

# Revitalizing Urban Cities: Linking the Past to the Present

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## I. INTRODUCTION

Many neighborhoods in U.S. cities still have not recovered from the housing crisis that triggered the 2007–2009 recession. Urban neighborhoods throughout the country continue to exhibit characteristics of “blight” and struggle to attract commercial investments. While there is no precise definition of blight, most blighted neighborhoods have dilapidated and vacant residential and

commercial properties, have high crime rates, and lack desirable community amenities like high-quality schools or parks.<sup>1</sup> Starting in the 1940s, cities used federal funds provided by urban renewal or slum clearance plans to clear blighted neighborhoods. Though these policies often succeeded in removing blight from the neighborhood, they also destroyed intact communities, forced lower-income (and often black or Latino) residents out of their neighborhoods, and shifted the blight to other neighborhoods. Most urban renewal plans continue to focus on demolishing older, deteriorated property and recent urban revitalization efforts have led to the gentrification of cities and the displacement of lower- and middle-income residents from those cities.

This Article considers the current challenges urban cities are facing with blighted neighborhoods and urges city leaders who are developing remedies for blighted neighborhoods to avoid repeating the mistakes of the past. Part II of the Article discusses “urban blight” and explains how the term can be used to justify the destruction of lower-income, but likely sustainable, communities. Part III then shows how federal, state, and local housing and transportation policies in this country helped create and perpetuate urban ghettos for black residents.

Part IV explores the role that private actors, including banks and the fabled urban slumlords, play in creating blighted neighborhoods. Specifically, this Article discusses how high-cost and high-risk subprime loans were disproportionately made to borrowers in black and Latino neighborhoods and why these discriminatory lending policies ultimately caused the higher foreclosure rates in these communities. The Article also examines data that reveal that, after the recession, lenders failed to market abandoned homes in black and lower-income neighborhoods as aggressively as they marketed homes in white neighborhoods and that this behavior has continued to contribute to depressed home values in neighborhoods with abandoned properties.

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1. See ARTHUR D. LITTLE, INC., U.S. DEP'T OF HOUS. & URBAN DEV., H-1299, A STUDY OF PROPERTY TAXES AND URBAN BLIGHT 72-73 (1973).

Part V of the Article presents the methods cities have typically used to respond to blighted neighborhoods. From the end of the 1940s until the 1970s, most cities used federal funds provided for in “slum clearance programs” to condemn, then destroy, decaying, vacant, or abandoned residences and commercial buildings in lower-income neighborhoods. Cities continue to implement urban renewal policies and rely on those policies to destroy deteriorated buildings, *especially* if the buildings are in neighborhoods that are near the city’s central business district.

The Article ends by urging policymakers to remember how blighted neighborhoods are created and maintained and how lower-income residents are often displaced and economically harmed when the policymakers implement policies to remove blighted conditions in their cities. Because lower- and middle-income residents are generally the ones who are harmed the most when cities destroy decaying residences, the Article specifically urges cities to include affordable and innovative housing solutions like land trusts in their renewal plans and to decrease the number of lower-income blacks and Latinos who are displaced during the city’s revitalization.

## II. URBAN BLIGHT: DEFINED

### A. *Physical Characterization*

Urban blight is not a new phenomenon. There have been blighted neighborhoods (which historically were called slums)<sup>2</sup> in cities for more than a century.<sup>3</sup> Since at least the middle of the twentieth century, a wide range of federal housing policies and programs have attempted to eliminate urban blight. For example, the national housing policy for the United States, as stated in 42 U.S.C. § 1441, notes:

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2. Anthony Downs, *Local Regulations and Housing Affordability*, in *REGULATING PLACE: STANDARDS AND THE SHAPING OF URBAN AMERICA* 109 (Eran Ben-Joseph & Terry S. Szold eds., 2005) (“In reality, America has always depended upon overcrowded and often deteriorated slums to accommodate its poorest urban dwellers, and we still do. But we do not like to admit it, so we pretend the word *slums* is obsolete.”).

3. ALEXANDER VON HOFFMAN, *HOUSE BY HOUSE, BLOCK BY BLOCK: THE REBIRTH OF AMERICA’S URBAN NEIGHBORHOODS* 8 (2003) (stating that many Americans accepted urban blight as an inevitable part of life).

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing *through the clearance of slums and blighted areas*, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation.<sup>4</sup>

Although revitalizing blighted areas and clearing slums may be a stated national housing priority, there is no one definition of blight.

Blight has been described as a “vague, amorphous term” and a “rhetorical device” that lets governing bodies deem “certain real estate dangerous to the future of the city.”<sup>5</sup> Though blight cannot be precisely defined, laws, renewal programs, and housing policies use similar terms when discussing blight. For example, a 1938 Harvard regional planning department study that examined blighted areas and slums in U.S. cities defined blight communities as those

where, as a result of social, economic, or other conditions, there is a marked discrepancy between the value placed upon the property by the owner and its value for any uses to which it can be put, appropriate to the public welfare, under existing circumstances. This discrepancy prevents or handicaps the improvement of the area. Old buildings are ne-

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4. 42 U.S.C. § 1441 (West 2012) (emphasis added).

5. Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y REV. 1, 3 (2003).

glected and new ones are not erected and the whole section becomes stale and unprofitable.<sup>6</sup>

This study contends that a “slum is relatively easy to locate and define” because of the “general agreement that it is an area in which the housing is so unfit as to constitute a menace to the health and morals of the community, and that the slum is essentially of social significance.”<sup>7</sup>

The federal government has defined “blighted neighborhoods” as areas with low or sinking property values,<sup>8</sup> and cities and political leaders view blighted areas as dangerous to the “safety, health, morals and comfort” of the people who live in those blighted neighborhoods.<sup>9</sup> Blighted areas are characterized by the presence of physically deteriorated or vacant buildings, and those buildings (both residential and commercial) often have high occupancy turnover or vacancy rates.<sup>10</sup> In addition to the sub-standard dwellings that are typically found in blighted neighborhoods, the public schools and other local amenities (parks, etc.) in those areas also tend to be dilapidated.<sup>11</sup> In addition, blighted areas are often overcrowded and have little open or green space, and blighted

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6. MABEL L. WALKER, *URBAN BLIGHT AND SLUMS: ECONOMIC AND LEGAL FACTORS IN THEIR ORIGIN, RECLAMATION, AND PREVENTION* 6 (1938).

7. *Id.* at 3; *see also* United States Housing Act of 1937, Pub. L. No. 75-412, 50 Stat. 888 (1937) (“The term ‘slum’ means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to the safety, health, or morals.”).

8. ARTHUR D. LITTLE, INC., *supra* note 1, at 11.

9. WALKER, *supra* note 6, at 3.

10. *See id.* at 15 (“[T]he most valid criteria for determining [blighted areas] location would be . . . falling land values (over a long period); detrimental shifts of business or population . . . failure to make or maintain improvements over extended period; [and] substandard housing.”).

11. *See* 24 C.F.R. § 570.208(b) (2007). Conversely, homes and apartments that are located near highly rated schools are higher quality and charge higher rent. *See* Marty Toohey, *Rents, School Quality Linked*, AUSTIN AMERICAN-STATESMAN (Dec. 28, 2015), <http://www.pressreader.com/usa/austin-american-statesman/20151228/281487865318383/TextView>.

communities also are likely to have known (or suspected) environmental contamination.<sup>12</sup>

### *B. Social Definition*

Though the buildings in blighted neighborhoods often share similar physical characteristics and blighted neighborhoods lack business investments, there is also a social dimension to blight. To some extent, blight is based on perceptions of the value or worth of the people or businesses that are in the neighborhood.<sup>13</sup> For example, poor people live in blighted neighborhoods and this could cause policymakers to conclude that poverty causes blight.<sup>14</sup> In addition to socio-economic status, there is also a racial component to urban blight.<sup>15</sup> That is, while not all residents of blighted neighborhoods are non-white, most neighborhoods that are designated as (or likely will become) blighted consist of black and Latino residents.<sup>16</sup> Because most renewal programs are designed to clear

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12. See ARTHUR D. LITTLE, INC., *supra* note 1, at 19. A report prepared on behalf of the United States Department of Housing and Urban Development notes that blighted neighborhoods “are characterized by a large proportion of sub-standard and vacant dwellings; mixed residential, commercial, commercial and/or industrial use; relatively low rent levels; high densities and minority population.” *Id.*

13. See Micheal Carriere, *Fighting the War against Blight: Columbia University, Morningside Heights, Inc., and Counterinsurgent Urban Renewal*, 10 J. PLAN. HIST. 5, 13 (2011). Carriere noted the contradiction that “common spaces and many individual apartment units within the building (even those marked for eviction) were well maintained,” notwithstanding the fact that the building was deemed blighted because Columbia University sought to demolish the building to make space for additional campus buildings. *Id.*

14. See WALKER, *supra* note 6, at 23 (“Poverty and blight are not always synonymous. Poverty is, however, a potent factor in translating the blighted area into a slum. To attribute blight solely or essentially to poverty is largely to dodge the issue.”).

15. See Carriere, *supra* note 13, at 11 (describing efforts to remove urban blight near the Columbia University campus and noting that “there was a definite racial component to Columbia’s urban renewal strategies in the postwar era, as the battle to contain blight often seemed to become a battle to contain the population of nonwhite community members”).

16. Miriam Hortas-Rico, *Sprawl, Blight, and the Role of Urban Containment Policies: Evidence from U.S. Cities*, 55 J. REGIONAL SCI. 298, 308 (2015) (“The higher the crime rate or the poverty level, and the higher the proportion of black and Hispanic residents, the greater the level of blight.”).

blight in low-income, predominately black or Latino areas that are deemed economically underutilized,<sup>17</sup> these programs frequently result in displacing minority residents.<sup>18</sup> Once the area is redeveloped, the new neighbors are almost always richer and whiter than the displaced residents, and the low-income displaced residents typically move to another blighted, and usually segregated, area.<sup>19</sup>

Because blight is so racially coded, what some people might view as a blighted, dangerous, and economically underutilized neighborhood, others may view as a working class but valuable close-knit community that could be rehabilitated for current residents if city leaders were willing to invest adequate resources in the neighborhood. Since municipalities have wide discretion in determining whether an area is blighted, “blight” is often whatever the governing body says it is. In most cases, existing residents generally can do little to prevent their neighborhoods from being “revitalized” even if they are forced out of their revitalized neighborhood.

### III. CREATING AND PERPETUATING BLIGHT: FEDERAL AND STATE LAWS AND POLICIES

Urban blight is not inevitable, nor does it develop overnight. Since the 1930s, federal, state, and local housing policies

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17. For example, the Morningside Heights, Inc. was founded in 1947 “to wage a war on urban blight” in the Harlem/Morningside Heights community in New York City. See Carriere, *supra* note 13, at 10. The group’s charge was to develop a plan that would improve and redevelop Morningside Heights and make that neighborhood “an attractive residential, educational, and cultural area.” *Id.*

18. Pritchett, *supra* note 5, at 6 (“By selecting racially changing neighborhoods as blighted areas and designating them for redevelopment, the urban renewal program enabled institutional and political elites to relocate minority populations and entrench racial segregation.”); see also Alison Gregor, *Crown Heights, Brooklyn, Gets Its Turn*, N.Y. TIMES (July 4, 2014), <http://www.nytimes.com/2014/07/06/realestate/crown-heights-brooklyn-gets-its-turn.html> (addressing a housing advocate’s concern that private equity firms have bought older rent-regulated buildings in Crown Heights and were in the process of driving out lower-income tenants).

19. Pritchett, *supra* note 5, at 6; Derek S. Hyra, *Conceptualizing the New Urban Renewal: Comparing the Past to the Present*, 48 URB. AFF. REV. 498, 512 (2012).

and practices have helped create blight in low-income, particularly ethnic and black, neighborhoods. While not all lower-income neighborhoods are blighted, housing and transportation policies that created neighborhoods with higher concentrations of poverty helped create many of the conditions that lead to urban blight. In addition, federal housing and transportation policies that could have prevented low-income neighborhoods from becoming blighted frequently were not implemented because of political leaders' often biased views concerning changing demographics and economic conditions in lower-income neighborhoods.

A. *Discriminatory Laws, Practices, and Policies*

Racially discriminatory laws and practices in the last century created many of the racially segregated and blighted neighborhoods in this country. For example, during the "Great Migration" at the end of the 1800s and first few decades of the 1900s, poor rural blacks fled the racially hostile and violent post-Civil War South and moved to northern cities. They were not welcomed in urban neighborhoods when they arrived, and instead, were often confronted by hostile property owners and unsupportive local leaders.<sup>20</sup> For example, political leaders relied on nuisance laws and racially-restrictive public zoning laws to keep blacks (and lower-income residents) in overcrowded urban ghettos. These race-restrictive zoning laws, which the United States Supreme Court later ruled to be unconstitutional,<sup>21</sup> kept blacks out of white neighborhoods by designating who could live in any given neighborhood.

When city leaders could no longer use race-restrictive zoning laws to keep blacks in lower-income racially segregated neighborhoods, white homeowners, private realtors, and real estate developers, with the implicit support of the federal government, then changed the tactics they used to create and maintain overcrowded, blighted, and racially segregated neighborhoods. Some white residents used violence to scare and keep blacks out of their neighbor-

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20. A. Mechele Dickerson, *Sorting the Neighborhood*, 93 TEX. L. REV. 179, 181 (2014) (reviewing RICHARD R. W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* (2013)).

21. *Buchanan v. Warley*, 245 U.S. 60, 82 (1917).



hoods or convince them to leave if they had moved in the all-white neighborhood.<sup>22</sup> Other white homeowners used racially restrictive covenants in deeds to keep their neighborhoods racially segregated. These covenants<sup>23</sup> provided that owners could not sell or lease their property to blacks and, like race-restrictive zoning laws, ultimately were ruled unconstitutional in the Supreme Court's 1948 holding in *Shelley v. Kraemer*.<sup>24</sup>

In addition to race-restrictive zoning laws and private covenants, the Federal Housing Administration ("FHA") had policies in the 1930s and 1940s that virtually ensured that blacks could not move into suburban neighborhoods.<sup>25</sup> Specifically, because the FHA refused to insure loans for blacks or for anyone who wanted to purchase homes in racially mixed or homogeneous black neighborhoods,<sup>26</sup> lenders would not approve mortgage loans for

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22. Dickerson, *supra* note 20, at 181.

23. RICHARD R. W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* 80 (2013). Examples of restrictive covenants have been collected by the Seattle Civil Rights and Labor History Project. See *Racial Restrictive Covenants*, SEATTLE CIVIL RIGHTS & LABOR HISTORY PROJECT, <http://depts.washington.edu/civilr/covenants.htm> (last visited Apr. 18, 2016). Four neighborhoods shared the following racial-restrictive covenant: "No person of any race other than the white race shall use or occupy any building or any lot, except this covenant shall not prevent occupancy by domestic servants of a different race domiciled with an owner or tenant." *Id.*

24. 334 U.S. 1, 20–21 (1948).

25. The FHA was authorized by the National Housing Act and was created to insure residential mortgages, supervise mortgage associations, and regulate low-income housing projects. See WALKER, *supra* note 6, at 323–24 (discussing role of FHA in low-income housing projects).

26. To ensure that no blacks would be allowed to buy any home (whether in a black or white neighborhood) using an FHA-insured loan, the FHA required lenders to provide information about the borrower's characteristics. In addition, to be sure that no buyer would use an FHA-loan to buy a house in a non-white neighborhood, the FHA required lenders to provide corroborating reports about neighborhood characteristics from third-parties (inspectors, examiners, appraisers, etc.) and the FHA refused to accept an appraiser's report unless the report revealed whether the neighborhood was racially mixed or, if the neighborhood currently was all-white, whether the neighborhood was at risk of being "infiltrated" or "invaded" by blacks or immigrants. See A. MECHELE DICKERSON, *HOMEOWNERSHIP AND AMERICA'S FINANCIAL UNDERCLASS: FLAWED PREMISES, BROKEN PROMISES, NEW PRESCRIPTIONS* 148–49 (2014).

blacks.<sup>27</sup> Because blacks could not be approved for low-cost FHA-insured loans, it was virtually impossible for them to buy homes in suburban white neighborhoods. Likewise, until the 1950s, the FHA underwriting manual encouraged builders to include racially restrictive covenants in the suburban subdivisions they were building, and developers also used subtle racial cues (like advertising that the homes met the FHA standards and could be purchased with a low-cost FHA-insured loan) to signal that the subdivisions were racially-exclusive.<sup>28</sup>

Federal housing laws ultimately banned all of these racially discriminatory lending and real estate practices.<sup>29</sup> Nonetheless, many of the neighborhoods that were “contained and constrained by public and private devices of exclusion and confinement” had been formed.<sup>30</sup> Although federal and state laws and policies can no longer force blacks to live in racially segregated neighborhoods, cities have used other methods, including exclusionary zoning

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27. Lenders relied on a rating system that was created by the federal Home Owners' Loan Corporation (“HOLC”). This rating system gave suburban neighborhoods that were predominately all-white the highest “A” rating and these neighborhoods were shaded green on lending maps. All-black urban neighborhoods received the lowest ranking of D and were shaded red, which gave rise to the term redlining. Because the federal government and the real estate industry deemed homes in ethnically or racially integrated urban neighborhoods to be unstable and unsafe, redlining made it virtually impossible for blacks to receive low-cost and federally-insured mortgage loans. *Id.* at 146–49. In a 1962 Executive Order, President John F. Kennedy made redlining illegal. This Order banned federal agencies that insured or guaranteed housing loans from discriminating in the sale or rental of property based on race and also outlawed housing discrimination by lenders who originated mortgage loans insured by the federal government. Exec. Order No. 11,063, 27 Fed. Reg. 11,527 (Nov. 20, 1962).

28. DICKERSON, *supra* note 26, at 148.

29. The Fair Housing Act makes it illegal to refuse to sell or rent, or otherwise make unavailable or deny housing to any person on the basis of race. 42 U.S.C. § 3604 (2013).

30. LEONARD S. RUBINOWITZ & JAMES E. ROSENBAUM, *CROSSING THE CLASS AND COLOR LINES: FROM PUBLIC HOUSING TO WHITE SUBURBIA* 18 (2000); *see also* Tex. Dep't. of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S.Ct. 2507, 2515 (2015) (discussing discriminatory housing and lending policies and noting that “[b]y the 1960’s, these policies, practices, and prejudices had created many predominantly black inner cities surrounded by mostly white suburbs”).

laws, to keep public housing and other affordable housing in low-income urban areas and out of higher-income neighborhoods.

### B. Zoning Laws

Once the United States Supreme Court deemed comprehensive zoning laws to be a constitutionally valid limitation on private property rights in *Euclid v. Ambler Realty*,<sup>31</sup> cities used zoning laws to keep multi-family housing out of neighborhoods that primarily consist of owner-occupied, single-family homes. In this 1926 ruling, the Court allowed cities to deem apartment buildings to be public nuisances and to exclude multi-family housing from residential districts because these units could monopolize “the rays of the sun which otherwise would fall upon the smaller homes.”<sup>32</sup> In addition, the Court referred to apartment houses as “parasites” and concluded that cities could segregate single-family homes from multi-unit housing to ensure that homeowners were not deprived of the “free circulation of air” and that their children could continue to have “quiet and open spaces for play.”<sup>33</sup>

While cities no longer characterize apartments or public housing tenants as parasites, facially race-neutral land use laws continue to make it hard for lower-income households to move out of older, decaying urban neighborhoods. For example, local planning commissions have adopted rules and regulations (or wealthy voters have voted in favor of zoning laws) that exclude affordable, multi-family housing (like mobile homes and public housing complexes) from single-family neighborhoods.<sup>34</sup> Likewise, land use laws in subdivisions in suburban neighborhoods require developers to build homes that have a minimum lot size, and zoning laws may also limit the number of people who can live in a home. The stated purpose of these zoning laws is to preserve the character of the neighborhood, but the laws are also designed to exclude lower-

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31. 272 U.S. 365, 397 (1926).

32. *Id.* at 394.

33. *Id.*

34. Bernard H. Siegan, *The Benefits of Non-Zoning*, in REGULATING PLACE: STANDARDS AND THE SHAPING OF URBAN AMERICA, *supra* note 2, at 219–20 (noting that black, Latinos, and low- and moderate-income voters typically vote against zoning laws).

income residents from certain subdivisions and keep them trapped in urban, blighted neighborhoods.<sup>35</sup>

### C. Public Housing

Most urban cities started to build large public housing units in the 1930s and 1940s. While federal funds have almost always been used to finance public housing, local housing boards or authorities are responsible for managing public housing and typically have wide discretion to determine the number, type, and location of public housing.<sup>36</sup> Many of these early public housing units were erected as part of the New Deal Public Works Administration's efforts to reinvigorate an economy that was devastated by skyrocketing foreclosure rates and record high unemployment during the Great Depression.<sup>37</sup> These early public housing units were designed to provide shelter for low-income, working-class residents

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35. DICKERSON, *supra* note 26, at 185–86; Eran Ben-Joseph, *Facing Subdivision Regulations*, in *REGULATING PLACE: STANDARDS AND THE SHAPING OF URBAN AMERICA*, *supra* note 2, at 175–76; *see also* Alana Semuels, *How to Decimate a City*, *THE ATLANTIC* (Nov. 20, 2015), <http://www.theatlantic.com/business/archive/2015/11/syracuse-slums/416892/> (discussing how a two-acre minimum lot size prevents low-income residents in Syracuse from leaving decaying urban neighborhoods and moving to suburban neighborhoods).

36. Lisa Redfield Peattie, *Public Housing: Urban Slums Under Public Management*, in *RACE, CHANGE AND URBAN SOCIETY* 301 (Peter Orleans & William Russell Ellis, Jr. eds., 1971). Federal public housing projects had historically been used as tools to modify residents' behavior and improve the "social usefulness" of low-income tenants. Lawrence J. Vale, *Standardizing Public Housing*, in *REGULATING PLACE: STANDARDS AND THE SHAPING OF URBAN AMERICA*, *supra* note 2, at 71. For example, units generally were 2–3 bedrooms in part to discourage "the cultural preferences of immigrant groups" who lived multi-generationally. *Id.* at 70. Housing staff also refused applications from potential tenants who cohabitated without marriage and for couples who had out-of-wedlock children. *Id.*

37. *See* Peattie, *supra* note 36, at 300–01. A major goal of Public Works Administration projects was to help reduce unemployment and stimulate economic activity during the Depression. *See* WALKER, *supra* note 6, at 347 (discussing urban planning policies in the 1930s and noting that "[f]ederal interest in housing in this country appears to be distinctly a by-product of the depression. Slum clearance and housing were seized upon by the National Government as a means of creating employment and stimulating industry.").

and typically consisted of high-density, high-rise apartment complexes located in urban neighborhoods.<sup>38</sup>

Some housing advocates argued that working-class housing should be sited in suburban neighborhoods which, at that time, were less populated. While suburban land could be purchased for cheaper than land in urban areas at the time, most public housing projects during the Depression era were built in urban areas because of a desire to link urban renewal with affordable housing.<sup>39</sup> Moreover, because cities could use these federal funds to clear “slums,” leaders preferred to build public housing projects in urban areas that formerly contained older, dilapidated tenement housing.<sup>40</sup>

Like homeowner-occupied neighborhoods, public housing projects have almost always been racially segregated.<sup>41</sup> Public housing projects are more likely to be placed in lower-income and predominately non-white neighborhoods because of the political clout higher-income homeowners exert when they learn of proposed zoning changes.<sup>42</sup> That is, based in part on what they perceive as their privileges as property owners, homeowners routinely lobby against proposed zoning changes that would permit affordable housing—including housing projects or mixed-income apartments—to be built in their neighborhoods.<sup>43</sup> They seek to exclude

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38. See Vale, *supra* note 36, at 72.

39. See *id.* at 69–77.

40. Slum clearance projects were enormously profitable with real estate investors, often mortgage companies, after the Depression because these private entities were seeking ways to rid themselves of underperforming real estate. See Pritchett, *supra* note 5, at 23.

41. See Peattie, *supra* note 36, at 286–87.

42. DICKERSON, *supra* note 26, at 186–87.

43. Downs, *supra* note 2, at 107 (“[T]he more public policy emphasizes homeownership, the more it leads to NIMBY (Not-in-my-backyard!) resistance to affordable housing by suburban homeowner majorities.”). Homeowners in upper-income neighborhoods also fight attempts to place socially useful but undesirable properties like half-way housing, homeless shelters, and group homes in their neighborhoods because of concerns that those properties may depress the values of their homes. For example, when the City of Dallas, Texas, sought to place a home for chronically homeless people in public housing units, neighbors mobilized to defeat the plan citing safety risks to school children and arguing that the presence of homeless residents in their neighborhood would depress property values. Kim Horner & Roy Appleton, *Oak Cliff Opposition*

affordable housing from their neighborhoods and place that housing in other neighborhoods based on their view that multi-family housing would change the character of their community, increase traffic, affect the academic rating or performance of their neighborhood schools, increase congestion, and depress their home values.<sup>44</sup>

Concentrating public housing units in low-income, racially segregated neighborhoods has, not surprisingly, caused both public and private low-income housing to experience rapid decay.<sup>45</sup> One reason public housing units have deteriorated is because there has always been limited public support for increasing funding to repair or upgrade affordable housing projects for lower-income residents.<sup>46</sup> In addition, public housing projects stopped expanding once urban redevelopment programs began to encourage private developers to create low-income housing.<sup>47</sup> Once low-income housing units (whether publicly- or privately-owned) start to deteriorate, the housing becomes undesirable, vacancy and turnover rates rise, and in turn, deterioration of the housing units accelerates.<sup>48</sup>

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*Shows Why Supportive Permanent Housing in Dallas is Still a Tough Sell*, DALLAS MORNING NEWS (June 13, 2010), <http://www.dallasnews.com/news/community-news/dallas/headlines/20100613-Oak-Cliff-opposition-shows-why-supportive-8560.ece>.

44. LEEANN LANDS, *THE CULTURE OF PROPERTY: RACE, CLASS, AND HOUSING LANDSCAPES IN ATLANTA, 1880–1950*, 210–15 (2009).

45. Peattie, *supra* note 36, at 287.

46. See generally Marc Bussanich & Jarrett Murphy, *Protest as City Auctions Land Despite Housing Need*, CITYLIMITS.ORG (Oct. 30, 2015), <http://citylimits.org/2015/10/30/protest-as-city-auctions-land-despite-housing-need/> (discussing New York City's sale of lands for private ownership despite the housing needs). The Mayor of New York City has proposed building mixed-income housing in a public housing project in order to generate more revenue for the city's public housing authority. Mireya Navarro, *In Chelsea, a Great Wealth Divide*, N.Y. TIMES (Oct. 23, 2015), <http://www.nytimes.com/2015/10/25/nyregion/in-chelsea-a-great-wealth-divide.html>.

47. Vale, *supra* note 36, at 92.

48. Peattie, *supra* note 36, at 297.

## IV. CREATING AND PERPETUATING BLIGHT: PRIVATE ACTORS

A. *Urban Landlords*

Most low-income housing in urban areas is privately owned. A common myth associated with urban blight is that absentee “slumlords” who own the private housing units help perpetuate the blighted conditions by allowing their rental properties to deteriorate. In the myth of the urban slumlord, the absentee landlord purchases property with the goal of extracting “the maximum possible cash flow from the property,” making an above-market return on the property, and then selling the property to a tenant or abandoning the property if there is no available buyer.<sup>49</sup> According to the myth, because the property owners (especially if they are not the same race as the tenants) often do not live in the low-income properties they rent,<sup>50</sup> they make only the repairs that are required by applicable housing regulations or the minimal expenditures they need to attract tenants.<sup>51</sup>

While some urban landlords fit the profile of the slumlord,<sup>52</sup> not all owners of low-income housing in urban areas are slumlords.<sup>53</sup> Indeed, research indicates that some owners choose not to make major improvements to their properties because they are concerned that they would need to raise rents and displace

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49. ARTHUR D. LITTLE, INC., *supra* note 1, at 86, 88. See generally GEORGE STERNLIEB & ROBERT W. BURCHELL, RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED 53–55 (1973) (discussing the “myth” of the urban slumlord).

50. A study of Newark low-income housing found black owners are five times more likely to live in their rental properties than whites who owned rental property in low-income neighborhoods. STERNLIEB & BURCHELL, *supra* note 49, at 102–03.

51. ARTHUR D. LITTLE, INC., *supra* note 1, at 88.

52. For example, a 1938 planning report that examined blighted neighborhoods throughout the U.S. criticized municipal agencies for failing to promptly respond to decaying housing (“old disease breeders and fire traps”) and for allowing owners “to derive profit by renting them to the public long after they have become a menace to the community.” WALKER, *supra* note 6, at 82, 111.

53. In addition, while the property owner in the myth of the urban slumlord is often assumed to be white, a study of low-income housing in Newark found that both the landlord and tenants of many rental homes are black. STERNLIEB & BURCHELL, *supra* note 49, at 97–133.

long-term tenants to recoup their investment in the property.<sup>54</sup> Likewise, some owners stop making repairs or doing major maintenance on their properties because they are elderly and can no longer do or afford the repairs needed to rehabilitate the building.<sup>55</sup> Some landlords ultimately decide to abandon their properties for pure economic reasons.

Landlords who conclude that the cost to repair their properties to meet applicable building code requirements exceeds their anticipated rate of return (based on the rents they can collect for the units)<sup>56</sup> often choose to allow their properties to deteriorate. In addition, some urban landlords abandon their rental property because of high crime rates, vandalism, and worries that those factors make it unlikely they will ever be able to sell the property.<sup>57</sup> Similarly, owners who believe the city will condemn the property have little incentive to repair their dilapidated housing units if they have concluded that making any additional repairs would be economically senseless.<sup>58</sup> In addition, owners sometimes abandon rental properties in deteriorating neighborhoods if they conclude that the neighborhood has become so dangerous that they no longer feel safe going to their properties to make repairs (or even to collect rent).<sup>59</sup> Regardless of the reason landlords choose to neglect or abandon rental properties, dilapidated or vacant private rental properties contribute to urban blight, and the presence of those properties destroy the value of all homes in the neighborhood.<sup>60</sup>

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54. STERNLIEB & BURCHELL, *supra* note 49, at 69–71.

55. STERNLIEB & BURCHELL, *supra* note 49, at 76 (“The facts of age frequently play a role in the abandonment of a unit.”).

56. ARTHUR D. LITTLE, INC., *supra* note 1, at 106–07. While tenants might be willing to pay the cost of amenities that make their rental housing secure, they likely are not willing to pay the cost the landlord incurs to bring the rental unit up to code. *Id.* at 93.

57. STERNLIEB & BURCHELL, *supra* note 49, at 298–93.

58. *Id.* at 291; *see also* Pritchett, *supra* note 5, at 22 (suggesting that some landlords during the post-depression era became “increasingly amenable to condemnation as a means to exit a failing market. Where they once opposed any government regulation, landlords now wanted to be ‘bailed out’ of their troubled investments.”).

59. STERNLIEB & BURCHELL, *supra* note 49, at 137–41.

60. *Id.* at 53.



### B. Suburban White Flight

As older neighborhoods in many urban cities deteriorated during the early part of the twentieth century, federal transportation policies and laws created and funded the national system of interstate highways. Having a comprehensive four-lane highway system in the 1940s made it easier for white residents to flee from urban cities to live in the suburbs but return daily to work in the city.<sup>61</sup> Once whites abandoned urban neighborhoods, real estate developers then focused on building homes in the suburbs.<sup>62</sup> Eventually, jobs followed whites to the suburbs, and since the turn of the twenty-first century, job growth in suburban areas has been five times faster than job growth in urban areas.<sup>63</sup>

Many cities used federal funds to create comprehensive highway systems in the 1950s that razed—or split in half—urban, predominately black communities.<sup>64</sup> Blacks could not leave the decaying urban areas by purchasing and moving to suburban homes because of redlining,<sup>65</sup> because of realtors steering blacks away from white neighborhoods,<sup>66</sup> and because of other discriminatory housing policies that existed until the 1960s. Likewise,

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61. See *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2511 (2015) (“Rapid urbanization, concomitant with the rise of suburban developments accessible by car, led many white families to leave the inner cities. This often left minority families concentrated in the center of the Nation’s cities.”).

62. DICKERSON, *supra* note 26, at 152–53; Pritchett, *supra* note 5, at 14.

63. DICKERSON, *supra* note 26, at 153.

64. See Semuels, *supra* note 35 (describing a close-knit community in Syracuse that was split in half by highway construction).

65. Generally speaking, redlining divided neighborhoods into colors based on their perceived stability. The race of the homeowners was used to categorize and rate neighborhood stability, safety, and desirability. DICKERSON, *supra* note 26, at 146–47. The phrase “redlining” arose because black neighborhoods (which received the lowest ranking) were coded red while upper-income white neighborhoods were shaded blue on the rating maps. Dickerson, *supra* note 20, at 184; see also *infra* Section IV.C (discussing the effects of reverse redlining).

66. *Tex. Dep't of Hous. & Cmty. Affairs*, 135 S. Ct. at 2515 (“[S]teering by real-estate agents led potential buyers to consider homes in racially homogeneous areas.”); Dickerson, *supra* note 20, at 184 (discussing how white realtors steered black clients away from white neighborhoods to preserve racially segregated neighborhoods).

blacks were trapped in decaying urban areas because realtors routinely refused to rent properties in white neighborhoods to blacks.<sup>67</sup> Even now, low-income black and Latino residents cannot escape from blighted urban neighborhoods because there are virtually no public housing projects in suburban neighborhoods and because many landlords still resist renting to tenants whose rent will be paid in part with a Section 8 housing voucher.<sup>68</sup>

### C. Lenders

Foreclosure rates nationwide hit record highs during the recession, and urban cities with large black or Latino populations (including Memphis) were hit especially hard. One reason cities like Memphis and Baltimore had such high foreclosure rates is because of reverse redlining, i.e., the practice of steering borrowers to certain products based on their race. Studies found that lenders systematically steered black and Latino borrowers to higher cost and higher risk subprime loans which—because of the cost and risks—have higher rates of foreclosure. One study found that these higher cost loans accounted for fifty-one percent of refinance loans in predominately black neighborhoods but only nine percent of subprime refinance loans in white neighborhoods.<sup>69</sup> Similarly, more than fifty percent of all loans blacks received to buy homes and forty percent of the loans Latinos received were subprime loan products, while only eighteen percent of the loans whites used to purchase homes were high-cost subprime loans.<sup>70</sup>

Many minority and lower-income neighborhoods that were hit particularly hard by foreclosures during the recession still have not recovered. A 2014 study found that home prices in black and Latino neighborhoods were still depressed and that a disproportionate percentage of homeowners in those neighborhoods were at risk of losing their homes because they were “underwater,” i.e.,

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67. See Dickerson, *supra* note 20, at 184–86.

68. *Tex. Dep’t of Hous. & Cmty. Affairs*, 135 S. Ct. at 2514 (discussing that segregated housing patterns exist in predominantly black inner-city areas because of the allocation of low income tax credits in those areas rather than predominantly white suburban neighborhoods); see also Semuels, *supra* note 35 (describing the obstacles blacks in urban Syracuse neighborhoods encounter when they try to move out of high-poverty neighborhoods).

69. DICKERSON, *supra* note 26, at ch. 7.

70. *Id.*

they owed more on their mortgages than the homes are worth.<sup>71</sup> Property owners who have underwater mortgages and assume they might lose their home in a foreclosure sale may perceive that they have little financial stake in those homes, which may give them less of an incentive to properly maintain their homes.

There are often signs of blight in neighborhoods that consist of homes where owners have little economic incentive to perform or pay for routine maintenance on the homes or where there are homes that were sold in a foreclosure or short sale. Homes in these neighborhoods often have overgrown lawns, have broken windows, are in a visibly deteriorated condition, and sit abandoned until the bank completes the foreclosure process or a new owner buys the home. In addition, data consistently show that neighborhoods with a high percentage of foreclosed homes or with rental properties that are abandoned by absentee landlords have higher rates of crime (including arson, prostitution, and looting), and the homes themselves are often used to commit crimes.<sup>72</sup> In addition, vacant and deteriorated homes in some urban cities have been occupied by homeless people, are often stripped bare both inside and outside of anything of value, and even attract wild animals.<sup>73</sup>

In addition to the disproportionate number of high-cost subprime loans that were steered to lower-income neighborhoods, evidence shows that banks and lenders treat the homes they foreclose on and own, i.e., Real Estate Owned (“REO”), differently depending on where the REO properties are located. That is, a report found that banks, lenders, and investors were far less likely to allow foreclosed properties in predominately black and Latino neighborhoods to become (or remain) in disrepair than properties in white neighborhoods.

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71. HAAS INST. FOR A FAIR AND INCLUSIVE SOC’Y, UNDERWATER AMERICA 5 (2014), [http://diversity.berkeley.edu/sites/default/files/HaasInstitute\\_UnderwaterAmerica\\_PUBLISH\\_0.pdf](http://diversity.berkeley.edu/sites/default/files/HaasInstitute_UnderwaterAmerica_PUBLISH_0.pdf).

72. DICKERSON, *supra* note 26, at ch. 8. One group of “investors” who purchased foreclosed homes at bottom rock prices used the homes to grow marijuana plants. Norimitsu Onishi, *Foreclosed Houses Become Homes for Indoor Marijuana Farms*, N.Y. TIMES (May 6, 2012), <http://www.nytimes.com/2012/05/07/us/marijuana-growers-move-to-the-suburbs.html>.

73. Meghan Hoyer & Matthew Jones, *Urban Blight, Investors Buy, Abandon Properties as Part of Profit Plan, Data Show*, VIRGINIAN PILOT (July/Aug. 2007).

REO properties in black and Latino neighborhoods were more likely to exhibit visible signs of blight, including chipped paint, broken fences, or broken or boarded-up windows. Homes in those neighborhoods also were more likely to have trash strewn on the property and overgrown (or dead) lawns. Similarly, those REO homes were frequently left unlocked, which encourages thefts from the unsecured homes and also encourages people to engage in criminal activities inside the homes.<sup>74</sup> In contrast, REO homes in white neighborhoods were more likely to have manicured lawns and be securely locked.<sup>75</sup> Finally, the study further found that foreclosed properties in black and Latino neighborhoods were more likely to be vacant and abandoned for longer periods than homes in white neighborhoods and were less likely to have “For Sale” signs in the yards than homes in white neighborhoods.<sup>76</sup>

While not all current blight in urban neighborhoods was caused by discriminatory lending practices, there are negative economic consequences to living in a neighborhood that is littered with deteriorated and abandoned buildings. Real estate agents are less likely to show homes that show signs of blight to clients who seek to live in the home. As a result, it is less likely that properties with substandard maintenance will be purchased by an owner-occupant and more likely that the buyer will be investors who seek to use the homes as rental property.

Vacant and deteriorated homes and buildings in a neighborhood impose costs on other homeowners because the blighted properties depress the value of all other properties in the neighborhood. Specifically, homes that are sold in a foreclosure or short

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74. See MICHAEL BONDS, RACE, POLITICS, AND COMMUNITY DEVELOPMENT FUNDING: THE DISCOLOR OF MONEY 33 (2004) (“[In Milwaukee], the property listings in largely African-American and integrated neighborhoods were only half as likely to be advertised . . . and only one-fourth were as likely to have an open house relative to homes in white neighborhoods.”).

75. NATIONAL FAIR HOUSING ALLIANCE, THE BANKS ARE BACK—OUR NEIGHBORHOODS ARE NOT: DISCRIMINATION IN THE MAINTENANCE AND MARKETING OF REO PROPERTIES 18 (2012), [http://www.nationalfairhousing.org/portals/33/the\\_banks\\_are\\_back\\_web.pdf](http://www.nationalfairhousing.org/portals/33/the_banks_are_back_web.pdf); Danielle Douglas, *Wells Fargo Settles Complaint on Foreclosed Homes*, WASH. POST (June 6, 2013), [http://www.washingtonpost.com/business/economy/wells-fargo-settles-complaint-on-foreclosed-homes/2013/06/06/18e55954-ce24-11e2-9f1a-1a7cdee20287\\_print.html](http://www.washingtonpost.com/business/economy/wells-fargo-settles-complaint-on-foreclosed-homes/2013/06/06/18e55954-ce24-11e2-9f1a-1a7cdee20287_print.html).

76. DICKERSON, *supra* note 26, at ch. 8.

sale, especially abandoned blighted homes, are almost always sold at a discount. Homes sold at a discount depress the market value of other homes in the neighborhood largely because appraisers assess the value of homes based partially on recent sales of comparable homes in the neighborhood.<sup>77</sup> Thus, properties sold at below market prices depress the market values and selling prices of all homes located near those properties even when the existing owners have taken care of and maintained their homes. These lower selling prices make it harder for owners to sell their homes for a profit or to use their homes as collateral for a loan. Finally, vacant and blighted properties in neighborhoods generally prevent the functioning of a stable housing market as tenants and businesses are less willing to move into blighted neighborhoods.<sup>78</sup>

Higher foreclosure rates and depressed home values do more than just harm individual homeowners. Depressed home values also reduce municipal real estate tax revenue, which accounts for about 75% of local tax revenue.<sup>79</sup> In addition, cities with vacant properties also incur additional costs in the form of additional police, fire, and other public safety services related to these vacant properties. Moreover, because cities often try to prevent blight from spreading and they seek to encourage economic activity in blighted areas, cities often incur costs to preserve property values in blighted neighborhoods. For example, cities have demolished uninhabitable abandoned properties and paid maintenance costs for habitable properties. However, because of lower tax revenues, some cities found they simply could not afford the cost of maintaining abandoned properties.<sup>80</sup>

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77. W. Scott Frame, *Estimating the Effect of Mortgage Foreclosures on Nearby Property Values: A Critical Review of the Literature*, FED. RES. BANK OF ATLANTA 5–7 (2010); Dan Immergluck & Geoff Smith, *The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime*, 21 HOUSING STUD. 851, 851–66 (2006).

78. ARTHUR D. LITTLE, INC., *supra* note 1, at 106–07.

79. Mark Niquette & Tim Jones, *Foreclosure Deal May Help States Prop Up Budgets, Raze Homes*, BLOOMBERG.COM (Feb. 13, 2012, 6:52 AM), <http://www.bloomberg.com/news/articles/2012-02-13/foreclosure-windfall-may-help-u-s-states-prop-up-budgets-raze-houses>; Shaila Dewan, *A City Invokes Seizure Laws to Save Homes*, N.Y. TIMES (July 29, 2013), <http://www.nytimes.com/2013/07/30/business/in-a-shift-eminent-domain-saves-homes.html>.

80. DICKERSON, *supra* note 26, at 169.

Some municipalities that were particularly hit hard by foreclosures threatened to use their eminent domain powers to seize underwater mortgages if the investors who owned the mortgages refused the city's offer to buy the loans at an amount that roughly equals the fair market value of the home. If investors refused the city's offer to purchase the loan at lower than face value, the city threatened to reduce the principal loan balance and then resell the reduced mortgages to new investors (or refinance the now lower amount with a government-backed loan).<sup>81</sup> Other cities, including Memphis, responded to revenue losses and blighted vacant homes by suing the banks who engaged in reverse redlining.<sup>82</sup>

Memphis and other cities sued Wells Fargo Bank and alleged that it steered minority borrowers to higher-cost subprime loans even though many of those borrowers could have qualified for lower-cost and lower-risk loans.<sup>83</sup> The cities argued that these lending practices resulted in disproportionately high foreclosure rates and caused property values and municipal tax revenues to plummet because of the number of homes in neighborhoods that had vacant foreclosed homes. Wells Fargo ultimately settled the claims the City of Memphis filed against it by investing more than \$400 million in loans to help generate economic development.<sup>84</sup>

## V. TRADITIONAL MUNICIPAL RESPONSE TO URBAN BLIGHT

In general, cities respond to deteriorating or blighted neighborhoods by seeking to repair, demolish, or transfer ownership of properties in the area to third party investors who agree to remove the blight or restore the decaying properties. Just as federal funds were used to build public housing units, cities (including Memphis) have used federal funds to demolish decaying public

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81. Ian Urbina, *Foreclosures Prompt Cities to Make Plea for Aid*, N.Y. TIMES (Jan. 24, 2008), <http://www.nytimes.com/2008/01/24/us/24mayors.html>. Some states used funds they received as part of the national foreclosure settlement against lenders to demolish abandoned and dilapidated homes. Niquette & Jones, *supra* note 79; Dewan, *supra* note 79.

82. Creola Johnson, Symposium, *Fight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties*, 2008 UTAH L. REV. 1169, 1186–92 (2008).

83. DICKERSON, *supra* note 26, at 169–70.

84. *Id.* at ch. 7.

housing projects.<sup>85</sup> While destroying dilapidated low-income housing will help revitalize blighted neighborhoods, a consistent consequence of blight removal is the displacement of low-income residents, who are typically pushed to another blighted neighborhood.<sup>86</sup>

#### A. Eminent Domain

Originally, localities used their eminent domain power to condemn land that would be used to construct government buildings, highways, or public utilities. Since at least the 1920s, government agencies have also used their eminent domain police powers to condemn vacant or structurally unsound buildings.<sup>87</sup> Once buildings are deemed to be blighted and to endanger the public safety, health, or welfare, the buildings or entire areas can be treated as a public nuisance, and the governing body can order owners to repair or destroy the buildings.<sup>88</sup> If owners refuse to (or are unable to) comply with an abatement order, the city can use its police powers to clear the blighted buildings or areas<sup>89</sup> (as long as private

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85. Hyra, *supra* note 19, at 504.

86. Peattie, *supra* note 36, at 300–01; Hyra, *supra* note 19, at 510 (discussing research that considers whether public housing tenants who are displaced from housing projects receive any positive benefits from the displacement).

87. *Berman v. Parker*, 348 U.S. 26, 32 (1954). Eminent domain is provided for in the United States Constitution and is also authorized by statutes or constitutions in most states. See U.S. CONST. amend. V (private property cannot “be taken for public use, without just compensation”); Kellen Zale, *The Government’s Right to Destroy*, 47 ARIZ. ST. L.J. 269, 293–94 (2005); see, e.g., TEX. CONST. art. I, § 17 (“No person’s property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made.”).

88. Pritchett, *supra* note 5, at 25 (noting that slums were deemed to be a public nuisance, urban renewal efforts that ordered them to be destroyed would be a valid use of a city’s eminent domain powers).

89. A 1938 urban planning report notes cities’ traditional response to dilapidated housing:

A very effective method of getting rid of bad housing is to demolish it. In most cities there are ordinances of rather long standing authorizing one or more city departments . . . to notify an owner when a building is in an unsafe condition. If the owner sees fit neither to remedy the condition nor to demolish the building, the city official may order demolition at the expense of the owner.

owners are paid for the taking of their property) if the blight poses health or safety risks to other citizens, decreases tax revenues, or decreases the values of neighboring properties.<sup>90</sup>

### *B. Urban Renewal*

#### 1. Slum or Blight Removal Programs

Since Congress passed the Housing Act of 1949, cities have developed and implemented urban renewal programs to revitalize blighted areas in neighborhoods near the business districts of major U.S. cities. Urban renewal programs in the mid-twentieth century used war-like terminology to describe the need to fight blight, and even today, political leaders often refer to blight as an infectious disease that must be eliminated before it spreads to other areas of the city.<sup>91</sup> Cities typically use their redevelopment authorities or agencies to develop urban planning policies, and for a number of reasons, those policies almost always are designed to condemn then destroy blighted properties.

Cities often seek to destroy dilapidated housing projects and relocate lower-income residents away from the urban core because blight is viewed as “geographically contagious” and “detrimental to the well-being of people living in or near such areas”<sup>92</sup> and because buildings in blighted areas generate little tax revenue but have higher needs for police and social services. Blighted

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WALKER, *supra* note 6, at 132.

90. *Zale, supra* note 87, at 291–92.

91. For example, efforts to renew the Morningside Heights/Harlem neighborhood in Manhattan in the 1950s characterized blight as “a parasite that was able to infect a healthy host body” and urged the need to contain blight and prevent it from spreading to (and infecting) the Columbia University campus. Carriere, *supra* note 13, at 11. Likewise, in announcing plans to demolish 4,000 buildings in Baltimore, the mayor was quoted as saying that “[f]ixing what is broken in Baltimore requires that we address the sea of abandoned, dilapidated buildings that are infecting entire neighborhoods.” Patrick Clark, *Can we Fix American Cities by Tearing them Down?*, BLOOMBERG EXPRESS (Jan. 13, 2016, 11:42 AM), <http://www.bloomberg.com/news/articles/2016-01-13/can-we-fix-american-cities-by-tearing-them-down->; *see also* William J. Collins & Katharine L. Shester, *Slum Clearance and Urban Renewal in the United States*, 5 AMER. ECON. J. 239, 240 (2013) (“Proponents of urban renewal believed that blight was rooted in powerful negative externalities and was therefore ‘contagious.’”).

92. Collins & Shester, *supra* note 91, at 243.



neighborhoods are viewed as a “drain on public resources, and both a cause and consequence of middle-class flight and local governments’ fiscal problems.”<sup>93</sup> Given these concerns, urban renewal programs have focused on reinvigorating central city business districts, making decaying cities become more economically viable<sup>94</sup> and encouraging white upper- and middle-class suburbanites to return to cities.<sup>95</sup>

Cities have often relied on federal funds to remove blight. Until the end of the 1970s, virtually all major urban renewal programs in the country were financed using funds provided by federal housing acts.<sup>96</sup> While not all urban renewal programs are funded totally with federal funds, cities continue to receive grants from the federal government to remove blight from their communities. For example, to create more housing in downtown areas, housing authorities in Memphis and other major cities used federal funds provided by the Hope VI program to demolish decaying public housing projects and replace them with mixed-income housing.<sup>97</sup> Likewise, housing authorities used federal Community Development Block Grants (“CDBG”) and federal funds provided by the HOME Investment Partnership Program to rebuild infrastructure in urban areas and to create affordable housing for lower- and moderate-income households.<sup>98</sup>

After the 2007–2009 recession, cities used funds from HUD’s Neighborhood Stabilization Program to demolish or rehabilitate abandoned properties. The U.S. also allowed states to use money they received from the Hardest Hit Fund to demolish dete-

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93. *Id.*

94. Hyra, *supra* note 19, at 502 (“Urban renewal was a downtown preservation and minority containment revitalization strategy.”).

95. For example, New York City suffered a population loss of almost one million people in the 1970s. The population of the city has consistently increased since the 1980s, which has now exacerbated housing unaffordability concerns for lower-income New Yorkers. *State of New York City’s Housing and Neighborhoods—2014 Report*, NYU FURMAN CTR. (2014), [http://furmancenter.org/files/sotc/NYUFurmanCenter\\_SOCin\\_2015\\_4MAY2016.pdf](http://furmancenter.org/files/sotc/NYUFurmanCenter_SOCin_2015_4MAY2016.pdf).

96. See Hyra, *supra* note 19, at 503; VON HOFFMAN, *supra* note 3, at 8–14 (2003) (discussing slum clearance programs).

97. Hyra, *supra* note 19, at 504.

98. For an overview of the CDBG program and how some politicians misuse CDBG funds by allocating them in a racially discriminatory manner, see BONDS, *supra* note 74, at 14–22, 75–89.

riorated, vacant residences.<sup>99</sup> The Hardest Hit Fund was originally created to provide funds to help homeowners prevent foreclosures. The large number of abandoned residences and buildings in some states caused the U.S. to allow a few states with high foreclosure rates to use Hardest Hit Fund allocations to demolish blighted properties and prevent those properties from harming the value of neighboring residences and also to decrease burglary, theft, and vandalism in blighted areas.<sup>100</sup>

Urban renewal programs have always been controversial. Some property rights scholars contend that these programs allow cities to encroach on individual property owners' rights and force owners into involuntary sales at prices that may be less than market value.<sup>101</sup> Other critics argue that the programs displace poor residents, destroy cohesive and viable neighborhoods, and are biased in favor of modern facilities over older or historic structures because newer facilities can provide more tax revenues for cities. Urban renewal or revitalization programs are also controversial because of the wide discretion they give municipalities when they are determining whether a building is blighted or merely old.

Some critics suggest that the inherent biases of urban renewal programs and the officials who administer these programs cause buildings or entire neighborhoods to arbitrarily be deemed blighted.<sup>102</sup> As long as there is a reasonable difference in opinion

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99. CHRISTY L. ROMERO, OFF. SPECIAL INSPECTOR GEN., TREASURY SHOULD DO MUCH MORE TO INCREASE THE EFFECTIVENESS OF THE TARP HARDEST HIT FUND BLIGHT ELIMINATION PROGRAM 12, 14–15 (Apr. 21, 2015), [https://www.sig tarp.gov/Audit%20Reports/SIGTARP\\_Blight\\_Elimination\\_Report.pdf](https://www.sig tarp.gov/Audit%20Reports/SIGTARP_Blight_Elimination_Report.pdf).

100. Clark, *supra* note 91. See generally Zale, *supra* note 87, at 271 (detailing the number of demolished properties in Cleveland, Buffalo, and Detroit).

101. Collins & Shester, *supra* note 91, at 240, 248 (listing criticisms of urban renewal programs); Pritchett, *supra* note 5, at 21 (observing that blighted areas often “supported viable businesses and provided affordable housing to working class persons” but were deemed to not be “profitable enough” because they failed to produce sufficient tax revenues for cities or “profit opportunities for those who most coveted the land”).

102. See Eric R. Claeys, *Don't Waste a Teaching Moment: Kelo, Urban Renewal, and Blight*, 15 J. AFF. HOUS. & COMM. DEV. L. 14, 16 (2005) (suggesting that cities can deem homes to be “deteriorating or detrimental by laying a paper trail to document broken windows and frayed porch screens, or by citing the fact that the houses were more than twenty years old”).

about whether an area is blighted, cities can almost always deem a neighborhood or property as blighted and use their eminent domain powers to condemn and destroy private land. Because there is no clear definition of blight, one housing advocate has suggested that if the only tool cities have to address blight is a hammer, then “everything looks like a nail.”<sup>103</sup>

Urban renewal programs can order the destruction of private property even if the existing landowners disagree that their properties are substandard or pose health risks to the community.<sup>104</sup> While destroying decaying buildings may revitalize the neighborhood or make redevelopment more likely, deeming old homes and buildings in lower-income neighborhoods to be blighted in order to pave the path for the construction of newer housing and trendy businesses often ignores the value that the existing (but soon-to-be-displaced) lower- and working-class residents might place in their neighborhood. Perhaps the biggest criticism of urban renewal programs, though, is that they have a disproportionately negative impact on racial minorities.

Most areas that have been deemed blighted have been in ethnic neighborhoods.<sup>105</sup> Some urban renewal projects have provided jobs for some black residents and cities like Detroit and Baltimore have “greened” some of the vacant lots, and allowed them to become parks.<sup>106</sup> Generally speaking, though, urban renewal generally has negative economic effects for black residents whose communities are razed or, in some instances, split in half by highway projects and once public or low-income housing is destroyed, cities rarely rebuild affordable housing units on the vacant land. Instead, displaced residents typically are forced to find other low-

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103. Clark, *supra* note 91.

104. See generally Semuels, *supra* note 35 (observing that black residents fondly viewed the Syracuse neighborhood as a “close-knit black community that socialized around Wilson Park, a square of green grass and trees in the center of town” while whites viewed the predominately black neighborhood as a slum that was “ripe for redevelopment because of its proximity to downtown”).

105. See Pritchett, *supra* note 5, at 20 (“Ethnic prejudice underlay much of the analysis of blighted areas . . .”).

106. For example, Detroit destroyed over 3,000 homes and used some of the vacant lots for storm water control. Clark, *supra* note 91. Baltimore, which intends to destroy up to 16,000 vacant homes, may ultimately build affordable housing on those lots but initially will convert the vacant lots into parks. *Id.*

income housing or are relocated to public housing in other lower-income, predominately black neighborhoods.<sup>107</sup> In short, although slum or blight clearance programs might eliminate blight in one part of a city, the poverty and conditions that caused the first neighborhood to be blighted often shift to another neighborhood.

## 2. Urban Renewal: Economic Development

In addition to using eminent domain to stop blight (however defined), properties in some urban areas are now being condemned as part of cities' economic development efforts. Generally speaking, if a governing body deems property to be blighted and used in an economically inefficient manner, the property can be condemned and the land transferred, sold, or leased to a private developer who promises to generate revenue for the city in the form of new job creation and additional tax revenues. The United States Supreme Court held in *Kelo v. City of New London*<sup>108</sup> that it is constitutional for cities to take private property and transfer the property to another owner as part of the city's economic development efforts. As a result, urban planners who view "blight" as an impediment to economic development now have even stronger incentives to condemn older buildings in lower-income, non-white neighborhoods in order to develop modern facilities that can attract upper-income (white) residents and upscale businesses to those neighborhoods.

Since *Kelo*, courts have given cities wide discretion to condemn and destroy property deemed to be blighted as part of the cities' economic development efforts. For example, one court observed that "only where there is no room for reasonable difference of opinion as to whether an area is blighted" are judges allowed to "substitute their views as to the adequacy with which the public purpose of blight removal has been made out" for the views held by the legislatively designated governing body that condemned the private property.<sup>109</sup> Urban renewal programs that focus on economic development are even more controversial than programs

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107. Hyra, *supra* note 19, at 504.

108. 545 U.S. 469, 483–84 (2005).

109. *Goldstein v. N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 172 (2009).

that are designed to eliminate blight because these programs essentially take property owned by private individuals and transfer it to other private owners who will then use the property to build homes or businesses.

Critics of urban renewal economic development programs suggest that cash-strapped cities are now using their eminent domain powers, not for the public good but, to profit from public-private partnerships that allow real estate developers to cheaply acquire property that owners have been forced to sell.<sup>110</sup> Rather than put the property to public use (for example, building a highway), critics suggest that the private developer rather than the city's residents primarily benefits from the taking of the "blighted" property. The residents who are most harmed by these renewal efforts are often lower-income people who live in the neighborhoods that are being revitalized.

For the last several decades, urban renewal programs have caused waves of gentrification in many large cities in the U.S. The "back-to-the-city" movement caused young, upper-income (and mostly white) residents to return to live in funky, hipster downtown areas in major metropolitan areas, like New York, Los Angeles, Washington, D.C., and Chicago.<sup>111</sup> Their return to the city has, however, caused housing prices to soar.<sup>112</sup>

Soaring housing prices and higher property taxes in revitalized and gentrified neighborhoods often displace lower-income (and mostly non-white) residents and also make it hard for middle-income residents to live in the central business districts of many cities.<sup>113</sup> In fact, recent urban renewal projects in Chicago, New

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110. See generally Pritchett, *supra* note 5, at 2–4 (“[E]minent domain could be used only where it provided specific benefits to the general public, and critics and supporters alike questioned whether urban renewal met this standard.”).

111. Gregor, *supra* note 18 (describing the gentrification process in the Crown Heights section of Brooklyn).

112. *Id.* (describing how abandoned and underutilized warehouses, factories, and auto shops were turned into high-income condominiums).

113. See generally Eugene L. Meyer, *Washington Neighborhood Is Remade for Young Urbanites*, N.Y. TIMES (Dec. 1, 2015), <http://www.nytimes.com/2015/12/02/realestate/commercial/development-redefines-character-of-washingtons-shaw-area.html> (discussing the economic impact of gentrification on an urban neighborhood).

York, Washington, D.C., and other major U.S. cities forced existing residents out of gentrified, urban neighborhoods and into suburbs.<sup>114</sup> Gentrification combined with the lingering economic problems from the recent recession have increased suburban poverty, and suburban poverty rates often exceed the poverty rates in the recently revitalized neighborhoods.<sup>115</sup>

## VI. INNOVATIVE URBAN RENEWAL

### A. *Preserving Neighborhoods*

Once a neighborhood starts to transition “downward,” urban blight is almost inevitable unless policymakers intervene. Before blight becomes irreversible, cities should engage in creative efforts to help older urban neighborhoods remain economically viable, to encourage investment in those neighborhoods, and to help existing residents remain in their neighborhoods. To encourage investment in an aging but sustainable community, cities should urge lenders—especially if they have participated in renewal efforts in other parts of the city—to increase their presence in lower-income neighborhoods.

Traditional banks have fewer branches in low-income neighborhoods, which causes residents of those neighborhoods to use financial services provided by higher-cost payday lenders and

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114. For example, the Mayor of New York has proposed renewal plans that would lease land within a public housing project to a developer who would then create mixed-income housing. Navarro, *supra* note 46. Likewise, the Mayor announced plans to change zoning laws in certain neighborhoods in order to build housing that would be both affordable and also market rate. *Id.* Critics fear that development efforts that privatize or destroy affordable public housing might improve decaying neighborhoods, make the neighborhood safer, and improve the neighborhood schools but would almost inevitably result in displacing the poor residents who currently rent in those areas. *Id.*

115. See Hyra, *supra* note 19, at 512 (observing that “the revival of the central city and inner city gentrification coincided with the movement of poverty to the suburbs”); Henry Grabar, *More Americans are Going Hungry in the Suburbs*, ATLANTIC CITY LAB (Jan. 26, 2016), [http://www.citylab.com/housing/2016/01/more-americans-are-going-hungry-in-the-suburbs/426786/?utm\\_source=SFTwitter](http://www.citylab.com/housing/2016/01/more-americans-are-going-hungry-in-the-suburbs/426786/?utm_source=SFTwitter).

check-cashing companies.<sup>116</sup> In addition, entrepreneurs and businesses in lower-income neighborhoods often must travel farther to get access to capital. Traditional banks seem amenable to opening branches in low-income, non-white neighborhoods only when forced to do so as part of settlements of lawsuits alleging that they engaged in lending discrimination (as First Tennessee Bank recently did).<sup>117</sup>

Cities should actively encourage banks to return to older, urban neighborhoods or to partner with community-based organizations to provide credit or financial services to residents. To make it easier for businesses that already operate in aging urban neighborhoods or ones that would like to invest in those neighborhoods, cities should help ensure that they have access to financial capital and have fair access to both municipal and private-sector contracting opportunities.<sup>118</sup> To ensure that entrepreneurs have access to capital, cities should continue to monitor and gather data about potential discrimination against black-owned businesses.

To ensure that lower-income residents who are displaced as part of urban renewal projects have access to affordable housing, local planning commissions must be willing to truncate the legal challenges suburban homeowners are allowed to mount to prevent affordable housing units from being built in their communities.<sup>119</sup> Similarly, cities must find ways to internalize the costs that wealthy neighborhoods place on lower-income neighborhoods when they insist that socially beneficial (but societally undesirable) projects, like public housing projects or homeless shelters, be placed in lower-income communities. Since the presence of these

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116. See DICKERSON, *supra* note 26, at 173–75 (discussing dearth of traditional lending facilities in lower-income neighborhoods and the resulting prevalence of high-cost loans in minority communities).

117. See Ben Lane, *First Tennessee Bank Reaches \$1.9 million Settlement Agreement Over Discriminatory Lending*, HOUSINGWIRE (Feb. 1, 2016), [http://www.housingwire.com/articles/36175-first-tennessee-bank-reaches-19-million-settlement-over-discriminatory-lending?utm\\_source=dlvr.it&utm\\_medium=twitter&utm\\_campaign=housingwire](http://www.housingwire.com/articles/36175-first-tennessee-bank-reaches-19-million-settlement-over-discriminatory-lending?utm_source=dlvr.it&utm_medium=twitter&utm_campaign=housingwire).

118. Carolyn M. Brown, *Black Farmers Shut Out Of \$10 Billion Legal Marijuana Business*, BLACK ENTERPRISE (Nov. 10, 2015), <http://www.blackenterprise.com/small-business/black-farmers-shut-out-of-legal-marijuana-business/>.

119. Ben-Joseph, *supra* note 35, at 180.

projects makes it more likely that the community will become blighted, lower-income communities that are forced to accept these properties should receive additional support—perhaps in the form of additional parks or neighborhood school funding.

If renewal programs succeed in revitalizing urban neighborhoods and attracting higher-income residents, many lower-income residents will be displaced. To make it possible for developers to build affordable higher density housing (both in the urban core and also in inner suburbs), many cities will need to revise zoning requirements (including density, height, and parking requirements) or grant zoning variances. In addition, cities should adopt inclusionary zoning laws that require builders of new developments to set-aside a certain percentage of the units in their new residential housing projects for lower- or middle-income residents.<sup>120</sup>

Cities must also commit to creative uses of land banks. Land banks are entities (often controlled by governments) that hold title to land that is often vacant, abandoned, dilapidated, or owned by the city because of tax delinquencies.<sup>121</sup> Land banks typically are given the authority to buy, rehabilitate, destroy, or resell the housing held in the bank and quickly return the property to productive uses. Most land banks are used to ensure that municipalities have a quick and efficient means of transferring blighted property to new private owners who can redevelop the process and, in the process, help generate tax revenues for the city.<sup>122</sup> If cities opt to use land banks to keep housing affordable for residents who live in neighborhoods that are (or are at risk of becoming) blights, the

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120. Robert W. Burchell et al., *Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis?*, NEW CENTURY HOUSING (Oct. 5, 2000), <http://www2.nhc.org/media/documents/InclusionaryZoning.pdf>. The California Supreme Court recently upheld an inclusionary zoning ordinance that requires developers to set aside housing for moderate-income households, pay a fee in lieu of providing the housing, or provide equivalent substitute housing. See *Cal. Bldg. Indus. Ass'n v. City of San Jose*, 61 Cal. 4th 435 (2015), *cert. denied*, 136 S. Ct. 928 (2016); Emily Badger, *Why it's so Hard to Afford a Rental Even if you Make a Decent Salary*, WASH. POST (Dec. 9, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/12/09/why-its-so-hard-to-afford-a-rental-even-if-you-make-a-decent-salary/>.

121. *Zale*, *supra* note 87, at 297.

122. *Id.*



bank must insist that private developers who acquire the property at low (or no) cost agree to invest in the blighted community and also set aside some of the redeveloped housing units for middle- or lower-income residents who currently live in the community.

Cities should also support the attempts of Community Land Trusts' ("CLTs") and Community Development Corporations' ("CDCs") to preserve affordable housing. Generally speaking, CDCs enter into long-term residential property leases with low-income residents in neighborhoods that are at risk of gentrifying and pricing out existing residents.<sup>123</sup> CLTs help create permanently affordable homes by giving low- and moderate-income households the opportunity to purchase homes that would otherwise be unaffordable. Homeowners generally are permitted to remain in homes held in a CLT indefinitely, and they can build equity in those homes while they live there. They cannot, though, rent out the homes and if they sell the home it must be to another lower-income household at an affordable price. By limiting the owner's property rights, CLTs ensure that the home remains affordable to lower-income families.<sup>124</sup>

CLTs and CDCs, while valuable, have high operating costs in part because they must purchase and potentially upgrade or refurbish homes before selling or leasing them to owners. Costs would be lower if CLTs and CDCs received additional financial support from financial institutions or if cities made it easier and more affordable for CLTs and CDCs to purchase blighted properties. If used on a larger scale, these entities could play a greater role both in helping to eliminate blight and in assisting existing residents remain in their neighborhoods.

Finally, one example of an innovative approach to fighting blight and encouraging existing residents to improve their communities is the Shelby County Land Bank's "mow-to-own program."<sup>125</sup> This program gives people who own land adjacent to vacant city- or county-owned lots the opportunity to purchase

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123. A. Mechele Dickerson, *Millennials, Affordable Housing and the Future of Homeownership*, J. AFFOR. HOUSING (forthcoming 2016).

124. *Id.*

125. Linda A. Moore, *Memphis' Mow-to-Own Takes Off in 2016*, COM. APPEAL (Dec. 21, 2015), <http://www.commercialappeal.com/news/government/city/memphis-mow-to-own-takes-off-in-2016-276e0cf9-a163-7881-e053-0100007f0f3a-363181171.html>.

those vacant lots at below-market costs. Participating owners are required to register for the program, pay \$175, and maintain the appearance of the lot for up to 3 years by mowing the property one initial time and then committing to mowing and maintaining the lot in the future.<sup>126</sup> Residents who comply with these requirements are then awarded credit toward buying the vacant lots.<sup>127</sup>

### *B. Sharing Revitalization's Benefits*

Unless city leaders consider the likely results of their revitalization efforts *before* those efforts start, gentrification is almost an inevitable result of urban renewal efforts. Gentrification, like urban renewal, implicates race because gentrification has *always* involved affluent whites moving to urban neighborhoods that have become chic or desirable. As noted in a federal housing report almost forty years ago, “[d]ramatic restoration of aged and blighted housing stock is almost exclusively a white phenomenon, undertaken by families whose alternative residence is the suburbs.”<sup>128</sup>

Of course, there is no reason that city leaders must reflexively respond to blight by immediately destroying all existing buildings and replacing them with condominiums, bagel pubs, and trendy cafes. That is, while revitalization efforts that succeed in stimulating economic growth in an area will likely displace some of the existing residents, the forced displacement of the existing low-income (black or Latino) households need not be the inevitable result of urban renewal programs.

Texas housing advocate John Henneberger (the recipient of a MacArthur “genius” grant)<sup>129</sup> has articulated four rights he believes all low-income households should have when cities are developing plans to revitalize a low-income or blighted area:

- the right to choose to live in a stable, mixed-race neighborhood;
- the right to stay in their neighborhoods and not be displaced by higher-income residents;

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126. *Id.*

127. *Id.*

128. ARTHUR D. LITTLE, INC., *supra* note 1, at 128.

129. *MacArthur Fellows Program*, MACARTHUR FOUND. (Sept. 17, 2016), <https://www.macfound.org/fellows/916/>.

- the right to equal access to public services and facilities; and
- the right to have a say in how their neighborhoods will be redeveloped.<sup>130</sup>

While it is unrealistic to think that wealthier residents will reverse their trend of moving into revitalized neighborhoods, urban renewal efforts must be more inclusive. Specifically, urban planners should make sure that existing residents participate in the benefits associated with the revitalized neighborhood and renewal plans should include mandatory set-asides for affordable housing.

One successful example of a city's inclusive urban renewal efforts involves the culturally historic Shaw neighborhood in Washington, D.C. Shaw is in the process of transforming from a working-class neighborhood where predominately black families have lived for generations to a trendy upper-income neighborhood of mostly young, white, single-person households.<sup>131</sup> The renewal efforts have, by design, ensured that the revitalized neighborhood will provide economic benefits for current residents. For example, the real estate development firm that is spearheading the revitalization efforts is headed by a black native Washingtonian whose firm has committed to having thirty percent of the units reserved for middle-income tenants.<sup>132</sup> Urban renewal projects in other cities (including Chicago and New York) that were revitalized in the 2000s also ensured that (1) black real estate development firms helped construct or manage new inner city housing developments; (2) black churches participated in community economic redevelopment programs; and (3) black banks are allowed to help finance the redevelopment projects.<sup>133</sup>

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130. John Henneberger, *The Right to Choose, the Right to Stay, the Right to Equal Treatment, the Right to Have a Say: Reimagining Fair Housing*, TEX. HOUSERS (Oct. 24, 2015), <http://texashousers.net/2015/10/24/the-right-to-choose-the-right-to-stay-the-right-to-equal-treatment-the-right-to-have-a-say-reimagining-fair-housing/>.

131. Meyer, *supra* note 113; *see also* Gregor, *supra* note 18 (noting that most new residents were in their late twenties and early thirties).

132. Meyer, *supra* note 113.

133. Hyra, *supra* note 19, at 511.

## VII. CONCLUSION

Urban blight has always existed and always will. Unfortunately, the country's history of pushing poor residents out of revitalized neighborhoods will remain a part of our present and future as long as the goal of urban renewal programs is to demolish and destroy. As a 1938 urban planning report observed: "Government[s] must provide the framework of legislation within which private industry can operate effectively. Zoning laws, building restrictions, mortgage laws, tax policies, and land control are some of the important obligations of the government."<sup>134</sup>

While urban blight will never disappear, cities can do more to anticipate and respond to the consequences of urban renewal programs. Although urban renewal programs should demolish buildings that cannot be rehabilitated, these programs should also make every effort to renovate or modernize buildings that still have value. Moreover, even if it is not feasible to save the existing buildings in a neighborhood, land use policies must take care to provide affordable housing for the displaced residents of blighted neighborhoods.

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134. WALKER, *supra* note 6, at 87.