yellow, to "Definitely Declining"; and D, or red, to "Hazardous". I referred to "Industrial". Most of the San Jose HQTA is HOLC uncategorized due to the large increase in size of the jurisdiction's land area beyond the limits of the HOLC map.

Table 3: Percentage of Residentially Zoned Land in HOLC Class in HQTA

		Fresno	Long Beach	Los Angeles	Oakland	Pasadena	San Diego	San Francisco	San Jose	Santa Monica	Sacramento
Class A	% SFH	n/a	69.06	77.71	89.30	87.10	87.41	86.87	79.96	n/a	99.54
	% Permissive zoning	n/a	0.00	9.67	.67	0.00	1.47	3.08	4.83	n/a	0.00
Class B	% Single-Family Home	69.22	58.68	55.49	63.19	67.23	62.60	59.88	65.77	87.16	76.21
	% Permissive zoning	0.00	3.90	23.37	7.85	4.26	6.74	31.46	17.28	1.70	1.55
Class C	% Single-Family Home	47.02	51.50	21.00	37.63	24.67	21.75	33.98	23.48	32.41	54.49
	% Permissive zoning	6.62	.99	37.38	12.39	35.72	30.11	57.95	26.26	9.26	14.09
Class D	% Single-Family Home	26.13	18.17	7.85	15.06	20.08	46.50	34.52	17.14	2.23	9.52
	% Permissive zoning	20.21	15.36	32.43	23.76	32.45	8.38	51.60	23.22	21.21	35.80
Class FI	% Single-Family Home	9.66	1.87	2.64	0.00	1.41	8.07	.36	1.42	0.00	1.32
	% Permissive zoning	0.00	68.41	25.25	86.99	59.63	44.97	51.72	64.32	62.90	47.33
Uncategorized	% Single-Family Home	20.30	30.27	33.22	20.27	28.47	47.79	9.66	35.43	11.04	34.08
	% Permissive zoning	42.63	3.83	22.57	20.47	19.84	5.85	15.50	12.89	25.13	13.98

Table 4: Percentage of Approved Units Within HQTA by HOLC Class

	% Units Within "A"	% Units Within "B"	% Units Within "C"	% Units Within "D"	% Units Within "I"	% Units Within "Uncategorized"
Fresno	0	0	20.78	0	0	79.22
Long Beach	0	0	8.11	0.74	58.27	32.88
Los Angeles	0.37	4.20	25.42	21.52	25.49	23.00
Oakland	0	0.37	15.32	16.97	44.19	23.25
Pasadena	0	0	23.79	5.98	66.14	1.35
Sacramento	0	0.18	2.81	16.65	46.26	34.11
San Diego	0	1.69	12.08	10.52	43.87	31.97
San Francisco	0	0.13	0.69	5.10	89.63	4.44
San Jose	0	0	1.16	14.07	25.58	59.19
Santa Monica	0	0.56	2.76	4.14	65.70	27.40*
Total	0.17	2.23	15.92	15.98	39.88	25.82

*This 27.40 percent represents one project located in an "uncategorized" area on the border of a D categorized area.

3. Permissive Density and Dense Development Are Often Limited to Low Resource and High Segregation & Poverty HQTA

Our analysis using HOLC maps tells us that in several cities most of the HQTA's permissive zoning and most approved dense TOD housing is located in neighborhoods impacted by past discriminatory land use policy. That still leaves unanswered questions about whether cities are primarily approving dense TOD housing in poorer neighborhoods. If formerly redlined neighborhoods, in particular, may be most susceptible to gentrification pressures,[122] it is possible that at least some of these formerly redlined neighborhoods in our study may be more affluent areas today. We used 2019 TCAC maps to assess base zoning and housing approvals in relationship to current socio-economic conditions to help answer questions about whether dense TOD housing is going into once redlined but more affluent HQTA neighborhoods, and if so, whether this dense TOD housing is accessible to lower-income households (promoting income integration).

Table 5 provides the amount of zoned higher opportunity HQTA land area within these cities using the TCAC classifications (from the Committee that administers the Low-Income Housing Credit, used to subsidize deed-restricted affordable development). We compare Highest and High Resource HQTA ("higher opportunity HQTA") and High Segregation & Poverty or Low Resource HQTA ("lower opportunity HQTA"), with permissive zoning or single family only zoning.[123]

122. *See Redlining and Gentrification: The Legacy of Redlining*, *supra* note 76.

123. We also calculated rates of permissive and single family only zoning in moderate resource HQTA. For more comprehensive analysis, see O'Neill et al., CARB Interim Report *supra* note 105.

The amount of higher opportunity HQTA with permissive density varies across these cities. Long Beach has none, though about four square miles of higher opportunity HQTA is zoned for single family only. Oakland has very little higher opportunity HQTA, overall. Most of our study cities with any permissive zoning in higher opportunity HQTA have more higher opportunity HQTA zoned for single family only. San Diego, for example, has fifteen square miles of higher opportunity HQTA zoned for single family only and less than three square miles with permissive density. San Francisco and Santa Monica are exceptions—they have more higher opportunity HQTA permissively zoned than lower opportunity HQTA. In Santa Monica, this is primarily because all of the HQTA is classified as either Highest or High Resource area. Another noticeable trend is that not all cities that have lower opportunity HQTA have more of this land permissively zoned.

Tables 6 and 7 provide the distribution of all market rate units and deed-restricted units sited in these cities' HQTA across TCAC classifications.[124] Given the limitations of base zoning, it is unsurprising that in the aggregate, more than twice as many market rate units are sited in lower opportunity HQTA as compared to higher opportunity HQTA. The difference is even more pronounced among deed restricted affordable development—approximately 57 percent of all deed restricted affordable units, if built, would be in lower opportunity HQTA but only about 15 percent would be in higher resource HQTA.[125] The variability across cities is also noteworthy: Long Beach has higher opportunity HQTA, but no permissive density, so all 374 approved affordable units, if built, would be in lower opportunity HQTA.

124. We provided analysis of a subset of our study cities here. We conducted similar analysis for all of our study jurisdictions and found similar trends in aggregate calculations of where affordable or market rate development would be built into the relationship to TCAC classifications. For comprehensive analysis, see O'Neill et al., CARB Interim Report, *supra* note 105.

125. In the aggregate, these calculations slightly increase if we include affordable development citywide (inclusive of affordable units outside of the HQTA and within the HQTA). 58 percent of affordable units are sited in lower resource areas citywide, and 16 percent are located in higher opportunity areas citywide. *See ibid.*

Table 5: Percentage of Residential Land Uses within the HQTA with Permissive Density and Single Family Only, Sorted by TCAC 2019 Opportunity Classification (denominator is total zoned HQTA)*

	% Higher Opportunity HQTA Zoned for all income levels/All zoned land in HQTA	Total land area (mi^2) HQTA Higher Resource All Income Levels	% Higher Opportunity HQTA Zoned for Single-family Only/All Zoned Land in HQTA	Total land area (mi^2) HQTA Higher Resource Single-family Only	% HQTA Lower Opportunity Zoned for All Income Levels/All Zoned Land in HQTA	Total land area (mi^2) HQTA Lower Opportunity Zoned for All Income Levels	% HQTA Lower Opportunity Zoned for Single-family Only	Total land area (mi^2) HQTA Lower Opportunity Zoned for Single-family Only
Fresno	6.97%	0.59	4.14%	0.35	22.57%	1.91	16.20%	1.37
Long Beach	0.00%	0.00	17.02%	3.76	6.00%	1.32	11.79%	2.60
Los Angeles	8.66%	9.22	12.52%	13.32	13.91%	14.81	8.85%	9.42
Oakland	0.78%	0.15	2.03%	0.39	17.57%	3.34	16.43%	3.13
Pasadena	18.58%	1.16	32.16%	2.00	7.97%	0.50	10.54%	0.66
Sacramento	5.82%	1.28	11.03%	2.43	7.39%	1.63	22.98%	5.05
San Diego	3.39%	2.56	19.87%	15.00	4.95%	3.73	18.93%	14.28
San Francisco	16.15%	5.20	9.74%	3.14	8.48%	2.73	4.39%	1.41
San Jose	2.45%	0.70	5.45%	1.57	4.48%	1.29	12.43%	3.58
Santa Monica	26.60%	1.39	19.44%	1.02	-[3]	-	-	-

*In this table, "Higher Opportunity" is inclusive of both Highest Resource and High Resource TCAC classifications, and "Lower Opportunity" is inclusive of both Low Resource and High Segregation & Poverty TCAC classifications.

Table 6: Distribution of Market Rate Units in HQTA by TCAC Classification

	% Units Highest Resource	% Units High Resource	% Units Moderate Resource	% Units Low Resource	% Units High Segrega-tion & Poverty	Total Market Rate Units in HQTA
Fresno	21.3%	0.0%	39.7%	0.0%	39.1%	348
Long Beach	0.0%	0.0%	0.0%	83.0%	17.0%	2,190
Los Angeles	7.1%	15.0%	29.4%	16.4%	32.2%	50,223
Oakland	0.0%	0.0%	23.4%	55.2%	21.4%	12,008
Pasadena	2.6%	26.7%	3.0%	1.8%	66.0%	1,328
Sacramento	3.1%	5.5%	42.0%	28.1%	21.3%	3,864
San Diego	7.5%	32.7%	20.5%	7.6%	31.8%	10,150
San Francisco	1.0%	4.5%	49.6%	44.3%	0.6%	12,101
San Jose	0.0%	0.0%	34.3%	65.7%	0.0%	10,805
Santa Monica	71.7%	28.3%	0.0%	0.0%	0.0%	1,196
Grand Total	7.0%	11.4%	29.1%	30.0%	22.4%	108,279

Table 7: Distribution of Deed Restricted Units in HQTA by TCAC Classification

	% Units Highest Resource	% Units High Resource	% Units Moderate Resource	% Units Low Resource	% Units High Segrega-tion & Poverty	Total Affordable Units in HQTA
Fresno	0.0%	0.0%	0.0%	0.0%	100.0%	90
Long Beach	0.0%	0.0%	0.0%	67.9%	32.1%	374
Los Angeles	9.7%	10.9%	32.6%	10.6%	36.1%	3,843
Oakland	0.0%	0.0%	9.9%	36.7%	53.4%	1,073
Pasadena	0.0%	15.8%	32.9%	0.0%	51.3%	76
Sacramento	0.0%	0.0%	0.0%	100.0%	0.0%	53
San Diego	0.8%	19.6%	18.3%	9.2%	52.0%	1,086
San Francisco	0.3%	1.8%	38.1%	51.6%	8.1%	2,168
San Jose	0.0%	0.0%	70.1%	29.9%	0.0%	589
Santa Monica	78.9%	21.1%	0.0%	0.0%	0.0%	180
Grand Total	6.7%	8.0%	28.5%	27.0%	29.7%	9,941

B. Permissive Zoning Patterns Predate State TOD Policy by Decades

The above analysis indicates that permissive density is located primarily in historically redlined areas, and cities approved about 72 percent of all units in

historically redlined areas. There is also more permissive density in lower opportunity HQTA than higher opportunity HQTA, and these cities approved the majority of market rate and affordable units in lower opportunity HQTA (52 and 57 percent respectively).

We next used our data to help us understand whether Senate Bill (S.B.) 375 might have impacted local choices about where to concentrate permissive density, which in turn influences where developers propose dense TOD housing. Specifically, we searched for historical zoning maps and ordinances for periods after the creation of the HOLC maps but before 2008 to explore choices made in prior decades about residential use and density. If the current-day patterns of permissive zoning were reflected in historical zoning going back decades, that would indicate that present-day, state-led infill policies, or S.B. 375, are not likely to be the main driver of where cities locate permissive zoning.

We found some historical zoning and maps for Long Beach, Oakland, San Francisco, and San Jose, as well as very limited historical zoning and maps for Los Angeles and Pasadena that preceded redlining.[126] When we could review historical zoning maps, we selected census tracts with the majority of housing approvals within the study city of interest for detailed study of density and use limitations over time. Incidentally, these census tracts were also formerly Class C, D, or Industrial, though not always lower opportunity HQTA.

In Oakland and San Francisco, we found that today's patterns of permissive zoning within certain formerly Class C and D residential-use neighborhoods have existed without notable change for decades. Zoning changes appear to be rezoning industrial to mixed-use zones. But the neighborhoods with the most entitlement appear to have contained mixed-use and cumulative zones that allowed for dense residential housing that predates state TOD policy, sometimes by decades. In San Jose, a city with limited HQTA, we found that the high-density downtown area had low density zoning until the 1960s, when the city undertook master-planning efforts that continued in the 1980s to enable development of high-rise condominiums. The location of this particular area was uncategorized under the HOLC maps, but adjacent to "hazardous" and "definitely declining" areas. In Long Beach, the downtown waterfront areas

126. In Los Angeles, we were only able to access 1922 maps. We reviewed these 1922 ordinances and maps to examine zoning in the census tracts with the most entitlements. Census Tract 1918.20 at the intersection of south Hollywood and Koreatown, Census Tract 2132.02 in central Koreatown, Census Tract 2063 in central Downtown Los Angeles, and Census Tract 2079 in the South Park/Fashion District of Downtown Los Angeles all allowed a mix of apartment and commercial uses. Similarly, the Hollywood Census Tract that we examined (1918.20) was zoned for single-family, multiple-family, and commercial use in 1925, but our entitlement data indicates that the entitlement is only in the multiple-family and commercial areas. The single-family sections of this area remain. The Koreatown Census Tract (2132.02) was zoned for multiple-family uses. The Downtown Census Tracts were zoned for commercial uses in 1925. In short, the urban form in tracts that permitted residential uses appears on the historical map seems to exist today. We encountered similar challenges locating historical zoning maps and ordinances for Pasadena. Still, the 1922 map in Pasadena indicates relatively dense residential- and mixed-uses in the Downtown area (six- to eight-story buildings), where the majority of our entitlements are located. We detail what we were able to retrieve and explore in Supplemental Table 4 below.

underwent planning to address what the city designated as blight in the 1970s and increased mixed-use and permissive residential density in the 1980s. This suggests that neither S.B. 375, nor state TOD policy, catalyzed upzoning in these locations.

To determine whether state TOD policy incentivizes siting new development in formerly Class C or D neighborhoods through specific planning, we also analyzed the rate of entitlement within specific plans (as opposed to other areas of our study cities) and the location of specific plans in relationship to redlining. Cities may use specific plans and sometimes general planning[127] to signal where the city wants to promote growth—particularly given that so few of our study cities allow for as of right processes. Specific plans may require a local government to make a considerable investment of financial and staff resources.[128] The plans also shift at least some of the burden of satisfying environmental review from developers to cities to facilitate entitlement approval processes.[129] Specific plans may also offer developers important pathways to expedite or streamline the discretionary review of their proposed development. Specific plans are one of the primary tools cities use to meet state TOD goals.

After analyzing our data across all cities, we analyzed specific plans in relationship to the HOLC maps. We had to limit this analysis to cities where we could study HOLC maps and where our data indicated a prevalence of specific planning. This included San Francisco, San Diego, Oakland,[130] and San Jose's General Plan Update. Specific plan areas within the first three cities were comprised of tracts that were previously classified as Class C, D, or formerly Industrial areas, but not to the same extent.[131] Very little land classified under the HOLC is within specific plan areas in San Diego, whereas nearly all of the formerly Industrial area and a third of what was Class D is now within specific plans in Oakland. While San Jose has not created a specific plan for its

127. San Jose's General Plan contains very detailed development standards that incentivize development in key areas like the downtown. *See* CITY OF SAN JOSE, GENERAL PLAN 17, *available at* http://www.sanjoseca.gov/DocumentCenter/View/474.

128. *See* Robert Olshansky, *The California Environmental Quality Act and Local Planning*, 62 JAPA 313, 319–20 (1996).

129. *Id.*

130. Within our dataset, Mountain View and Redwood City also used specific plans. As there are no HOLC maps available for Redwood City and Mountain View, we did not analyze their specific plans in relationship to former redlining. We also omit discussion of the role of specific plans in Los Angeles for several reasons. First, specific planning in Los Angeles does not accelerate development in the same way as it does in our Bay Area cities. In many specific plan areas, the regulations of the plan disrupt the ministerial pathway for projects of forty-nine units or less by making all new developments regardless of size subject to discretionary review. Second, concentrated rezoning efforts occur primarily at the Community Plan level, which, due to the large size of Los Angeles, aggregates multiple neighborhoods under the umbrella of a single plan. Many of these community plans have not been updated in years. Unpacking the role of these plans requires careful analysis of the timing of the update adoption and its sub-geographic units. Understanding the impact of specific plans within the Los Angeles context, and their potential impact on limiting ministerial review is important question that—while not entirely analogous to Bay-Area-specific planning—we will study in the future.

131. Both Oakland and San Francisco also have commercial areas within specific plans.

downtown, the most recent General Plan Update directs significant growth into the area that already had permissive density by loosening zoning regulations around height.[132] Similarly, for Oakland, specific planning seems to build on earlier zoning choices (in terms of density and use provisions) for formerly Class D neighborhoods and resolve prior non-conforming residential uses in what was classified as Industrial. San Francisco and San Jose (with General Plan amendments) indicate similar but much less pronounced trends.

In sum, this information generally indicates that it is unlikely S.B. 375 plays much of a role in where permissive zoning is located within our study cities. For the cities where historical zoning information is available, it appears that cities made choices decades ago about where to locate permissive zoning, and much of that permissive zoning overlaps with redlining. In some cities, specific planning may explicitly direct growth into areas that already had permissive zoning in place.

C. Transitioning From Sprawl to Infill Development May Lead to Direct Physical Displacement

Our data indicates that most of the dense TOD housing our study cities approved is located in poorer neighborhoods. While we cannot answer questions about economic displacement, exploring prior land use for parcels that are being developed can inform whether the new housing is being proposed where housing already exists. Residential prior use might require eviction and demolition. Demolition can indicate direct physical displacement if existing tenants do not have access to a replacement unit in the new development or if existing tenants do not have access to temporary, on-site housing during development. Some cities with rent-stabilization ordinances inadequately tracked data on rent-stabilized units; thus, we also used rates of Ellis Act[133] eviction as a proxy for rent-stabilized housing and as an indicator of direct physical displacement of tenants through eviction.

Although high demolition and eviction rates associated with proposed dense development approvals in a study city strongly suggests that approved infill development physically displaces existing tenants, we cannot determine the tenant's income level with entitlement data. Media reports about demolition of rent-stabilized housing in the neighborhoods we studied would suggest that

132. San Jose's General Plan lifted height limitations in most downtown areas, giving developers more flexibility in design and construction type. San Jose Mun. Code § 20.70.200.

133. The Ellis Act permits a landlord to evict all the tenants in a building in order to withdraw the units from the rental market for sale or for conversion into condominiums. Cal. Gov't Code §§ 7060-7060.7. The Ellis Act prevents local governments from enacting ordinances that compel a landlord to stay in the rental business. *See id.* at § 7060(a). Ellis Act evictions are commonly—but not exclusively—used to withdraw rent-stabilized units from the rental market because Rent Stabilization Ordinances (RSO) limit the circumstances under which a landlord may evict a tenant. We did not count condominium conversions as new units, though this is a common reason to use the Ellis Act on a non-RSO unit. For this reason, the number of Ellis Act evictions that were not tied to rent-stabilized units likely approximates rent-stabilized units that were not tracked in Zimas, Los Angeles's property information system.

demolition and evictions impacted at least some communities of color and lower income communities to make way for new housing.[134]

We also examined whether entitled development that demolishes rent-stabilized housing provides replacement deed-restricted affordable housing.[135] Determining replacement rates with affordable housing does not allow us to assess whether the new dense TOD would accommodate any low-income tenants that might be physically displaced because of demolition. Deed-restricted affordable housing is limited to qualifying households,[136] and we have no way of knowing whether the households displaced by demolition would qualify for deed-restricted affordable housing. Still, examining whether the new housing that replaces demolished housing contains affordable units helps inform whether the new development would promote for income integration.

Table 8 below shows that in San Francisco, Oakland, Long Beach, Fresno, and Sacramento, nearly all proposed housing units in our dataset, if built, would be on land where no housing existed before. Existing commercial and vacant uses outnumbered the existing residential uses. But in San Diego, San Jose, and Santa Monica, more than a third of proposed housing units would be built where housing once existed. That percentage climbs to approximately 60 percent for Los Angeles and 68 percent for Pasadena. Pasadena and Los Angeles are adding

134. For example, the Hollywood, Sawtelle-Japantown, Koreatown, and Pico-Robertson neighborhoods are among the areas within Los Angeles where we observed the highest rates of demolition of rent stabilized units (Sawtelle-Japantown listed as neighborhood with most Ellis Act evictions since 2007). We found various media and blog posts describing how demolition of these units impacted specific communities—including communities of color and low- and moderate-income households. *See e.g.*, Cameron Kiszla, *AHF Sues to combat Hollywood 'gentrification'*, PARK LABREA NEWS BEVERLY PRESS (Aug. 15, 2019), https://beverlypress.com/2019/08/ahf-sues-to-combat-hollywood-gentrification/ (describing a group of renters demanding anti-displacement policies in Hollywood); Ben Poston & Andrew Khouri, *More rent-controlled buildings are being demolished to make way for pricier housing*, LOS ANGELES TIMES (Apr. 2, 2016), https://www.latimes.com/local/california/la-me-apartments-demolished-20160402-story.html (describing an advocacy group suing developers because they claim that recent developments have displaced Latinx households); Bianca Barragan, *Koreatown Pushing Back Against Dense and Pricey Developments*, CURBED LA (Apr. 11, 2016) https://la.curbed.com/2016/4/11/11409194/koreatown-mobilizing-against-dense-and-pricey-developments (describing Korean advocacy groups demanding more affordable housing in new developments).

135. Deed-restricted affordable housing refers to housing that is limited to households earning incomes below Area Median Income (AMI). Units are restricted at certain percentages of AMI, and the households must income qualify to occupy those units. Low-income households typically earn less than 80 percent of AMI, very low-income households earn less than 50 percent of AMI, and extremely low-income households earn less than 30 percent of AMI. *See* CAL. DEPT. OF HOUSING & CMTY. DEV., INCOME LIMITS, *available at* http://www.hcd.ca.gov/grants-funding/income-limits/index.shtml. The units are deed-restricted because covenants are placed in the deed that bind future owners of the housing to only rent the units to eligible tenants. Demolition of deed-restricted affordable housing can be identified through the deed-restriction recorded on title. We did not identify any demolition of deed-restricted affordable housing. Determining whether "naturally occurring affordable housing" such as Single Room Occupancy (SRO) hotels will be demolished is more difficult and for this reason, our numbers are likely underinclusive. By "naturally occurring affordable housing," we refer to housing that is affordable without government regulatory intervention.

136. As noted above, deed-restricted affordable housing has very specific income requirements and is limited to U.S. citizens and eligible immigrants (Permanent Residents, refugee and asylum seekers). *See* CAL. DEPT. OF HOUS. & CMTY. DEV., INCOME LIMITS, *supra* note 132.

far more units than they are demolishing, which shows that new development is much more dense than existing development. The former may serve climate goals, but the latter may present issues for fair housing policy.

Table 8: Rates of Prior Use Citywide as a Percentage of Total Approved Projects

City	% Prior Residential Use	% Prior Commercial Use	% Vacant Prior Use	% Prior Use Unknown
Fresno	14.1	7.8	71.9	6.3
Long Beach	0.0	29.6	48.1	22.2
Los Angeles	53.4	23.8	19.1	3.7
Oakland	13.2	40.4	41.2	5.1
Pasadena	68.4	15.8	13.2	2.6
Sacramento	11.8	26.5	61.8	0.0
San Diego	31.3	28.3	39.4	1.0
San Francisco	2.6	81.2	15.4	0.9
San Jose	34.6	42.0	21.0	2.5
Santa Monica	38.1	38.1	23.8	0.0

Because Los Angeles has a rent stabilization ordinance,[137] the demolition of existing residential units also risks loss of rent-stabilized units. Table 9 indicates that at least 68 percent of demolished units were rent stabilized or Ellis Act evictions (indicating rent stabilized units).[138] Again, while deed-restricted

137. Los Angeles's Rent Stabilization Ordinance (RSO) regulates the city's allowable annual rent increases, tenant evictions, and relocation benefits for covered housing stock. The RSO covers most multifamily units or two or more single-family dwelling units on the same parcel that were built on or before October 1, 1978. *See* L.A. Mun. Code § 151.28. Los Angeles has mapped all its rent stabilized units in its Zimas portal. *See* City of Los Angeles, *RSO Property Search*, https://hcidla.lacity.org/RSO-Property-Search. There are several important limitations to the Zimas data. First, Zimas RSO data are classified on a parcel basis. Where available, we searched all the parcels associated with a project to determine which parcels were subject to the RSO. Because of subsequent parcel consolidation, it was not always possible to verify each parcel at the time the project was proposed. Second, Zimas classifies a parcel as subject to the RSO even if not all the units on the parcel are subject to the RSO. We cross-referenced with building permit data where possible to determine the total number of units subject to the RSO on the parcel; however, building permit data was not always available. Finally, our conversations with city staff revealed that many of the RSO units that were withdrawn prior to 2016 but did not construct replacement units are not classified as an RSO property in Zimas, and therefore are not covered in the city system. For these reasons, we look to Ellis Act evictions to help approximate the number of pre-2016 units, although it is possible the number of these evictions might overstate the total demolition of rent-stabilized units pre-2016.

138. We emphasize that these numbers are likely conservative. Accurate unit information was not always available. There were fourteen projects total that had an unknown number of existing residential units, and at least four of those proposed developments did demolish rent-stabilized housing, but because we did not have data on the number of rent-stabilized units demolished, we could not include them in our calculations. We also had one proposed development with thirty-three rent-stabilized units, and one

affordable housing and rent-controlled housing are not interchangeable, citywide, the total number of demolished rent-stabilized or Ellis Act eviction units is higher than the number of approved new deed-restricted affordable units.

Table 9: Rates of Residential Demolitions in Los Angeles

	HQTA	Non-HQTA	City Wide
Rent Stabilized Units			
Demolished	651	342	993
Total Replacement Market-Rate Units	2,545	775	3,320
Total Replacement Affordable Units	261	48	309
Ellis Act Units			
Demolished	485	164	649
Total Replacement Market-Rate Units	2,168	561	2,729
Total Replacement Affordable Units	215	25	240
Units that Were Not Rent Stabilized or Ellis Acted			
Demolished	533	249	782
Total Replacement Market-Rate Units	3,997	1,557	5,554
Total Replacement Affordable Units	709	67	776
Total Residential Units			
All Housing Units Demolished	1,669	755	2,424
Ellis Act or Rent Stabilized Demolished	1,136	506	1,642
Percentage Ellis Act or Rent Stabilized	68.06%	67.01%	67.74%
Total Replacement Market-Rate Units	8,710	2,893	11,603
Total Replacement Affordable Units	1,185	140	1,325

[*]Rent Stabilized Units calculations include all units that the City of Los Angeles identified as rent stabilized, some of which may have been evicted under the Ellis Act. Ellis Act Units calculations include only units that were evicted under the Ellis Act but not listed as rent stabilized on the City's data tracker.

In Los Angeles, 51.89 percent of all rent stabilized and Ellis Act residential demolitions are also located in formerly Class C neighborhoods, and another 18.21 percent of rent stabilized and Ellis Act residential demolitions are located in formerly Class D neighborhoods.[139] Given that less than 20 percent of Los

proposed development with two rent-stabilized units, as prior use, but it is unclear if entitlement included demolition of these units. That means that the total counts of rent-stabilized housing demolished is underinclusive.

139. We used the geocoding for all proposed developments that had both rent stabilization and demolition characteristics, or Ellis Act eviction only (for developments that did not have rent stabilization information included in the planning department tracking system), and demolition characteristics, and then matched the geocoding to the HOLC classifications city-wide to determine calculations of demolition

Angeles's land area was redlined as Class C or D citywide, this indicates that demolitions of rent stabilized housing are disproportionately located in formerly Class C and D neighborhoods, signaling most demolition occurs in areas with a history of disinvestment.[140] As noted, however, while redlining provides critical information about historical disinvestment and discriminatory land use policy, it does not provide complete information about current neighborhood conditions. Some neighborhoods that were once redlined in Los Angeles, for example, are now higher opportunity areas under the state's TCAC analysis.

Using TCAC maps, we found that, in total, new housing would demolish 191 rent-stabilized units in Low Resource or High Segregation & Poverty neighborhoods; nearly all of these units are also in formerly redlined (primarily Class C or D, with some in adjacent Industrial) areas. The new development would provide 1,048 market rate units and 166 affordable units. Demolition of rent-stabilized units is highest in Los Angeles's Highest or High Resource neighborhoods, totaling 1,097 rent-stabilized units. The replacement rate with affordability is low, overall, at 301 deed-restricted affordable units. 64 percent of these demolished units in higher opportunity areas are also formerly redlined areas (Class C or D) and would be replaced with only 166 units of deed-restricted housing. This indicates the approved development will not likely promote income integration in these neighborhoods. Media reports also indicate that high rates of demolition of rent stabilized housing in formerly redlined but higher opportunity neighborhoods, such as Sawtelle-Japantown, Hollywood, and Koreatown, adversely impacts specific communities of color.[141]

The loss of rent-stabilized units and low affordable replacement rates is likely the product of how state density bonus law and local law operated in tandem. Los Angeles was unique among our cities in its usage of the density bonus (a state provision that allows denser development in return for provision of affordable housing)[142]—over 40 percent of projects received a density bonus. Prior to 2015, state density bonus law did not require one-to-one replacement of demolished rent-stabilized units with affordable units.[143] In addition, the city's

of rent stabilized housing in relationship to HOLC classifications. [Hereinafter description of methodology].

140. HOLC classifications do not cover all of Los Angeles's land area. The jurisdiction's boundaries changed after HOLC classifications. In fact, 69.35 percent of Los Angeles land area has no historical HOLC classification. The combined total of formerly Class C and D land area equals approximately 19.22 percent of Los Angeles's land area.

141. *See* description of methodology, *supra* note 139.

142. *See* Cal. Gov't Code §§ 65915–65918. Specifically, the incentive operates by allowing the developer a "density increase over the maximum allowable gross residential density" where the proposed new development provides for senior or affordable housing. *See id.* § 65915(f). It also operates to provide waivers from specific development standards (detailed within the local or state law—often referred to as "on menu") in exchange for the developer providing specific types (and percentages) of senior housing or affordable housing.

143. As of January 1, 2015, state law prohibits the use of the density bonus with the demolition of rent controlled or other units with affordability restrictions, unless the developer complies with one-to-one replacement obligations. *See* A.B. 2222, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

Rent Stabilization Ordinance did not require one-to-one replacement for demolition of rent-stabilized units. Before June 4, 2017, the developer had to designate as affordable the *lower* of (1) the total number of rent-controlled units that were eliminated or (2) 20 percent of the newly constructed units.[144] This meant that unless the developer was constructing five times as many new units as demolished rent-controlled units, one-for-one replacement was not required. Local zoning facilitated use of the state density bonus, but the state density bonus law did not adequately protect vulnerable housing stock during half of our study years. Local law also provided no additional protections.

D. Local Zoning and Planning Choices Likely Lead to Inequitable Outcomes

Cities direct where dense housing supply is located when they limit permissive density to specific neighborhoods, and those choices do not appear related to state-led TOD policy. Still, these local choices may lead to inequitable outcomes. Cities like San Francisco and Oakland illustrate how the ability to restrict permissive zoning and specific planning to certain neighborhoods directs the flow of private capital almost exclusively into neighborhoods that may be vulnerable to gentrification and displacement.[145] The proposed developments in these cities include very little affordable development. If TOD is limited to a handful of neighborhoods, density is restricted in the rest of the city, and too little transit-accessible housing exists at a regional level, then high-income residents in search of TOD near their jobs will necessarily go where TOD housing is built. Without policy intervention, low- and moderate-income households may not be able to compete with new, high-income residents who can afford to pay more for housing.

By contrast, our Los Angeles data indicates that the transition from sprawl to TOD risks physical displacement when there is insufficient commercial or vacant land zoned for residential use (as is the case in many California communities). Demolition of rent-stabilized housing indicates likely physical displacement of tenants. The full scale of risk is also difficult to determine, as we cannot assess whether residential demolition includes low-cost, low-density rental housing that is not legally protected (such as low-cost single-family rentals on a single lot—a likely scenario in parts of Los Angeles).[146]

144. *See* L.A. Mun. Code § 151.28 (B), prior to Ord. No. 184, 873. Current law requires that the developer replace the greater of the two.

145. In San Francisco, limiting permissive density to formerly category D or industrial neighborhoods is the most pronounced, as high-quality transit exists throughout high-opportunity—but low-density—neighborhoods. Even though San Francisco employs an inclusionary zoning ordinance, the benefits of possible affordable housing are likely curtailed by how the city limits the availability of appropriately zoned land (in terms of density and use) that would allow for affordable development.

146. At present, we can only partially identify these risks because we can only identify the demolition of rent-stabilized housing—which, under state law, is necessarily housing built before 1995 that is multi-family or more than one single-family house on a single lot, *see* Cal. Civ. Code § 1954.52.

III. EQUITABLE INFILL DEVELOPMENT REQUIRES STATE INTERVENTION

Discriminatory land use controls and housing policy from the twentieth century continue to shape residential development patterns in California's high-cost cities.[147] For cities with substantial access to transit, the primary legal driver perpetuating harms that advocates today liken to urban renewal is most likely exclusionary zoning at a neighborhood level. Exclusionary zoning within cities reduces the land available for dense TOD housing, and in turn directly limits affordable TOD to the same areas where cities have allowed dense residential or mixed-use development in the past.

Our results suggest that the development patterns in our study cities reflect exclusionary zoning at a neighborhood level that is not new. It is also not likely the consequence of environmental law and planning incentives created by state-level infill TOD policy. Some of our study cities appear to have made choices decades ago about where dense housing may go. In some cases, these decisions were examples of blatantly racist and discriminatory land use policy, often reinforced through subsequent redevelopment and blight removal initiatives that continue to restrict dense housing to specific neighborhoods. These local choices heavily influence whether new housing or transitioning from sprawl to TOD leads to displacement.

A. The Current Balance Between Local and State Control Over Land Use Requires Change

We provide empirical evidence from high-cost cities that the current land use regime and scope of local control risks perpetuating spatial inequality. As exclusionary zoning is the likely problem, state-led TOD policy may have a role to play in correcting inequities going forward. To start, policy addressing climate change must acknowledge existing equity tradeoffs within the current land use regime. These tradeoffs arise both from local zoning and planning and from state preemption of other related law that affects the ability of cities to preserve and produce affordable housing.

Specifically, an uneven balance between localism and state preemption contributes to inequitable outcomes. On the one hand, our study cities continue to have broad authority to use local planning and zoning to dictate the form, location, and pace of urban development, which enables them to concentrate development within certain areas with inequitable outcomes. On the other hand, state law prevents our study cities from easily preserving or producing affordable housing. Cities cannot consider rent control or expand rent stabilization to whole

147. This is consistent with existing theoretical discussions about the role of past discriminatory land use law and policy and present-day residential segregation patterns. There is little debate about the relationship between past land use law and policy and today's metropolitan fragmentation, sprawl, segregation, and spatial inequality. *See* powell, *supra* note 27; *Redlining and Gentrification: The Legacy of Redlining*, *supra* note 76 (video on strong correlation between past redlining and current demographic changes/displacement indicators).

classes of housing stock—such as single family rental dwellings.[148] Municipal ability to finance and subsidize affordable housing is limited—California cities no longer have the power to use tax increment financing through redevelopment to support affordable housing or required infrastructure to support increasing housing supply broadly.[149] This limitation encourages fiscalization of land use that may be particularly important for cities in California, where Proposition 13 also severely limits a city's ability to raise revenue, build infrastructure, and subsidize affordable housing.[150] Fiscalization can sometimes, but not always, explain low-density zoning in residential neighborhoods. For instance, one possible driver for low-density residential zoning in parts of Los Angeles could be the need to force developers into negotiations over the terms of rezoning. These negotiations can be used to extract fees, payments, and more affordable development.[151]

148. *See* Cal. Civ. Code § 1954.52 ("Costa Hawkins Act"). We refer to rent stabilization, as distinguishable from rent control, because Costa Hawkins preempts ordinances that would impose vacancy control, the ability of cities to regulate rental increases for new tenants. Costa Hawkins allows cities to impose regulation on rental increases for existing tenants, but once the tenant moves out, the landlord may reset the rent to a market rate, what is called "vacancy decontrol." The recently enacted A.B. 1482 does not modify the limitations on rent control although it does impose rent stabilization (a rent cap) and just-cause eviction standards statewide. A.B. 1482, 2019-2020 Leg., Reg. Sess. (Cal. 2019).

149. The Community Redevelopment Act gave local governments the authority to declare areas as blighted and in need of urban renewal, which enabled the city or county to distribute most of the growth in property tax revenue for the project area to the relevant Redevelopment Agencies as tax-increment revenues. *See* Cal. Health & Safety Code §§ 33020 et seq. In 2011, the California legislature dissolved the Redevelopment Agencies. *See* A.B. X126, 2011-2012 Leg., Reg. Sess. (Cal. 2011). Dissolution has severely constricted local governments' ability to finance affordable housing. *See* Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* 7 (Working Paper No. EMAD-2014-01, 2014) https://www.huduser.gov/portal/publications/Redevelopment_WhitePaper.pdf (estimating a statewide average annual loss of 4,500 to 6,500 new affordable units).

150. *See e.g.*, Jonathan Schwartz, Note, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV. 183 (1997); *see also*, CALTHORPE & FULTON, *supra* note 94, at 85–86 (noting the importance of fiscal zoning); William A. Fischel, *The Evolution of Zoning Since the 1980s: The Persistence of Localism*, 259, 264–65 in PROPERTY IN LAND AND OTHER RESOURCES (Daniel H. Cole & Elinor Ostrom eds., 2012) (stating that exclusionary zoning is a response to fiscal pressures on publicly provided services and public goods that are created when low-income residents move into jurisdictions). Proposition 13 is an amendment to the California state constitution that requires super-majority voter approval for many tax increases, and also sets a fixed and unalterable cap on property taxes.

151. *See, e.g.*, BRIAN BLAESSER, DISCRETIONARY LAND USE CONTROLS: AVOIDING INVITATIONS TO ABUSE OF DISCRETION 5–6 (6th ed. 2003) (describing how local governments convert as of right "permitted" uses to conditional uses in order to gain leverage over developers); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 427–28 (1977) (arguing local governments use discretionary approval processes that are waiver to unrealistically strict zoning standards to get "maximum leverage in the subsequent bargaining" with developers); FRED E. CASE & JEFFREY GALE, ENVIRONMENTAL IMPACT REVIEW AND HOUSING: PROCESS LESSONS FROM THE CALIFORNIA EXPERIENCE 90 (1982) (identifying "extras" developers give up in Los Angeles to get discretionary approvals, such as setbacks, fence construction, landscaping, installation of infrastructure, easement provision); C.J. Gabbe, *How Do Developers Respond to Land Use Regulations? An Analysis of New Housing in Los Angeles*, 28 HOUS. POL'Y DEBATE 411, 423 (2018) (quoting interviews with developers that find "whereas decision-makers employ discretion at different points in the process, proven pathways to approval are highly valued by developers, who are often willing to provide public benefits in

This is certainly the case in Santa Monica, which structures its zoning code to initiate these negotiations even outside the rezoning process. Until recently, to unlock the full density potential of a mixed-use zone in Santa Monica, a developer had to enter into a development agreement[152] with the city, with the developer providing various community benefits such as augmented inclusionary housing requirements, the provision of childcare or art facilities, transportation improvements, and funding for libraries or other civic institutions.[153] But Santa Monica's approach to community benefits may also typify what some have styled as exclusionary use of inclusionary zoning[154] to block new development generally. Since the 2017 adoption of a 30 percent inclusionary requirement for certain projects in its Downtown Specific Plan, two years later only one project would trigger the new affordability requirement.[155]

More permissive zoning that is equitably distributed coupled with financially feasible inclusionary requirements might be a better approach to achieving equitable infill development, generally. Several cities, Santa Monica included, still zone higher opportunity HQTA for single family homes only. This does not advance climate policy or spatial equity. Consider the example of San Francisco. San Francisco may have entitled more affordable units (as a percentage of all units entitled) than many other cities—but only 2 percent of those units will be built in higher opportunity areas, and 60 percent will be built in low resource and high segregation and poverty areas. It is possible that San Francisco needs even more affordable housing in lower resource neighborhoods where most of the units approved in our study are sited. But it is also true that

exchange for allowances and/or increased certainty with development approvals."); Lindell L. Marsh, *Introduction*, in DEVELOPMENT AGREEMENTS: PRACTICE, POLICY, AND PROSPECTS 1, 3 (Douglas R. Porter & Lindell L. Marsh eds., 1989) (noting that development agreements are primarily used to give assurances to developers about changes in regulatory rules, and also from public perspective can create incentives for larger projects and transfer of benefits to public); Richard Cowart, *Experience, Motivations, and Issues*, in DEVELOPMENT AGREEMENTS: PRACTICE, POLICY, AND PROSPECTS 9, 30 (Douglas R. Porter & Lindell L. Marsh eds., 1989) (noting major driver of development agreements is desire to get fees or land dedication from developer).

152. A development agreement between the developer and local government freezes the zoning rules specified in the agreement. This process includes a requirement for initial authorization by a local law, public notice and hearing requirements before any agreement is adopted, periodic review, and subsequent modification and termination of such agreements. Cal. Gov't Code §§ 65864–65869.5 (2013).

153. *See* City of Santa Monica Land Use and Circulation Element §§ 3.2-6, 3.2-3 (2017). In December 2012, Santa Monica had 26 pending development agreements. *See* Memo from David Martin, to Santa Monica City Council (Dec. 11, 2012), *available at* https://www.smgov.net/departments/council/agendas/2012/20121211/201212118-B.htm. Santa Monica has since revised its zoning code to eliminate the Development Agreement requirement in many parts of the city; however, unlocking more density still requires community benefits and an additional level of discretionary review. *See* Santa Monica Mun. Code § 9.23.030.

154. Inclusionary zoning ordinances require a developer to either make a certain percentage of units within the development affordable to low- or moderate-income households or pay a fee to the city in lieu of constructing the units. *See* Vicki Been, *'Exit' As a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine*, 91 COLUM. L. REV. 473, 474–83 (1991).

155. *See* CITY OF SANTA MONICA, DOWNTOWN COMMUNITY PLAN MONITORING REPORT 14 (Mar. 22, 2019), https://www.smgov.net/WorkArea/DownloadAsset.aspx?id=53687104707.

the current distribution of affordable units is unlikely to promote income integration. Increasing permissive density in the higher opportunity HQTA, combined with the city's existing inclusionary ordinance, might be more effective at addressing that issue.

The challenge we observe is insufficient political will at the local level to redress inequality. Our research indicates that many of these local constraints on base zoning have been in place for decades. Local electorates may want to fund affordable development[156] and even homeless housing,[157] but that does not mean that these same voters will welcome building either in their own neighborhoods.[158] Local politicians may propose initiatives to address displacement, but that does not mean cities can effectively fund these initiatives. Not all local officials will risk reelection to advance economic and racial residential integration through upzoning and project approvals within high opportunity areas.[159] While some of our study cities' mayors have welcomed state intervention like S.B. 50, the true locus of local land use power—the city council—frequently opposes such intervention.[160]

B. State Intervention in Zoning Should be Coupled with Consideration of Other Areas of Law That Impact Local Housing Policy

Two of our Bay Area case studies illustrate that state intervention in zoning may be necessary but that it must be mindful of local contexts. Consider San Francisco: The city has embraced inclusionary zoning, rent stabilization, and

156. *See* Marisol Medina-Cadena & Anna Sturla, *S.F. Supervisors Announce Plans for $500 Million Affordable Housing Bond*, KQED (May 8, 2019), https://www.kqed.org/news/11742614/s-f-supervisors-announce-plans-for-500-million-affordable-housing-bond; Steven Sharp, *L.A. County Supervisors Approve $63 Million to Fund Affordable Housing Developments*, URBANIZE (Feb. 22, 2019), https://urbanize.la/post/la-county-supervisors-approve-63-million-fund-affordable-housing-developments.

157. *See* Los Angeles Mayor Eric Garcetti, *Tracking HHH*, https://www.lamayor.org/HomelessnessTrackingHHH.

158. Gale Holland, *Los Angeles spends big to end homelessness, but the crisis drags on*, L.A. TIMES (Dec. 28, 2018, 6:50 PM), https://www.latimes.com/local/lanow/la-na-yir-homeless-yearend-20181228-story.html.

159. *See* Rachel Swan, *Local leaders find that supporting Bay Area housing plan spurs anger at home*, S.F. CHRON. (Jan. 31, 2019), https://www.sfchronicle.com/bayarea/article/Local-leaders-find-that-supporting-Bay-Area-13575312.php?psid=ekxFJ.

160. The mayors of San Francisco, Oakland, and San Jose all endorsed S.B. 50. Laura Bliss, *The Political Battle Over California's Suburban Dream*, CITY LAB (Apr. 5, 2019), https://www.citylab.com/equity/2019/04/california-affordable-housing-bill-S.B.50-single-family-zoning/586519/. The San Francisco Board of Supervisors opposed S.B. 50. *See* Chronicle Editorial Board, *Editorial: With anti-housing vote, SF supervisors prepare to join California's other exclusive enclaves*, S.F. CHRON. (Apr. 8, 2019), https://www.sfchronicle.com/opinion/editorials/article/Editorial-With-anti-housing-vote-SF-supervisors-13745885.php. While the mayor of Los Angeles did not take an official stance, he did not sign the City Council's resolution opposing the legislation. *See* Jenna Chandler, *California transit density proposal S.B. 50 on pause until 2020*, CURBED LA (May 16, 2019), https://la.curbed.com/2019/5/16/18628217/senate-bill-50-status-postponed. After a lengthy debate on the Senate floor, S.B. 50 failed to advance to the Assembly. *See* Liam Dillon, *California bill to dramatically increase home building fails for the third year in a row*, L.A. TIMES (Jan. 30, 2020). Recently proposed S.B. 902 would authorize up to ten units in certain job and transit rich zones. S.B. 902, 2019-2020 Leg., Reg. Sess. (Cal. 2020).

tenant protections. After the dissolution of Redevelopment Agencies, San Francisco created one of the only independent successor agencies that selects, entitles, and funds projects in former redevelopment areas.[161] In these ways, San Francisco advances progressive affordable housing policy.

But San Francisco—the city with the highest amount of HQTA among our study cities—still zones some of its higher opportunity HQTA for single family homes only. This limits access to these neighborhoods and the amount of land area, overall, available for affordable development; this may enable persistent income segregation.[162] Also thwarting the equity goals embedded in the City's progressive affordable housing policies is the city charter's discretionary permit provision which means that all land use projects can be subject to discretionary review, regardless of whether those projects are consistent with base zoning.[163] Eliminating this provision within the charter would not directly increase base zoning density in higher opportunity areas, but it would allow a range of affordable-development projects that do comply with base zoning to avoid discretionary review. This would be meaningful within a city that also has the lengthiest approval timelines.[164]

San Francisco Mayor London Breed called for reform of the city's discretionary permit provision in the city charter,[165] specifically for affordable development. Given that San Francisco had the longest median entitlement timeline within our set of study cities,[166] moving any category of projects into a ministerial process would be meaningful.[167] San Francisco is also the only one of our study cities that does not have a blanket discretionary review requirement like design review or site plan review outside of its city charter. Reforming the charter provision could move a substantial portion of projects into a ministerial

161. O'Neill et al., *supra* note 20, at 42.

162. *See* Jessica Trounstine, *The Geography of Inequality: How Land Use Regulation Produces Segregation*, 114 AM. POL. SCI. R. 443–55 (2020). *See also* Stephen Menendian et al., *Racial Segregation in the San Francisco Bay Area, Part 5: Remedies, Solutions, and Targets*, OTHERING & BELONGING INST. https://belonging.berkeley.edu/racial-segregation-san-francisco-bay-area-part-5 (finding relationships between single-family zoning and persistent segregation).

163. *See* O'Neill et al., *supra* note 20, at 10–11, 49. Cities impose discretionary review when the proposed project would not comply with the applicable zoning ordinance, such as an exemption from the zoning ordinance (variance), a request to zone the project site differently (rezoning), or to change or update the General Plan. But most of our study cities also impose discretionary design review or site plan review when a proposed project is consistent with the underlying base zoning district's use and development controls.

164. We found that among twenty jurisdictions, the City of San Francisco's median timeframe to approval was over two years, and significantly longer than every other jurisdiction within our study. *See* O'Neill et al, CARB Interim Report, *supra* note 105.

165. Press Release, San Francisco Office of the Mayor, Mayor London Breed Introduces Charter Amendment to Build Affordable and Teacher Housing Projects Faster (Apr. 24, 2019) *available at* https://sfmayor.org/article/mayor-london-breed-introduces-charter-amendment-build-affordable-and-teacher-housing.

166. *See* O'Neill et al, CARB Interim Report, *supra* note 105.

167. Our findings also indicate dense development appeared a bit more equitably distributed within the only city to have a ministerial process (despite limited permissive zoning)—Los Angeles—suggesting another potential benefit of reducing discretionary review.

process. But even though this charter reform would not disrupt the current distribution of permissive zoning across the city, county supervisors still pushed back.[168] Reforming San Francisco's discretionary permit process demands a charter amendment—and a popular vote—so any change along these lines presents a massive political hurdle. Referenda in San Francisco tend to control growth rather than enable it.[169] The fact that San Francisco cannot enact a straightforward process reform exemplifies the problem and power of local politics and highlights how state intervention in local land use control is desperately needed to address spatial inequality in this city.

Across the San Francisco Bay sits Oakland. It has very little higher opportunity HQTA. Permissive zoning in Oakland's HQTA is primarily limited to Downtown Oakland and nearby West Oakland. Transit access found in Downtown and West Oakland comes from the remaking of the social and physical landscape of what was "the heart of Oakland's expanding African American community"[170] because the government employed eminent domain to raze West Oakland homes to foster economic revival of the downtown area and to support a highway system and Bay Area Rapid Transit (BART).[171] The history of West Oakland is one of coordinated policy that led to severe disinvestment and neighborhood decline for decades.[172]

Past discriminatory land use policy reduced the comparative value of land within West Oakland neighborhoods for several decades. More recent local zoning and planning infused some of West Oakland's formerly Industrial

168. *See* Randy Shaw, *As Housing Crisis Worsens, SF Supervisors Play Politics*, BEYOND CHRON (June 25, 2019), http://beyondchron.org/as-housing-crisis-worsens-sf-supervisors-play-politics/.

169. *See* Richard Hu, *To Grow or Control, That is the Question: San Francisco's Planning Transformation in the 1980s and 1990s*, 11 J. PLAN. HIST. 141, 142–44, 152 (2012) (describing how initiatives drove much of the anti-growth rezoning in San Francisco). San Francisco's political culture of using initiatives to enact anti-growth zoning and process is not unique in California. *See* Jessie Agatstein, *The Suburbs' Fair Share: How California's Housing Element Law (and Facebook) Could Set a Housing Production Floor*, REAL ESTATE L. J. (forthcoming Apr. 2015) *available at* https://ssrn.com/abstract=2592020 or http://dx.doi.org/10.2139/ssrn.2592020 (describing how the referendum process killed a major senior housing project in Palo Alto and, more generally, identifying the importance of referendums as obstacles to development); Kenneth A. Stahl, *The Artifice of Local Growth Politics: At-Large Elections, Ballot-Box Zoning, and Judicial Review*, 94 MARQUETTE L. REV. 1, 29 (2010) (noting importance of referenda to control growth in Southern California when middle class neighborhoods use the tool); Andrew H. Whittemore, *Requiem for a Growth Machine: Homeowner Preeminence in 1980s Los Angeles*, 11 J. PLAN. HIST. 124, 133 (2012) (noting use of referenda to constrain growth in Los Angeles).

170. ROBERT O. SELF, AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND 137, 141 (2003).

171. *Id.* at 141, 147–55 (detailing the destruction of the Seventh Street commercial and business corridor that was once a vibrant African American community to make way for BART, a regional transportation rail intended to connect downtown Oakland and San Francisco with suburban Alameda and Contra Costa County communities).

172. *Id.* at 157 (observing that the "institutional and political isolation of African Americans had come to have spatial consequences in West and North Oakland, as redevelopment and aggressive policing disrupted life and cast city government as a hostile, invasive force. Coupled with the exodus of more and more whites, they rendered these flatland neighborhoods nearly unrecognizable to generation who had lived there in the 1930s and 1940s. . . . ").

neighborhoods with permissive residential density.[173] This directs market-rate development into these neighborhoods. These neighborhoods had enough vacant and formerly Industrial areas to support new housing without demolition, which would suggest the possibility of economic and racial integration. But there are few indications that West Oakland neighborhoods are on track to become integrated.[174] This suggests that local zoning and planning fails to interrupt the impacts of past land use policy within West Oakland, which also invites the important question of whether state action in local zoning, such as potentially mandating a ministerial process for dense mixed-income housing throughout Oakland's neighborhoods with transit access, might be better.

Oakland is also a city where substantial low-density HQTA citywide is comprised of flatland low-income areas that were also once categorized as Class C or D and today are lower-opportunity neighborhoods. Some of these neighborhoods are home to a considerable portion of the city's remaining African American community and low-income Latinx and Asian families, not affluent white households.[175] Notably, state law preempted the city's past efforts to slow the massive foreclosure tide[176] within these neighborhoods—a local effort that

173. The Prescott Neighborhood example illustrates this type of planning. *See* Table 6 *supra*.

174. *See* Stephen Menendian & Samir Gambhir, *Racial Segregation in the San Francisco Bay Area Part I*, OTHERING & BELONGING INST. (Oct. 29, 2018), https://haasinstitute.berkeley.edu/racial-segregation-san-francisco-bay-area (noting that "Although the city of Oakland is exceptionally diverse (27 percent white, 15 percent Asian, 28 percent Latino, 23 percent Black), it contains some of the most segregated neighborhoods in the Bay Area. As the map above illustrates, African Americans in particular are racially segregated in the eastern flatlands of Oakland and West Oakland, while the Oakland hills are disproportionately white."). Local schools in the area are also closing. *See* Ali Tadayon, *Oakland Unified scrambles to identify as many as 24 schools that could be closed in next 5 years*, E. BAY TIMES (Jan. 8, 2019), https://www.eastbaytimes.com/2019/01/08/oakland-unified-scrambles-to-identify-as-many-as-24-schools-that-could-be-closed-in-next-5-years/. Some researchers have found that gentrification may not improve local public schools and may instead create marginal harm. *See* Micere Keels et al., *The Effects of Gentrification on Neighborhood Public Schools*, 12 CITY & CMTY. 238 (2013) (finding that gentrification in Chicago did not yield an aggregate benefit to local public schools, and that students may experience marginal harm as the neighborhood skews towards higher-income residents).

175. *See* Moira O'Neill, *Increasing community engagement in collective impact approaches to advance social change, Community Development*, 51 CMTY. DEV. 17, 25 (2020); Kalima Rose & Margarette Lin, *A roadmap to equity: Housing solutions for Oakland, California*. POLICYLINK (2015), https://www.policylink.org/resources-tools/roadmap-toward-equity (identifying neighborhoods and demographics impacted by foreclosure crisis); *see also* Jovanna Rosen et al., *The Important Role of Government in Comprehensive Community Initiatives: A Case Study Analysis of the Building Healthy Communities Initiative*, J. PLAN. EDUC. & RES., 4–6 (first published Dec. 2018) *available at* https://doi.org/10.1177/0739456X18814296.

176. *See* American Financial Services v. City of Oakland, 34 Cal.4th 1239 (2005). The City of Oakland enacted an anti-predatory lending ordinance in 2001 that imposed more extensive consumer protections than the state's anti-predatory lending statute. Two notable features of the ordinance included a required certificate in the loan file demonstrating the borrower discussed the loan with a credit counselor, and potential liability for purchasers of the loan in the secondary market that violated the ordinance. The California Supreme Court, in a split decision, rejected Oakland's arguments that the legislature's silence supported a presumption against preemption and held that the local law was implicitly preempted and invalid. The dissent noted that

> . . . the Oakland City Council, in passing the ordinance in question, found that the predatory lending problem in Oakland was particularly aggravated 'because of the high number of minority and low income homeowners in Oakland, and the pressures of gentrification in

predated the Great Recession—that disproportionately impacted the city's African American and Latinx population and converted substantial housing stock into Real Estate Owned (REO) properties.[177] State law preempts Oakland's ability to extend current tenant protections to single family rental housing stock. Los Angeles provides a lesson for Oakland: Any state intervention to deregulate broadly (through upzoning and limits on discretionary review) that might advance TOD in lower opportunity HQTA without provisions to avoid displacement or provide affordability[178] risks direct displacement through eviction and then demolition. In this context, communities that have already carried the burden for the benefit of the city's and region's economic development would carry the burden of the regional need for sustainable infill development as well.

These case studies in San Francisco and Oakland together demonstrate that the solutions necessitate a careful balancing between localism and state-level control and a recognition of the interplay of multiple areas of law that touch housing. In certain contexts, such as San Francisco, where politics prevent addressing major constraints to equitable infill development of housing, state preemption of local zoning may be long overdue. In contexts such as Oakland, state intervention would need to incorporate and retain some local planning processes (likely with increased accountability measures), inclusionary zoning, and housing protections. The need to balance equity considerations and to address local context should not, however, be a pretext to abandon efforts towards state intervention in local control over land, or progress towards achieving climate goals, particularly as fires and other extreme weather events wreak havoc across the state.

CONCLUSION

California's housing policy aims to address multiple goals—among them, combating climate change and advancing fair housing goals. The data we have collected highlights two distinct challenges. First, in terms of the absolute amounts of infill development that local jurisdictions are approving, the unit numbers are too low. As an indicator of the challenge and opportunity here, changing California's current growth patterns to focus new growth in infill

> certain neighborhoods that increase property values and home equity,' which have led to a situation in which 'Oakland residents in low income areas have been perceived to be 'the house rich and the cash poor' and thus are prime targets for predatory lending practices.

Id. at 1304.

177. Real Estate Owned properties refers to real estate ownership by lenders. For maps of Oakland that provide the amount and distribution of foreclosures from 2007-2011, *see Foreclosures in Oakland, 2007-2011*, URB. STRATEGIES COUNCIL (Apr. 18, 2012), https://urbanstrategies.org/download/foreclosures-in-oakland-2007-2011/; *see also Who Owns Your Neighborhood? The Role of Investors in Post-Foreclosure Oakland*, URB. STRATEGIES COUNCIL (June 2012), https://drive.google.com/file/d/0BzpT2ZxllyQoWjV4dFo2ZG5ZTU0/view. These maps reveal how foreclosures, though they occurred citywide, were concentrated in greater numbers in neighborhoods that have historically been low-income.

178. S.B. 50 appeared to address this. S.B. 50, 2019-2020 Leg., Reg. Sess. (Cal. 2019).

locations would save at least 1.79 million metric tons of greenhouse gases annually—almost two-thirds of the total statewide emissions decrease California achieved between 2013 and 2014 alone.[179] This is important as VMT in California initially increased after a slight decline during the Great Recession and have only begun to go back down again.[180] Local discretion over land use remains a major obstacle to increasing the amount of infill housing required in California. The primary constraint in most cities appears to be density and use restrictions in zoning, although process is also important. The second challenge is that existing zoning leads to an inequitable spatial distribution of proposed development and likely inequities in terms of affordability and access to neighborhoods in proximity to transportation and jobs. When development involves demolition, the inequities—and a direct relationship to displacement—become even more pronounced.

Advancing equitable infill development in California therefore requires rapidly ramping up the scale of that development while also ensuring its equitable distribution and availability to residents of a wide range of incomes. This, in turn, requires a range of potential solutions that operate together to advance a comprehensive approach to climate mitigation policy. These could include but are not limited to: addressing the base zoning that constricts development to a limited number of neighborhoods; increasing financial support for affordable housing subsidies; expanding the availability of high-quality transit beyond existing corridors; reducing the scope of discretionary review for a wide range of projects across the city that meet criteria linked to equity goals and climate mitigation policy; and expanding tenant protections. We hope to advance debates about these solutions in future work, drawing on the data that we have collected.

179. *See* NATHANIEL DECKER ET AL., *supra* note 16, at 5.

180. *See* CALIFORNIA AIR RESOURCES BOARD, 2018 PROGRESS REPORT: CALIFORNIA'S SUSTAINABLE COMMUNITIES AND CLIMATE PROTECTION ACT 22 (2018), *available at* https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report_S.B.150_112618_02_Report.pdf; CALIFORNIA AIR RESOURCES BOARD, *Mandatory Greenhouse Gas Reporting 2018 Emissions Year Frequently Asked Questions*, *available at* https://ww3.arb.ca.gov/cc/reporting/ghg-rep/reported-data/2018mrrfaqs.pdf.

SUPPLEMENTAL TABLES

Supplemental Table 1: Entitlement Rates Across Cities 2014-2017

	2014-2017 Total Project Count [1]	2014-2017 Total Units	2014-2017 Total Afford-able Units	% of Units that are Afford-able	% of Units 2014-2017 that are Within a HQTA	Median Timeframe (Months)	Mean Time-frame (Months)
Folsom	6	1,364	12	0.88%	20.01%	14.10	14.12
Fresno	64	6,153	308	5.01%	7.12%	6.49	12.04
Inglewood	4	568	0	0.00%	97.01%	-	-
Long Beach	27	2,604	374	14.36%	98.46%	7.59	10.60
Los Angeles	1,081	66,058	4,771	7.22%	81.38%	9.66	13.16
Mountain View	33	2,767	268	9.69%	83.63%	13.02	13.08
Oakland	136	14,399	1,073	7.45%	90.85%	5.36	8.67
Palo Alto	7	351	75	21.37%	48.72%	14.10	14.54
Pasadena	38	1,617	127	7.85%	97.71%	9.89	14.83
Redondo Beach	7	211	2	0.95%	0.00%	2.17	8.83
Redwood City	18	1,630	183	11.23%	71.53%	7.50	15.12
Sacramento	68	5,794	53	0.91%	67.60%	6.38	8.78
San Diego	176	13,957	1,284	9.20%	80.35%	13.87	21.08
San Francisco	140	14,269	2,168	15.19%	100.00%	26.56	31.44
San Jose	81	14,601	734	5.03%	78.04%	17.69	30.99
Santa Monica	21	1,447	190	13.13%	99.17%	16.45	34.77

We used 30.42 to convert from days to months in our timeframe calculations and calculate median and mean timeframes using observations of discretionary processes (entitlement) only that had complete timeframe information.

Supplemental Table 2: Rate of Entitlement Housing Units 2014-2017 Standardized

	2014-2017 Total Project Count	2014-2017 Total Units	Units/1000 people	Units/square mile[2]	% Increase Total Housing Stock[3]	% of Units that are Deed-Restricted
Folsom	6	1,364	18.60	45.29	5.21%	0.88%
Fresno	64	6,153	12.16	53.04	3.53%	5.01%
Inglewood	4	568	5.11	62.49	1.47%	0.00%
Long Beach	27	2,604	5.56	51.78	1.48%	14.36%
Los Angeles	1,081	66,058	17.10	140.95	4.61%	7.22%
Mountain View	33	2,767	36.06	230.58	8.10%	9.69%
Oakland	136	14,399	35.79	258.09	8.43%	7.45%
Palo Alto	7	351	5.32	14.70	1.23%	21.37%
Pasadena	38	1,617	11.63	70.40	2.68%	7.85%
Redondo Beach	7	211	3.13	34.03	0.69%	0.95%
Redwood City	18	1,630	20.44	83.93	5.45%	11.23%
Sacramento	68	5,794	12.17	59.17	3.02%	0.91%
San Diego	176[5]	13,957	10.40	40.75	2.69%	9.20%
San Francisco	140	14,269	17.21	304.44	3.74%	15.19%
San Jose	81	14,601	14.80	82.71	4.52%	5.03%
Santa Monica	21	1,447	15.79	171.85	2.80%	13.13%

We calculated units/1000 people using population counts as of January 1, 2014 with American Community Survey Data (American Fact Finder, 2019). We calculated square miles with city boundary shapefiles that we pulled from city websites for all cities. We used American Community Survey Data for 2014 for Housing Stock calculations.

Supplemental Table 3: Percentage of Residential Land Uses Citywide with Zoning for All Income Levels and Single Family Only

	% Entire City Zoned for Single Family Only	Entire City Land Area Zoned for Single Family Only mi^2	% Entire City Zoned for 30 du/acre and above	Entire City Land Area Zoned for 30 du/acre mi^2
Fresno	42.33%	39.50	9.96%	4.87
Long Beach	30.84%	12.30	4.34%	1.73
Los Angeles	46.69%	189.79	11.21%	45.56
Oakland	27.83%	18.59	6.16%	4.75
Pasadena	46.86%	8.62	12.39%	2.28
Sacramento	42.89%	35.61	9.21%	7.64
San Diego	70.25%	191.61	3.19%	8.70
San Jose	24.99%	8.84	33.54%	11.86
San Francisco	44.34%	67.44	4.03%	6.13
Santa Monica	32.21%	1.93	17.72%	1.06

Supplemental Table 4: Summary of Historical Zoning Density Limitations

City Name	Date of Map /Ordinance	Findings	30 du/acre?	Source Information and Notes
Los Angeles	1925	Permitted a mix of single-family, multifamily, commercial, and accessory uses	Yes	In Los Angeles we examined the zoning of three areas: Hollywood (Census Tract 1918.20; HOLC Ungraded, D, C, and B), Koreatown (Census Tract 2132.02: HOLC D), and Downtown (Census Tracts 2063, 2079; HOLC Ungraded and near C and D). These census tracts received the bulk of entitlement in Los Angeles for 2014-2017. (Los Angeles (Calif.). (1925). Los Angeles municipal atlas: official zoning maps of the city of Los Angeles as authorized by City Council. Los Angeles.). The Los Angeles census tracts we studied were zoned for a mix of apartment and commercial uses from the 1925 zoning onward. The Hollywood Census Tract of interest (1918.20) was zoned for single-family, multiple-family, and commercial use in 1925, but recent entitlement is limited to the multiple-family and commercial areas–the single-family sections of this area remain intact today. The Koreatown Census Tract of interest (2132.02) was zoned for multifamily use from 1925 onward. The Downtown Census Tracts of interest were zoned for commercial uses in 1925. The multiple-family and commercial zones did not regulate density directly but permitted building heights and setback requirements would have allowed for thirty dwelling units per acre on most lots in the areas receiving the bulk of residential land-use entitlements for 2014-2017.
Long Beach	1941	Permitted industrial, commercial, and apartment residential uses with limited restrictions on height and bulk	Yes	We examined the zoning of the Downtown Long Beach (Census Tracts 5760.01, 5759.01, 5759.02, and 5762; HOLC Commercial and C), which received the bulk of residential land-use entitlements for 2014-2017. (Long Beach (Calif.). (1941). Ordinance no. C-390: The zoning ordinance: adopted April 7, 1925: as amended to July 1, 1941. Long Beach: City of Long Beach.). The Long Beach 1941 Ordinance and Zoning Maps did not restrict height or bulk in the Downtown area. The citywide height limit was 180 feet, with increased allowable height of

				three feet for every one foot of setback thereafter. Interior lots could be covered up to 75 percent and corner lots up to 90 percent. These regulations would permit at least thirty dwelling units per acre on most lots.
Long Beach	1990	Permitted high density residential and mixed uses	Yes	Long Beach (Calif.). Zoning map index. Long Beach, Calif.: Dept. of Engineering. The 1990 Long Beach Zoning Maps illustrate Dense Multiple Residential High-Rise and Dense Mixed-Use zones for the Downtown area, as well as several planned development zones.
Oakland	1946	Permitted a mix of industrial, single-family, and multifamily uses	Yes	We analyzed the zoning of Oakland census tracts in three areas: Prescott/Clawson (Census Tract 4017; HOLC Industrial/Commercial and D), Mosswood/Temescal (Census Tract 4011; HOLC Industrial/Commercial, C, and D), and Downtown/Civic Center (Census Tracts 4013, 4028, and 4029; HOLC Industrial/Commercial, B, and C). These areas of Oakland received the bulk of residential land-use entitlements for 2014-2017. (Oakland City Planning Commission., & Oakland (Calif.). (1946). Zoning laws, Oakland, California: Ordinance 474-475 C.M.S., adopted February 5, 1935. Text of Ordinances and maps, rev. to March 31, 1946. Oakland, Calif: Tribune Press.) The Oakland 1935 Zoning Ordinances and Maps amended to 1946 do not directly regulate density but permit building heights of seventy-five to one hundred feet (which would allow for thirty dwelling units per acre on most lots) in all areas we studied except for northern Temescal.
Oakland	1973	Permitted a mix of heavy industrial, office, and residential uses	Yes	Oakland (Calif.). (1973). Oakland planning code: Zoning maps. Oakland, Calif.
Oakland	1980	Permitted a mix of industrial, medium- to high-density residential, and commercial uses	Yes	Oakland (Calif.). (1980). Oakland policy plan, City of Oakland: Adopted October 24, 1972, amended through September, 1980. Oakland, Calif.: Oakland City Council.
Pasadena	1922	Permitted dense residential and mixed uses	Yes	We examined the zoning of the Downtown area of Pasadena (Census Tracts 4619.01, 4622.01, and 4623.01; HOLC Commercial and C), which received the bulk of residential

				land-use entitlements for 2014-2017. (Pasadena (Calif.)., RTKL Associates., Crawford, Multari & Clark Associates., & Moore Iacofano Goltsman (Firm). (2000). Zone Map of Pasadena, California, Ordinance No. 1982, In Effect May 1, 1922 in Central District specific plan. Pasadena, Calif.: City of Pasadena. The 1922 Pasadena Zone Map allowed for residential uses with maximum heights of seventy-five to 110 feet in the Downtown area, which would translate to permissive density of at least thirty dwelling units per acre on most lots.
San Francisco	1921	Permitted industrial and multifamily uses	No	In San Francisco, we analyzed zoning in three areas: SoMa (Census Tracts 178.02 and 615; HOLC Commercial), the Mission (Census Tract 177; HOLC Commercial), and Potrero Hill/Mission Bay (Census Tracts 226 and 607; HOLC Commercial). These areas of San Francisco received the bulk of residential land-use entitlements for 2014-2017. (San Francisco (Calif.). (1921). Building zone ordinance: City and county of San Francisco. San Francisco.).
San Francisco	1948	Permitted industrial and multifamily uses	No	Spangle, W. E., & San Francisco (Calif.). (1948). Comprehensive zoning ordinance for the city and county of San Francisco. San Francisco, Calif.: San Francisco City Planning Commission.
San Francisco	1962	Permitted a mix of commercial-manufacturing, industrial, and multifamily uses	Yes	San Francisco (Calif.). (1962). City Planning code, part II: Chapter II of San Francisco Municipal Code. Effective date May 2, 1960, with amendments to and including May 16, 1962. San Francisco: Board of Supervisors.
San Francisco	1990	Created new zoning districts to protect mixed-use neighborhood character	Yes	San Francisco (Calif.)., & San Francisco (Calif.). (1990). South of Market zoning controls: Proposal for adoption: a proposed ordinance of the City and County of San Francisco. San Francisco: The Dept. Exact densities are not specified in the 1990 South of Market Zoning Controls planning document, as the policy proposal stipulates further land use study is necessary to determine appropriate densities. However, the building typologies represented in the document illustrate an attempt to densify residential uses to at least thirty dwelling units per acre.
San Francisco	2004	Specified a goal of	Yes	Board of Supervisors of the City and County of San Francisco. (2004). Redevelopment Plan for the Transbay

		increasing housing supply		Redevelopment Project Area, Ordinance No. 124-05. The 2004 Transbay Redevelopment Plan policy document furthers the 1990 South of Market Zoning Controls by calling for additional increase in housing stock without enumerating exact densities. Similar to the 1990 South of Market Zoning Controls, the 2004 Transbay Redevelopment Plan illustrates a policy framework that would allow for residential uses of at least thirty dwelling units per acre.
San Francisco	2005	Eliminated maximum allowable residential densities in specific areas to create affordable housing	Yes	San Francisco Planning Department. (2005). Rincon Hill Area Plan: An Area Plan of the General Plan of the City and County of San Francisco.
San Francisco	2008	Eliminated residential density limits in areas adjacent to transit	Yes	San Francisco (Calif.)., Environmental Science Associates., Carey & Co., CHS Consulting Group., Dyett & Bhatia (Firm), Hausrath Economics Group., LCW Consulting., Seifel Consulting. (2008). Eastern neighborhoods rezoning and area plans: Final EIR. San Francisco, Calif: Planning Dept.
San Jose	1960	Permitted medium- to high-density mixed uses.	Yes, in part; 27-60 du/acre	We analyzed the zoning of San Jose census tracts in one area: Downtown (Census Tracts 5008, 5010, and 5019; HOLC Ungraded). The Downtown area of San Jose received the most residential land-use entitlements for 2014-2017. (San Jose (Calif.). (1960). San Jose general plan: Dated December 6, 1960. San Jose: City Planning Commission.).
San Jose	1961	Established a mix of business, commercial, retail, and residential districts	Yes; 60 du/acre on average	Candeub, Fleissig & Associates., Livingston and Blayney., & San Jose (Calif.). (1961). San Jose metropolitan core plan. Newark, N.J: Candeub & Fleissig