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THE GOOD, THE BAD, AND THE GENTRIFIED: HOW THE HISTORICAL MISUSE AND FUTURE POTENTIAL OF ZONING LAWS IMPACT URBAN DEVELOPMENT

Megan VanGilder*

I. INTRODUCTION

When shiny new apartment complexes and high-end boutiques appear in previously blighted or decaying neighborhoods, many perceive a welcome improvement and celebrate the influx of spending and new facilities to the area. Meanwhile, critics decry these changes as the result of gentrification and chastise those who celebrate luxury apartment buildings or artisanal coffee shops instead of mourning the loss of long-time residents and existing community structure.1 Both reactions, however, over-simplify the process of redevelopment and neighborhood change. On the one hand, revitalization indisputably improves dilapidated housing structures and under-funded infrastructure.2 On the other, however, these improvements may lead to the exclusion or displacement of residents as the changes drive up the cost of living.3 Whether the improvements lead to benefits for the existing community or price people out of their homes, the process of revitalization is still considered gentrification. While many are familiar with the term “gentrification,” at least in a colloquial sense, most fail to comprehend its complex legal underpinnings.

This Comment unpacks the intricate and nuanced socioeconomic process of gentrification and identifies zoning regulations as a key contributor to the process. Rather than being a purely sociological and independent process, gentrification is linked closely to local laws and regulations. While some may view zoning as a rather trivial area of the law, zoning ordinances determine the structure of cities across the United States and have an outsized impact on the countenance of communities.

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1. See generally Lindsay M. Miller, We Need to Change How We Think About Gentrification, 107 NAT’L. CIVIC R. 25, 26 (2019) (describing public outcry and protest against a coffee shop joking about gentrification and explaining emotional and personal responses to gentrification).


3. See Miller, supra note 1, at 26.
everywhere.4 Zoning laws not only dictate what can be built and where, but indirectly dictate who can live where, thus contributing to exclusion and segregation.5

This Comment suggests a strong causal link between zoning and gentrification and argues that the impact of zoning on community planning and development is historically overlooked—especially its relationship with divestment, displacement, and segregation in American cities. Breaking down the concept of gentrification reveals that the basic process itself is not to blame for the negative effects associated with the changes it may bring. Rather, the specific circumstances in which gentrification occurs dictate the results. Further, a close examination of how zoning became such a widely used regulatory tool across the United States reveals a history laden with discriminatory intent and highly suspect motivations from local city planners and even the federal government.6

As cities across the country seek ways to reduce the cost of housing and prevent gentrification’s harmful effects, some of those cities must begin by looking in the mirror.7 Cincinnati, Ohio is one such city. From a community-centered, large-scale plan, to the newly passed accessory dwelling unit ordinance, Cincinnati’s self-reflection has led to attempts to introduce equitable and inclusionary measures to its zoning code.8 Based on widespread research and case studies from other cities, coupled with the compelling relationship between zoning and gentrification, it is likely that these changes—if implemented—will have a positive impact on the city.9

5. Id.
Section II of this Comment explores the historical evolution of gentrification, traces the development of zoning laws, explores the legal basis for local zoning authority, and considers the overtly race-based and segregationist goals that underpin the widespread use of this kind of land-use regulation. Section II also outlines the city of Cincinnati’s efforts to address gentrification and equitable zoning. Section III argues that zoning regulations are a key factor in determining the impact gentrification will have on a community by manipulating developer incentives. This Section also contrasts the historical misuse of zoning laws with the future potential for zoning as a tool for positive change. Finally, Section III argues that Cincinnati’s new ordinance and proposed changes for the future will help prevent the potentially negative effects of gentrification while contributing to a more flexible and inclusive zoning regime. Section IV briefly concludes by asserting that zoning is the true cause of the negative effects commonly associated with gentrification, and urges city leaders across the country to take responsibility by seeking out equitable changes such as those recently embraced by the city of Cincinnati.

II. BACKGROUND

Before detailing the connection between zoning and gentrification, it is necessary to consider the relevant legal and sociological concepts at hand. Part A of this Section explains the evolution of gentrification over time, as well as several majorly debated issues within related scholarship. Part B discusses the proliferation of zoning regimes across the United States and the authority of state actors to implement such regulations. Part C describes the socioeconomic landscape of Cincinnati, Ohio, the newly passed accessory dwelling unit ordinance, and efforts to implement zoning reform throughout the city.

A. Gentrification Explained

English sociologist Ruth Glass coined the term “gentrification” in 1964 to describe a pattern she first observed in East London. Members of the middle class moved into working class districts, then purchased and renovated run-down buildings in the area, thus displacing long-time residents. Social scientists in the United States borrowed Glass’s term

10. Despite getting its name in 1964, the phenomenon has been occurring since the early 1910s. See Suleiman Osman, Gentrification in the United States, OXFORD UNIVERSITY PRESS 1 (May 9, 2016), https://oxfordre.com/americanhistory/americanhistory/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-135?mediaType=Article.
11. Id.
12. Id.
to describe a similar phenomenon emerging in American cities.\textsuperscript{13} As opposed to the frequently fast-paced, large-scale, government-endorsed urban redevelopment process,\textsuperscript{14} gentrification refers to a slower process of private revitalization funded by middle class migrants.\textsuperscript{15} Gentrification consistently involves rehabilitation, restoration, or adaptive reuse of existing structures paired with a class shift, as wealthy residents and consumers move into the area—pushing out poorer, long-time residents.\textsuperscript{16} The process tends to be gradual and unplanned, resulting in both a racial and structural transformation that directly or indirectly displaces the existing community.\textsuperscript{17}

Contemporary scholars provide varied definitions of gentrification; however, the main elements of the concept remain constant.\textsuperscript{18} Some scholars refer to gentrification as a process by which a professional or managerial class moves into a previously decaying inner-city neighborhood, renovates the housing, and displaces poorer residents.\textsuperscript{19} Others describe it as a process wherein a neighborhood’s population becomes whiter, younger, and more affluent.\textsuperscript{20} Still others see it as a process in which poorer neighborhoods experience both an increase in investment and an influx of wealthier new residents.\textsuperscript{21} This process may also be marked by changing physical, demographic, and cultural characteristics, as well as improved amenities and rising rents.\textsuperscript{22} Throughout its century-long history, this process continued to change not only in scale, but also in its contributing factors and impacts, leading to a present phenomenon that is vastly different today than when it first began to emerge in the 1910s.\textsuperscript{23}

\textsuperscript{13} Id.
\textsuperscript{14} Urban redevelopment refers to “the large-scale demolition of slum areas, erection of new structures, and government subsidies.” Id. at 2.
\textsuperscript{15} Id.
\textsuperscript{16} Id. at 3.
\textsuperscript{17} These are not consistent and scholars debate whether or not gentrification causes displacement as residential displacement is difficult to measure. Id. Additionally, the shifting landscape of urban poverty contributes to the changing racial makeup of certain communities. Id. at 4.
\textsuperscript{18} See Nick Bailey & Douglas Robertson, Housing Renewal, Urban Policy and Gentrification, 34 URB. STUD. 561, 562 (1997); see also Miller, supra note 1, 25-26; Jackelyn Hwang & Jeffrey Lin, What Have We Learned About the Causes of Recent Gentrification?, 18 CITYSCAPE: J. POL’Y DEV. & RSCH. 9, 10 (2016). The main elements of the concept include: privately organized and funded revitalization of old structures, a slow-moving process in which rehabilitation occurs over time, and shifting neighborhood demographics as long-time residents leave and new (and often wealthier) residents move in. See Osman, supra note 10, at 1-4.
\textsuperscript{19} Bailey & Robertson, supra note 18, at 562.
\textsuperscript{20} Miller, supra note 1, at 26.
\textsuperscript{21} Hwang & Lin, supra note 18, at 10.
\textsuperscript{22} Id. However, this is not an exhaustive summary of scholarship defining “gentrification,” a significant and lively body of study proffers many additional definitions.
\textsuperscript{23} See generally Osman, supra note 10 (describing the historical evolution of gentrification and
1. Gentrification Over Time

The historic development of gentrification in the United States can be broken down into four distinct eras. First, beginning in the 1910s, a growing class of white-collar workers moved into cities, looking for affordable housing with convenient access to central business districts. This group flocked to what sociologists called the "zone of transition," where the remaining nineteenth-century structures suffered from disuse and disrepair. Although most of the new middle-class workers moved into suburban areas, singles and childless couples preferred to rent cheap spaces within walking distance of their downtown offices. Young, single women were a particularly influential group during this time period as they, along with gay men, lesbians, and artists, made up a large portion of the population moving into downtown spaces. This trend of renovation and migration provided middle class women an opportunity to gain financial independence as landlords or project managers. Moreover, these women often founded historic preservation societies focused on protecting the historical architecture of the dilapidated homes they sought to rehabilitate.

Gentrification decreased during the Great Depression and World War II; however, the 1950s saw a resurgence of the phenomenon. While this second era closely mirrored the first in many ways, rehabilitators’ focus shifted from simply renovating individual buildings to instead revitalizing entire neighborhoods. Developers started naming neighborhoods, forming block associations, and planting trees in these newly formed communities. Despite these efforts, banks refused to finance loans in redlined districts, and realtors continued efforts to steer white buyers out of the inner city. Due to such factors, gentrification remained a predominantly citizen-led process. Renovators continued to rely on

pointing out notable changes).

25. *Id.* at 5–6.
26. *Id.* at 5.
27. *Id.* at 6.
28. *Id.*
29. *Id.*
30. *Id.* at 8–9.
31. *Id.* at 10.
32. *Id.*
33. *Id.*
private savings and would even restore the homes themselves.\textsuperscript{36}

The 1970s and 1980s, however, marked a transition from a purely citizen-driven occurrence to one led by developers and city planners.\textsuperscript{37} This shift occurred, at least in part, because in the mid-1970s, local governments offered tax incentives and grants to developers who rehabilitated old buildings.\textsuperscript{38} Still, the process was slow-moving and remained primarily concentrated in downtown areas and historically white neighborhoods in large cities.\textsuperscript{39} Unlike the relative consistency of twentieth-century gentrification, the new millennium invited dramatic changes.\textsuperscript{40}

This modern era of gentrification differs from the previous century both in scale and in public awareness (as the term itself is now common and used broadly in society, not just among scholars).\textsuperscript{41} While the renovators of the previous era focused on restoring run-down housing structures, actors in the contemporary era are less concerned with individual homes than with the broad restructuring of entire communities.\textsuperscript{42} The phenomenon now is also dramatically broader, affecting even more cities—and neighborhoods within those cities—that vary from the archetypal target for gentrification described above.\textsuperscript{43} Additionally, twenty-first century gentrification is focused on more practical concerns such as location and quality neighborhood amenities, rather than the aesthetic concerns considered by prior generations.\textsuperscript{44} One constant, however, is the occupying demographic—young, white, and college-educated individuals. These young professionals retained primary responsibility for population growth in city centers during the 2000s.\textsuperscript{45}

2. Debated Concepts

Although scholars generally agree on the history of gentrification, they tend to disagree on most other issues surrounding the phenomenon.\textsuperscript{46} One issue that is heavily debated is whether gentrification is beneficial or
detrimental to communities.\textsuperscript{47} Those who view gentrification as a positive contribution to society assert that it brings economic growth and revitalization to previously decaying neighborhoods.\textsuperscript{48} However, those who claim gentrification is detrimental point to historical divestment and disenfranchisement of poor communities of color, factors that allowed gentrification to take hold in the first place.\textsuperscript{49} Gentrification opponents further cite to the displacement of long-term residents that often results from the inflated housing costs, property taxes, and cost of living that often accompany gentrification.\textsuperscript{50}

However, not all scholars agree that gentrification necessarily leads to displacement.\textsuperscript{51} Some studies suggest that the displacement of poor, long-term residents caused by wealthy new residents occurs infrequently.\textsuperscript{52} Nonetheless, a large group of scholars argue that displacement is a direct result of excluding the low-income individuals who want to move in to gentrified areas, rather than a result of gentrifiers pushing out existing residents.\textsuperscript{53} Others, while still skeptical of a causal relationship between gentrification and displacement, assert that lower-income individuals find it harder to afford homes in the historically poor, inner-city neighborhoods that gentrifiers target—whether they are looking to move in or simply maintain their homes.\textsuperscript{54} Still, contemporary studies suggest that even if the level of displacement caused by gentrification is historically low, the displacement of disadvantaged communities has increased in the modern era.\textsuperscript{55}

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\textsuperscript{47} Bingham, \textit{supra} note 2, at 76; Miller, \textit{supra} note 1, at 26.
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\textsuperscript{48} Miller, \textit{supra} note 1; see Bingham, \textit{supra} note 2, at 76.
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\textsuperscript{49} Miller, \textit{supra} note 1, at 26.
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\textsuperscript{50} Id.
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\textsuperscript{51} Id. at 29. Displacement refers to “the process by which a neighborhood becomes too expensive for its long-term residents to live, so that, over time, lower-income residents get priced out due to rising rents, property taxes, or general cost of living.” \textit{Id.} at 26.
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\textsuperscript{52} Id. at 29.
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\textsuperscript{53} Id.
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The extensive history of the divestment of Black communities due to zoning, redlining, racially restrictive covenants, and racial steering set the stage for the gentrification and resulting displacement seen today. Gentrification is inextricably linked to this history of residential segregation, as predominantly Black neighborhoods, subject to “White Flight” and neglect in the 1950s went on to become prime targets of gentrification in the seventies and eighties. However, many scholars note that while gentrification is one contributor, a variety of overlapping factors lead to the displacement of these individuals. In sum, while the basic process of gentrification follows a reliable pattern, its impact can be complex and inconsistent, making it a complicated area of study from both a sociological and legal perspective.

B. The Rise of Zoning

Zoning is a type of regulatory scheme through which municipalities exercise control over the use and occupancy of land. Municipalities achieve their goals by restricting parcels of land to particular uses or developments based upon carefully drawn districts outlined in the city’s


57. Racial steering is a practice adopted by real estate agents in which they purposefully steer African Americans out of desirable (white) neighborhoods, and towards neighborhoods with higher concentrations of people of color, lower housing quality, and a higher level of poverty. Michela Zonta, Racial Disparities in Home Appreciation, CTR. FOR AM. PROGRESS (July 15, 2019), https://www.americanprogress.org/article/racial-disparities-home-appreciation/.


60. Miriam Zuk et al., Gentrification, Displacement, and the Role of Public Investment, 33 J. PLAN. LITERATURE 31, 32 (2018); see also ROTHSTEIN, supra note 6.

61. RICHARDSON ET AL., supra note 58, at 9. For example, public programs such as the Homeownership and Opportunity for People Everywhere (HOPE IV) program, also contributed to displacement by demolishing public housing and decreasing population density in low-income neighborhoods. See Derek Hyra, Commentary: Causes and Consequences of Gentrification and the Future of Equitable Development Policy, 18 CITYSCAPE: J. POL’Y DEV. & RSCH. 171, 172 (2016) HOPE IV is a federal program designed to demolish public housing and replace the structures with new housing units. Michael Brazley & John I. Gilderbloom, HOPE IV Housing Program: Was It Effective?, 66 AM. J. ECON. & SOCI. 433, 434 (2007).
map and development plan. Historically, land-use regulations relied on common law nuisance doctrines. This allowed cities to prevent the harm or annoyance caused by public nuisances while simultaneously allowing landowners to retain comparatively stronger control over desired use of their property. However, as populations expanded, local governments’ and city planners’ increased desire for clear boundaries and regulated land usage led to the adoption of the more rigid structure of zoning ordinances.

Although San Francisco adopted a limited nuisance law in 1876, New York City implemented the United States’ first modern, city-wide zoning ordinance. Passed in 1916, the New York City ordinance aimed to regulate density by dividing the city into height, use, and area districts. The ordinance grew out of the city’s desire to prevent immigrant garment workers from encroaching on high-end Fifth Avenue shopkeepers and their patrons. This early regulation demonstrates how zoning affects both uses and users, foreshadowing how these regulations would function in the future. The remainder of this Part outlines the development of zoning as a method of land-use regulation, explores the legal basis for local zoning authority, and highlights the racial and segregationist motivations for promoting the widespread use of zoning laws.

1. Buchanan and Racial Zoning

In the early 1900s, cities across the United States adopted zoning rules with the express goal of segregating communities. Cities commonly employed a tactic of prohibiting Black residents from purchasing property on blocks with predominantly white residences, and vice-versa. City planners were not shy about the intended segregation, with many blatantly espousing racist motivations. For example, in 1910, a Baltimore lawyer said the city’s segregation ordinance was necessary to keep Black
residents from getting “as close to the company of white people as circumstances will permit.” Many southern cities adopted similar regulations until the Supreme Court decided *Buchanan v. Warley* in 1917.

*Buchanan v. Warley* arose out of a contract dispute in which Buchanan (a white man) sued Warley (a Black man) for specific performance of a real estate contract. Warley maintained that he was unable to purchase Buchanan’s land because it was located on a primarily white block, and a Louisville, Kentucky ordinance prohibited people of color from moving onto majority white blocks. Buchanan challenged the Louisville ordinance under the Fourteenth Amendment, arguing he was denied privileges and immunities, due process, and equal protection. Ultimately, the Court held that racial zoning ordinances were unconstitutional—not because they violated the constitutional rights of Black citizens—but because they interfered with freedom of contract and the right of a property owner to sell to whomever they please.

Although this ruling should have ended state-sponsored racial segregation in the zoning context, cities continued to find clever ways of evading the Court’s decision, with some legislators blatantly ignoring it. Cities continued to enact thinly veiled segregation ordinances, often arguing that because they differed slightly from the Louisville ordinance, *Buchanan* did not apply. For example, the city of Atlanta argued that because its ordinance designated entire neighborhoods for either Black or white use, rather than individual blocks, that it was sufficiently distinct from the Louisville ordinance—the Georgia Supreme Court disagreed. As the federal government took an active role in developing race-neutral zoning ordinances that maintained segregation without violating *Buchanan*, national interest in zoning skyrocketed. As a result, the

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74. *Id.*
75. *Id.* at 45.
77. *Id.* at 70-71. The ordinance also worked in reverse, prohibiting white people from moving onto majority Black blocks. *Id.* A majority white block was defined as “Any block upon which a greater number of houses are occupied as residences . . . by white people than are occupied . . . by colored people.” *Id.*
78. *Id.* at 72.
79. *ROTHEIN*, supra note 6, at 45; see *Buchanan*, 245 U.S. at 82.
80. *Id.* at 46; see *ROTHEWELL*, supra note 63, at 4.
81. *ROTHEIN*, supra note 6, at 46.
82. *Id.* Indianapolis and New Orleans adopted laws that only allowed a Black family to move into a neighborhood if a majority of the white residents gave their consent or voted to allow them in. Additionally, Richmond, Virginia used its ban on interracial marriage to prohibit people from living on a street where they would not be allowed to marry a majority of the people already living there. All of these laws were struck down. *Id.*
83. *Id.* at 51.
 federal Advisory Committee on Zoning was created in 1921. This newly formed committee, led by Secretary of Commerce Herbert Hoover, quickly developed a manual explaining why cities should adopt zoning ordinances. Just a few years later, the committee published a uniform model “Zoning Enabling Act” as a guide for state legislatures to confer regulatory authority to local governments. Pursuant to the model, states must adopt some form of enabling legislation, as these land-use regulations are not presumed to be included within the general scope of police power already afforded to state governments. Following the committee’s publication of the model, most states adopted it, or at least relied on it, to enact their own zoning enabling legislation.

2. Euclid and the Authority to Zone

As states adopted their own zoning enabling legislation, thus empowering municipalities to implement local zoning regimes, legal challenges emerged. The first non-racial zoning challenge made its way to the Supreme Court in 1926 in Village of Euclid v. Ambler Realty Co., a case arising out of a disputed ordinance in a suburb of Cleveland, Ohio. In Euclid, the issue centered around a newly adopted ordinance establishing a comprehensive zoning plan for the village. The ordinance divided Euclid into six classes of use districts, three classes of height districts, and four classes of area districts. The appellee, Ambler Realty Co., owned a sixty-eight-acre tract of land on the western side of the village which was ultimately divided into three different types of use districts after the ordinance took effect. Ambler alleged that this division dramatically decreased the value of its land, restricting its ability to sell or develop it.

The company sued the village, arguing that the ordinance violated the

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84. Id.
85. Id.
86. See ROTHWELL, supra note 63, at 3; see also 1 ROHAN, supra note 66, § 1.02. The Act detailed the most “legally sound and efficient zoning codes.” ROTHWELL, supra note 63, at 3.
87. 6 ROHAN, supra note 66, § 35.03. These regulations cannot be presumptively included in the general police power because they did not exist at common law.
88. 1 Id. § 1.02.
89. See ROTHWELL, supra note 63, at 3; see also 1 ROHAN, supra note 66, § 1.02.
91. Id. at 379.
92. Id. at 379-80.
93. Id. at 381, 389.
94. Id. at 384.
Fourteenth Amendment’s Due Process and Equal Protection Clauses. The Supreme Court ultimately held that the challenged provisions had “a rational relation to the health and safety of the community,” tying the state’s authority to zone to the village’s police power under the Tenth Amendment. Justice Sutherland dedicated a large portion of the majority opinion to discussing the then-novel trend of creating separate residential and commercial districts within cities, signaling support for the practice. Turning to the disputed ordinance, the Court held that the general scope of the legislation was a valid exercise of authority but refused to closely examine any of the specific provisions.

One important aspect of the Euclid opinion is the Court’s clarification that zoning power is derived from a state’s police power. Euclid specified that zoning measures must be rationally related to a goal of public health, safety, morals, or general welfare. As mentioned above, this requirement made zoning enabling legislation a requirement in a state wanting to delegate regulatory power to the cities and municipalities within their borders. The Euclid decision signaled the Court’s approval of zoning as a valid exercise of state police power, quashing any question of the legitimacy of these land-use regulations.

The Court’s decision in Euclid led to a significant shift in states’ authority to regulate land use and encroach on the previously broad property rights of landowners. For instance, before the Euclid decision, cities could not unilaterally impose aesthetic requirements on certain neighborhoods or districts. Further, courts previously presumed that property owners had the freedom to use their property however they wanted. Courts historically considered most land uses legitimate unless they proved otherwise dangerous or unsuitable. However, after Euclid, land-use regulation became largely decentralized, allowing local governments to determine what rules applied to which areas.

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95. Id. The appellee also argued that the ordinance was violative of the Ohio State Constitution. Id.
96. Id. at 391.
97. Id. at 390-97.
98. Id. at 397.
99. 6 ROHAN, supra note 66, § 35.02.
100. See Ambler Realty Co., 272 U.S. at 379-80; see also 6 ROHAN, supra note 66, § 35.02.
101. ROTHWELL, supra note 63, at 3.
102. Claeyss, supra note 64, at 738.
103. Id. Further, if cities wanted to impose aesthetic requirements pre-1897 (when the Court incorporated the Fifth Amendment to the states) they would have had to go through an eminent domain proceeding and pay property owners just compensation. Id. at 731.
104. Id. at 739.
105. Id. at 739-41.
106. Id. at 739.
that most land uses were presumptively illegitimate, and the idea of a property owner’s freedom carried significantly less weight.\footnote{107}

By the end of the 1920s, not only had the federal government handed down a template for states to implement their own zoning laws in the model Zoning Enabling Act, but the Supreme Court had declared zoning a constitutionally sound practice in \textit{Euclid v. Ambler Realty}.\footnote{108} With this ringing endorsement, zoning ordinances exploded across the United States.\footnote{109} Today, almost every large city in the country utilizes zoning ordinances to regulate land use.\footnote{110} While municipalities must rely on the state legislature’s grant of legal authority, their level of discretion varies across the country.\footnote{111} For instance, some states prescribe narrow limits on municipal authority, while others afford local governments the freedom to go above and beyond the baseline provisions.\footnote{112}

Regardless of the source or scope of authority that states confer upon local governments, \textit{Euclid} requires—at a minimum—that the state actor exercise a valid police power.\footnote{113} While regulations must be both reasonable by their terms and in their application, there is no bright line test for determining whether or not they are reasonable or nondiscriminatory.\footnote{114} Rather, courts evaluate the validity of regulations on a case-by-case basis.\footnote{115} In doing so, courts examine whether an ordinance serves any legitimate government objective as well as if the means to do so are rationally related to the asserted objective.\footnote{116} However, most zoning regulations enjoy a strong presumption of validity—they must be arbitrary or capricious to fail a challenge.\footnote{117} This presumption results from the strong contention that the acting legislative body believed the ordinance was both reasonable and necessary for the community.\footnote{118}

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\item 107. \textit{Id.} at 741.
\item 108. \textit{ROTHWELL}, supra note 63, at 3; \textit{see Ambler Realty Co.}, 272 U.S. at 397.
\item 109. \textit{Claeys}, supra note 64, at 732.
\item 110. \textit{Berry}, supra note 4, at 259-60. Houston, Texas is the only major United States city that does not use zoning. \textit{Id.} at 259. Rather, the city relies on a private system based on restrictive deed covenants. \textit{Id.} at 260.
\item 111. \textit{1 ROHAN}, supra note 66, § 1.02.
\item 112. \textit{Id.}
\item 113. 6 \textit{Id.} at § 35.02; \textit{see Village of Euclid v. Ambler Realty Co.}, 272 U.S. 365, 379-80 (1926). Any zoning regulations must be reasonably related to either the public health, safety, morals, or general welfare. 6 \textit{ROHAN}, supra note 66, § 35.02.
\item 114. 6 \textit{Id.} at 35.04.
\item 115. \textit{Id.}
\item 116. \textit{Id.}
\item 118. \textit{Id.}
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3. Exclusionary Versus Inclusionary Practices

Although zoning laws enjoy a presumption of validity, certain ordinances may have an either implicit or explicit discriminatory impact due to the targeted use.\textsuperscript{119} Common restrictions, such as bans on multi-family housing units, often have discriminatory impacts even though they do not blatantly exclude any specific groups.\textsuperscript{120} Banning multi-family housing structures decreases density and increases housing costs, making it impossible for people with lower economic status to live in certain areas.\textsuperscript{121} These kinds of restrictions, known as exclusionary zoning restrictions, completely exclude certain uses, and often target racial minorities and low-income individuals by virtue of their impact, rather than by their words.\textsuperscript{122}

Inclusionary zoning ordinances, by contrast, encourage the development of low-cost housing, often by requiring developers to provide affordable units.\textsuperscript{123} Responding to exclusionary zoning, the term originally referred to any broad strategy aimed at producing affordable housing in affluent areas.\textsuperscript{124} Such ordinances resist the traditional conception of the single family ideal and that higher density structures are of less value than single-family, detached homes.\textsuperscript{125} The most common inclusive zoning technique requires developers to set aside a certain percentage of units to list at affordable rates.\textsuperscript{126} These inclusive regulations differ from other affordable housing strategies by making such efforts part of the planning structure rather than a process run by a separate social welfare or public interest program.\textsuperscript{127}

Inclusionary zoning can now be found in many jurisdictions across the United States, including New Jersey, Massachusetts, Texas, and Virginia.\textsuperscript{128} However, as these programs grow in popularity, anti-growth sentiments increase as well, often leading to legal challenges.\textsuperscript{129} Scholars such as Cecily Talbert and Nadia Costa predict these challenges will

\textsuperscript{119} See id.; see also Berry, supra note 4, at 252.
\textsuperscript{120} Berry, supra note 4, at 252.
\textsuperscript{121} See id.
\textsuperscript{122} Id.; see also James L. Mitchell, Will Empowering Developers to Challenge Exclusionary Zoning Increase Suburban Housing Choice? 23 J. POL’Y ANALYSIS & MGMT. 119, 120 (2004).
\textsuperscript{123} 1 ROHAN, supra note 66, § 3.07.
\textsuperscript{124} LINCOLN INST. OF LAND POL’Y, supra note 7, at 2.
\textsuperscript{125} 1 ROHAN, supra note 66, § 3.07. In the so-called hierarchy of land uses, single-family detached homes are traditionally at the top. As the density of a structure or use increases, its ranking in this hierarchy drops. Id.
\textsuperscript{126} LINCOLN INST. OF LAND POL’Y, supra note 7, at 1.
\textsuperscript{127} Id. at 9.
\textsuperscript{129} Id. at 559. However, courts tend to uphold the ordinances when they are challenged.
become even more frequent as jurisdictions continue to implement inclusionary regimes.\textsuperscript{130} Talbert and Costa stress the importance of ensuring these new programs are legally defensible.\textsuperscript{131} They suggest that local lawmakers who want to adequately defend new programs should support proposed legislation with valid research, use clear language and definitions, and acknowledge policy considerations.\textsuperscript{132}

Whether exclusive or inclusive, zoning ordinances impact the structure, development, and landscape of nearly every city in the United States.\textsuperscript{133} Municipalities enjoy broad discretion in determining the allowable uses, types of structures, and possible developments on a piece of property.\textsuperscript{134} More than this, zoning both indirectly and directly impacts the racial composition and socioeconomic status of neighborhoods and communities through regulations such as minimum lot sizes, parking requirements, and single-family housing designations.\textsuperscript{135} Regardless of the recognized harms zoning may cause, the practice remains a prominent and pervasive form of land-use control throughout the country.

\textbf{C. Zoning and Gentrification in Cincinnati}

The city of Cincinnati, Ohio is illustrative of how zoning negatively impacts the composition and well-being of communities. Cincinnati’s neighborhood structure reflects a history of racial segregation and inequitable zoning measures that date back to the 1800s.\textsuperscript{136} The first major revitalization effort took place in the 1950s when the West End neighborhood\textsuperscript{137} was redeveloped to make room for Interstate 75, pushing the existing population into other neighborhoods such as Over-the-Rhine, Avondale, and Walnut Hills.\textsuperscript{138} As this displacement occurred, white

\textsuperscript{130} Id. at 563.
\textsuperscript{131} Id.
\textsuperscript{132} See id. at 565-68.
\textsuperscript{133} See Berry, supra note 4; see also 1 ROHAN, supra note 66, § 3.07.
\textsuperscript{134} See 1 ROHAN, supra note 66, § 1.02; see also Pollard, supra note 62, at 15; see also Emily Talen, Zoning and Diversity in Historical Perspective, 11 J. PLAN. Hist. 330, 331 (2012).
\textsuperscript{135} Sara C. Bronin, Zoning By a Thousand Cuts, 50 PEPP. L. REV. 719, 759-60 (2023); see Berry, supra note 4, at 252; see also ROTHSTEIN, supra note 6.
\textsuperscript{137} West End is a predominantly Black neighborhood in Cincinnati. West End Cincinnati Neighborhood Profile, CITY OF CINCINNATI, https://www.cincinnati-oh.gov/sites/oes/assets/West%20End%20-%20CEI.pdf (last visited Nov. 19, 2023).
\textsuperscript{138} Horn, supra note 136.
families moved even further east into the city’s growing suburbs.\textsuperscript{139} Despite the passage of the federal Fair Housing Act in 1968, minority residents in the city remained in effectively segregated neighborhoods throughout the seventies and eighties as a result of steering\textsuperscript{140} and other discriminatory (and now illegal) practices.\textsuperscript{141}

Following an increase in development, white residents moved back into predominantly Black neighborhoods in the early 2000s, contributing to gentrification and the displacement of existing residents.\textsuperscript{142} While the city historically allowed such segregation and displacement, city officials only recently began to acknowledge the inequity and harm to communities resulting from the existing structure of land-use regulations.\textsuperscript{143} These harms include not only displacement but also exclusion from the higher quality schools, better paying jobs, and increased government investment in community amenities that follow in the wake of revitalization efforts.\textsuperscript{144} Despite this historical backdrop, the city has recently begun to make efforts to reform its existing zoning code.

1. Accessory Dwelling Units

On June 6, 2023, the Cincinnati City Council approved an ordinance allowing the construction of accessory dwelling units (“ADUs”) on lots with existing single-family homes.\textsuperscript{145} ADUs are small, independent residential dwellings.\textsuperscript{146} These structures commonly take one of three forms: stand-alone structures, additions to existing homes, or converted sections of existing homes.\textsuperscript{147} While relatively unheard-of today, ADUs were relatively common in the United States throughout the beginning of the twentieth century.\textsuperscript{148} However, population growth and an increased preference for suburban living in the fifties and sixties lowered demand for high-density development, leading to many jurisdictions banning these accessory structures.\textsuperscript{149} In the 1990s, cities began adopting ADU

\begin{footnotes}
\footnotetext{139}{Id.}
\footnotetext{140}{See Zonta, supra note 57.}
\footnotetext{141}{Id.}
\footnotetext{142}{Id.}
\footnotetext{143}{Id.}
\footnotetext{144}{See Welcome to Connected Communities, supra note 8.}
\footnotetext{145}{CINCINNATI, OHIO, CINCINNATI MUN. CODE § 1401-01-A1A (2023); see also Fening, supra note 8.}
\footnotetext{146}{U.S. DEP’T OF HOUS. & URB. DEV., supra note 9. These structures are also referred to as granny flats, mother-in-law suites, or accessory apartments. Id.}
\footnotetext{147}{Id.}
\footnotetext{148}{U.S. DEP’T OF HOUS. & URB. DEV., supra note 9, at 1.}
\footnotetext{149}{Id. Despite bans on ADUs, many communities continued to construct them illegally when they had no other way to meet the demand for housing. Id.}
\end{footnotes}
programs again as a response to shortages in affordable housing, but often, these programs proved too small and inflexible to be effective.\textsuperscript{150} In recent years, though, cities across the United States started reintroducing ADUs to their communities, recognizing the variety of benefits they can provide.\textsuperscript{151}

One of the primary benefits of ADUs offer is their ability to increase overall density without visibly altering the existing neighborhood structure.\textsuperscript{152} Increasing density in such a way not only creates more affordable housing but can also facilitate the expansion of public transportation and ride share options.\textsuperscript{153} ADUs also create a wider variety of alternative housing options within a community, facilitate the efficient use of existing housing, and tend to increase the affordability of housing as a whole.\textsuperscript{154} Additionally, allowing for these structures helps meet the increasing demand for housing and presents an alternative to the kinds of zoning changes that can significantly alter the countenance and character of existing neighborhoods.\textsuperscript{155} Further, these units provide a ready support system for community elders as they lose self-sufficiency with age, as well as other vulnerable members of the community.\textsuperscript{156} Finally, ADUs may also provide a passive source of income for homeowners who choose to rent them out.\textsuperscript{157} This income could be used to make mortgage payments or go towards property taxes, thus mitigating the overall cost of living.\textsuperscript{158}

Despite these benefits, many still criticize and resist ADUs.\textsuperscript{159} Those in opposition fret over potential changes to neighborhood character and strains on public services.\textsuperscript{160} Still, scholars tend to find that these units do not have nearly the effect on neighborhoods that critics assume.\textsuperscript{161} This may be due to the fact that ADU developments are often subject to rigid restrictions.\textsuperscript{162} Most cities with ADU programs regulate ADU size, maximum number of occupants, minimum number of parking spots, and whether the ADU owner must live on the lot.\textsuperscript{163} Opposition and strict
regulation aside, these small, ancillary structures afford cities a feasible option for responding to the changing norms surrounding housing and community—an option that Cincinnati appears eager to take. The Cincinnati ordinance defines ADUs as "self-contained dwelling unit[s] designed for occupancy by one family for living and sleeping purposes that provides complete independent living facilities, including its own entrance, kitchen, bathroom, and sleeping area; that is located on the same lot as a larger single-family dwelling." The ordinance purports to ensure that ADU development respects neighboring land uses, increases housing supply and affordability, provides equitable access to housing, mitigates displacement, and generates wealth-building opportunities for residents in neighborhoods undergoing changes. It further recognizes that ADUs bring increased access to housing and wealth building opportunities to Cincinnati communities.

Cincinnati’s ordinance also lays out a laundry list of regulatory requirements for the construction of ADUs. First, it allows ADUs within the building envelope of a single-family dwelling, as an addition to a single-family dwelling, or as a detached structure. Additional regulations require independent exterior entrances for ADUs, implement height and square footage limitations, and distinguish acceptable types of structures. Further, under the ordinance, ADUs may not be constructed in a front yard, must be equipped with utility hookups, and are exempted from off-street parking requirements. The ordinance allows the use of ADUs as short-term rentals but requires property owners who rent out their ADUs to reside on the lot. Remaining provisions of the legislation weave ADUs into the existing fabric of the city’s zoning regime.

examples of the many different regulations cities attach to ADU ordinances.

164. Infranca, supra note 9, at 59-60, 86. “Changing norms” refer to the fact that many more adults of all ages, but particularly young adults, are living alone today but want to live in close proximity to others, as well as the increase in multigenerational households and closer family associations. Id.


166. Fening, supra note 8; § 1401-01-A1A.

167. § 1401-01-A1A.

168. Id. CINCINNATI, OHIO, CINCINNATI MUN. CODE § 1421-06 (2023).

169. The building envelope refers to “the volume of space for which a principal building could be extended in compliance with the minimum setbacks and the maximum allowable building height.” CINCINNATI, OHIO, CINCINNATI MUN. CODE § 1401-01-B12 (2023).

170. § 1421-06 (a); Note that these are the three common forms of ADUs mentioned above.

171. § 1421-06 (b), (h), (i). Unacceptable structures include tiny homes and recreational vehicles. § 1421-06 (i).

172. § 1421-06 (f), (i), (j).

173. § 1421-06 (k), (l). Another lauded benefit of ADUs is their potential to provide additional income for owners who rent them out. U.S. DEP’T OF HOUS. & URB. DEV., supra note 9, at 3.

of Cincinnati’s ordinance—which went into effect on October 2, 2023—remain uncertain.175

2. Connected Communities

Although the ADU ordinance is a new development, Cincinnati’s shift toward a community-centered land-use framework began over ten years ago, with momentum picking up over the last few years.176 In 2020, the City Council requested a study on zoning near key transportation corridors, and the Urban Land Institute responded with a series of recommended zoning reforms.177 In response to some of these recommendations, Councilmember Liz Keating sponsored an ordinance that would have removed density limitations in the zoning code; however, the legislation was ultimately voted down.178 Many community members opposed the ordinance despite their desire for increased density and inclusive zoning, noting their fear and broad distrust in the city’s ability to put citizens’ interests first.179 Councilmembers who opposed the legislation were not against zoning reform, but they did express sentiments that any changes should be more equitable and community-centered than the proposed ordinance.180

After hearing these comments, the city hosted a housing summit in the summer of 2022, which spurred the creation of a citizen-focused guide for zoning changes known as the Connected Communities plan.181 The Department of City Planning and Engagement describes Connected Communities as “a series of potential policy changes, and the processes involved in crafting those changes, related to land use that will help Cincinnati grow into a more accessible, people-focused, diverse, healthy, and connected community for all.”182 In pursuit of its ultimate goal of

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176. See Welcome to Connected Communities, supra note 8.
177. Id.
178. Id.
179. Kennedy Heights Community Council co-president Kate Mock Elliot said, “[Y]ou’re hearing from constituents today with baggage left over from the last administration; grave distrust form years of feeling like our needs come second or third or fourth to developers.” Becca Costello, Council Votes Down Density Ordinance After Contentious Public Comment, WVXU NEWS (Mar 15, 2021), https://www.wvxu.org/politics/2022-03-15/council-votes-down-density-ordinance-after-contentious-public-comment.
180. Id. Councilmember Reggie Harris noted, “We know that cities and particularly cities like Cincinnati, with significant Black populations, adopted zoning to exclude Back people, brown people and immigrants . . . and so we are undoing something that is rooted in a deeply racist system[,]” Id.
181. Welcome to Connected Communities, supra note 8.
182. Id.
producing impactful zoning legislation, the plan identifies six broad focus areas: middle housing, reduced regulatory barriers, parking, encouraging affordable development, human-scale development, and process improvements.\textsuperscript{183}

These six concepts each work to change the overall structure, density, and health of a community. For example, providing more middle housing (medium-density housing structures such as duplexes, triplexes, and rowhouses) increases density and promotes affordability with minimal disruption to neighborhood character.\textsuperscript{184} The plan cites both scholarly works and case studies of cities across the United States to support each chosen focus area.\textsuperscript{185} The plan also acknowledges that any one of these regulatory changes alone will not produce major impacts.\textsuperscript{186} Rather, changes must be made from each area for the effects to be felt on a large scale.\textsuperscript{187} While the ADU ordinance represents the first notable change resulting from the efforts of Connected Communities, the city appears committed to long-term equitable and community-focused zoning reform.\textsuperscript{188}

III. DISCUSSION

Zoning is a major determining force in community evolution. Unlike other factors such as redlining, urban sprawl, and white flight, many overlook the subtle but massive influence of zoning. While zoning has historically been rigid, forcing communities to conform to strict guidelines, community-centered and inclusive zoning regimes have the potential to positively impact neighborhoods and prevent the negative effects of gentrification from taking hold.\textsuperscript{189} This contrast between the ways community leaders historically misused zoning and the potential of modern zoning plans to correct these wrongs demonstrates how values

\begin{footnotes}
\footnote{183. Id.; see generally \textit{Explore the Proposed Policies}, CONNECTED CMTIES., https://experience.arcgis.com/experience/341e80f53c764e0abd4199aeb18b2de/page/Explore/ (last visited Apr. 28, 2024).}
\footnote{184. Id.}
\footnote{185. Id.}
\footnote{186. Id.}
\footnote{187. Id.}
\footnote{188. This can be seen in the detailed Connected Communities Plan, which includes detailed explanations of the city’s goals as well as opportunities for community engagement, as well as in the statements from city leaders who have acknowledged the importance of community input. \textit{See generally \textit{Explore the Proposed Policies}}, supra note 183; see also Becca Costello, \textit{Council Votes Down Density Ordinance After Contentious Public Comment}, WXXU NEWS (Mar 15, 2021), https://www.wvux.org/politics/2022-03-15/council-votes-down-density-ordinance-after-contentious-public-comment.}
\footnote{189. See 1 ROHAN, supra note 66, § 3.07; see also LINCOLN INST. OF LAND POL’Y, supra note 7, at 11.}
\end{footnotes}
and attitudes towards housing and community development are beginning to change.\textsuperscript{190} From the highly suspect use of zoning in the twentieth century to exclude and perpetuate segregation, to the modern-day desire for inclusive and affordable housing, zoning reform is an underappreciated tool.\textsuperscript{191} Cities like Cincinnati illustrate the movement towards placing people and community values first when it comes to equitable development, and how inclusive zoning is essential to alleviating the effects of gentrification.\textsuperscript{192}

As detailed above, gentrification is a complex, sociological process that impacts most cities across the United States. Relatedly, zoning laws are uniquely tailored to specific municipalities and have a vast impact on not only the structure of cities, but the community growth within them. The following discussion melds the legal with the sociological to explain how a relatively unassuming legal tool like zoning can have impacts that reach far beyond the legal sphere. Part A unpacks the relationship between zoning and gentrification, arguing that zoning regulations dictate outcomes when it comes to the effects and impact of gentrification on a community. Next, Part B contrasts the ways zoning has historically been misused with the future potential of zoning laws to positively impact community development. Finally, Part C applies all of this to the city of Cincinnati’s ADU ordinance and Connected Communities plan.

\textit{A. The Relationship Between Zoning and Gentrification}

Gentrification is inextricably linked to zoning, as zoning regulations dictate the development possibilities in an area and the incentives for what developers choose to build.\textsuperscript{193} While gentrification started out as a small and largely grassroots phenomenon, it evolved into a process predominantly influenced by government incentives like tax breaks and developer grants.\textsuperscript{194} No longer led or funded by individuals merely seeking the natural benefits of rehabilitation, gentrification in the twenty-first century is a strategic process motivated by the government’s and

\textsuperscript{190} Steve Wright, \textit{Promoting Affordable Housing Via Zoning Reform}, NAT’L ASS’N OF REALTORS (Nov. 8, 2023), https://www.nar.realtor/on-common-ground/promoting-affordable-housing-via-zoning-reform; Costello, supra note 179


\textsuperscript{192} Costello, supra note 179; \textit{Welcome to Connected Communities}, supra note 8.

\textsuperscript{193} See generally Mitchell, supra note 122, at 132 (noting a study describing how Pennsylvania’s use of zoning incentivized developer actions).

\textsuperscript{194} Osman, supra note 10, at 10.
developers’ desires to maximize profits. The success of these efforts depends on whether an existing zoning code is supportive or detrimental to development goals. Without rigid zoning structures that implement regulatory barriers such as use requirements, minimum lot size, and parking requirements, gentrification would not be able to completely reshape neighborhoods or price out longtime residents as effectively. However, a flexible zoning structure that permits, at a minimum, more multi-family housing and mixed-use structures will prevent dramatic increases in housing costs.

Before going further, it is crucial to emphasize that the term gentrification is overused, with many stakeholders in housing policy using it to convey different concepts. This leads to a lack of agreement on causes and solutions and adds to the debate over whether the phenomenon is positive or negative. Further, these divergent meanings result in stakeholders asking the wrong question. While most continue to ask whether the effects of gentrification are positive or negative, the proper inquiry is why the effects are positive or negative. Gentrification is extremely nuanced—it is not an inherently positive or negative phenomenon. Rather, its impacts depend on the circumstances and context within which it occurs.

When gentrification impacts a neighborhood in a negative way, the result is often displacement of long-time residents who can no longer afford the neighborhood. Expensive new housing developments and businesses lead to inflated housing costs, higher property taxes, and a jump in the overall cost of living, making it difficult for existing residents to remain. However, when gentrification results in positive impacts, the increased investment and new developments bring economic growth and revitalization to previously decaying neighborhoods in ways that support the existing community. When that happens, residents can then remain in their homes, and they gain access to improved amenities, better employment opportunities, and increased investment in the community. They reap the benefits of revitalization alongside newcomers.

However, the likelihood of these outcomes hinges entirely on the context in which they unfold, and the predominant determining factor is

195. See id.
196. See 1 ROHAN, supra note 66, § 3.07; see also LINCOLN INST. OF LAND POL’Y, supra note 7, at 2.
197. See Bailey & Robertson, supra note 18, at 34.
198. Billingham, supra note 2; Miller, supra note 1, at 36.
199. Id.
201. Id.
202. See id.; see also Billingham, supra note 2, at 76.
203. Miller, supra note 1; see Billingham, supra note 2, at 76.
the established zoning structure of the area. For example, rigid zoning regimes that restrict mixed-use development and multi-family housing, promote single-family dwellings, and separate residential from commercial areas severely restrict the possibilities of new developments. Limits on the allowable number of occupants or units, off-street parking requirements, and similarly restrictive measures contribute to low density, decreased walkability, and inflated housing costs. These and similar zoning regulations contribute to and increase the likelihood of the negative impacts of gentrification. While some argue that these types of restrictions are trivial or unimpactful, in reality they serve as powerful regulatory tools that have been used to enforce economic and racial segregation in communities across the United States for decades.

Conversely, a flexible zoning structure that incentivizes mixed-use structures, integrates commercial and residential zones, and promotes tri- or quad-family housing encourages equitable development. Allowing residential and commercial spaces to coexist allows for walkable communities and higher density, both of which contribute to affordability. These zoning measures help mitigate housing costs and allow existing residents to benefit from gentrification, rather than pushing them out of their neighborhoods to make room for wealthier and more privileged individuals.

Additionally, zoning impacts developer incentives. Developers desire the easiest and least-expensive path to return on their investments. This often means that developers build where the existing zoning regime supports their project rather than going through the process of obtaining a variance or conforming to regulations. For example, if a developer is building an apartment building on a lot subject to minimum off-street parking requirements, they are incentivized to build luxury units to maximize profits and compensate for the cost associated with complying with the restriction. However, in the absence of this restriction, the developer may be more likely to build affordable units. The difference between zoning regulations that encourage equitable development and those facilitating rigidity and exclusion demonstrate that gentrification is not solely to blame when it comes to inequity and displacement. The

204. Berry, supra note 4, at 252; contra Welcome to Connected Communities, supra note 8.
205. Berry, supra note 4, at 255.
206. See ROTHSTEIN, supra note 6, at 45-46.
207. See Welcome to Connected Communities, supra note 8; see also Berry, supra note 4, at 252-53; ROTHSTEIN supra note 6, at 204.
208. See ROTHSTEIN, supra note 6, at 211.
209. See generally Mitchell, supra note 122, at 120, 124 (discussing how inclusionary zoning regulations that impose set-aside requirements will include waivers of other regulations to induce developers to provide affordable units).
process of gentrification does not occur in a vacuum. A hostile zoning regime can easily quash gentrification’s benefits and potential to elevate communities.

B. Historical Misuse Versus the Future Potential of Zoning

As described above, zoning evolved out of local lawmakers’ desire to maintain and enforce segregation within cities while avoiding legal challenges. Local leaders as well as the federal government encouraged racially-motivated zoning regulations that utilized socioeconomic status as a surreptitious end-around, ensuring de facto segregation without the traditional trappings of de jure segregation. Widespread adoption of exclusionary zoning ordinances perpetuated segregation and exclusion by regulating seemingly innocuous factors such as number of units, parking requirements, and minimum height requirements—avoiding explicit mention of race or socioeconomic status but enforcing discrimination, nonetheless. This misuse of zoning as a tool for discrimination allowed for decades of insidious housing regulations, the effects of which linger in American cities today.

While the Supreme Court’s opinion in Buchanan was a major catalyst for the use of zoning as a discriminatory tool, even pre-Buchanan zoning ordinances implicated motivations suspect under the Fourteenth Amendment. However, as the Euclid opinion and subsequent guidance provide, zoning ordinances rarely fail legal challenges. As a consequence, the vast majority of zoning regimes throughout the twentieth century were highly suspect and blatantly exclusionary, but they were also facially neutral towards race; thereby benefitting from the sweeping presumption of validity granted to most zoning laws. Both the Court’s legal guidance and the refusal to invalidate clearly discriminatory zoning regimes on a local level led to the uneven city structures seen today, with visible neighborhood segregation among both racial and economic lines remaining prevalent across the country.

Despite this destructive past, zoning still has the potential to help create...
healthy communities. Flexible, inclusionary zoning regimes encourage equitable development that is focused on the health and well-being of community members.\footnote{See 1 ROHAN, supra note 66, § 3.07; see also LINCOLN INST. OF LAND POL’Y, supra note 7, at 2; see also Mitchell supra note 122, at 132.} To reap these benefits, local governments must alleviate the barriers to low- and moderate-income multifamily developments.\footnote{See ROTHSTEIN, supra note 6, at 205-06; see also Welcome to Connected Communities, supra note 8; see also Berry, supra note 4, at 252.} Policy incentives like set-aside requirements,\footnote{Set-aside requirements refer to the inclusionary zoning practice of requiring developers to designate a certain number of units in a structure to be priced affordably for lower income residents. See LINCOLN INST. OF LAND POL’Y, supra note 7, at 1.} the removal of parking requirements, and the promotion of development near public transit corridors motivate developers to create more affordable and equitable housing structures.\footnote{Id.; see Mitchell, supra note 122, at 120.} If developers know they will not face intense regulatory barriers, they will be much more likely to maintain affordable units or create mixed-use structures.

However, it is important to add that many of the communities that would benefit most from inclusionary zoning regimes are those most adamantly against such changes. Many of the groups most impacted by segregation and discriminatory housing practices remain extremely distrustful of government intervention or involvement when it comes to regulating their neighborhoods.\footnote{Costello, supra note 179.} As seen in Cincinnati, community members care about being heard and having their input considered when governing bodies make changes.\footnote{Id.} Consequently, administrative bodies looking to implement equitable development strategies must commit time and effort to gaining the support and trust of the community before unilaterally restructuring their zoning codes.\footnote{Sarah Adams-Schoen & Edward J. Sullivan, Reforming Restrictive Residential Zoning: Lessons from an Early Adopter, 30 J. AFFORDABLE HOUS. 161, 204 (2021).}

\section*{C. How Cincinnati’s Zoning Plans May Impact Gentrification}

Cincinnati provides an apt example of how zoning regulations can be used in positive and equitable ways. Cincinnati’s ADU ordinance and broader Connected Communities plan have the potential to alleviate the harms caused by the historical misuse of zoning authority and to reduce the harmful impacts sometimes caused by gentrification.\footnote{See Welcome to Connected Communities, supra note 8; see also Infranca, supra note 9, at 72.} Additionally, the city’s cognizant has been extremely cognizant of the community’s
input on and concern about proposed changes. Although many of the proposed changes referenced in the Connected Communities plan have yet to be implemented, they, along with the ADU ordinance, have the capacity to be impactful in implementing positive change.

First, ADUs exemplify inclusive and flexible zoning. These structures help meet the demand for housing by providing a wider variety of housing options and making existing lots more efficient. Although the Cincinnati ordinance contains a wide variety of restrictions and regulations it still marks a transition from a wholly rigid zoning structure to one showing a willingness to provide flexibility. Even more than increasing density, promoting the efficient use of existing structures, and meeting the rising demand for housing within the city, the passage of the ordinance itself was a remarkable step forward. While this initial ordinance is merely a single step within the wider scope of what needs to be done across the Cincinnati, it is significant.

The language of the ordinance is extremely promising when considering future changes to Cincinnati’s zoning structure. The ordinance places emphasis on increasing the housing supply and affordability, providing equitable access to housing, mitigating displacements, and generating wealth-building opportunities for residents. While these goals may be implicit, specifically articulating them in the language of the legislation shows that city officials have community members in mind—something city leaders must continue to demonstrate in order to garner the trust of impacted communities. Without the necessary support from citizens, any attempts to accomplish more will struggle to succeed. This ADU ordinance is an opportunity for Cincinnati to prove its good intentions and desire for equitable and inclusive changes.

Further, the potential policy changes outlined in the focus areas of the Connected Communities plan, if adopted, would add to the creation of a city-wide, inclusive, and flexible zoning structure. Removing regulatory barriers, promoting middle housing, and providing developers incentives to build affordable housing, would have a massive impact on the overall structure of the city. The plan cites numerous studies regarding the efficacy and effectiveness of such changes, lending support

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226. Costello, supra note 179.
228. See Infranca, supra note 9; see also U.S. DEP’T OF HOUS. & URB. DEV., supra note 9.
229. CINCINNATI, OHIO, CINCINNATI MUN. CODE § 1421-06 (2023).
230. See Welcome to Connected Communities, supra note 8.
231. See Mitchell, supra note 122, at 120; see also Berry, supra note 4, at 252; see also ROTHSTEIN supra note 6, at 204, 211.
to the likelihood of success. Not only would these changes add to the housing supply and increase affordability, they would also eliminate the negative impacts of gentrification and reduce the lingering effects of state-sponsored segregation. This plan identifies and targets some of the key factors contributing to a rigid and exclusionary zoning structure, and in turn, the negative effects of gentrification. The proposed changes would facilitate the positive effects of gentrification, particularly when it comes to new commercial and residential developments and revitalization efforts.

City planners and local leaders across the United States should also consider the ways in which their existing zoning regimes impact the structure and growth of communities. Gentrification has been occurring since the early twentieth century and shows no sign of slowing down now, even with the larger scale and shifted focus of the modern era. Cities seeking to protect vulnerable communities must acknowledge their own role in remedying the harms gentrification brings when supported by a rigid and exclusionary zoning code. Further, they must address the deep distrust and fear of affected community members, and find ways to involve citizens in the process of updating the zoning structure.

In an era when the cost of living continues to rise and affordable housing is increasingly harder to find, inclusionary zoning practices are more important than ever. Cincinnati’s response is a useful model for recognizing and seeking solutions for these concerns. Although many of the changes proposed in the Connected Communities plan have yet to be implemented, the ADU ordinance alone demonstrates a commitment to equitable changes. While only time will reveal the efficacy of Cincinnati’s plan, the compelling connection between inclusionary


233. See Explore the Proposed Policies, supra note 183.

234. See Osman, supra note 10, at 5-6; see also Freeman, supra note 42, at 164-65.

235. See Berry, supra note 4, at 252; see also Welcome to Connected Communities, supra note 8; see also Mitchell, supra note 122, at 120.

236. See Costello, supra note 179; see also Adams-Schoen & Sullivan, supra note 224, at 14.


238. See Welcome to Connected Communities, supra note 8.

239. See Welcome to Connected Communities, supra note 8; see also Infranca, supra note 9, at 72; see also U.S. DEP’T OF HOUS. & URB. DEV., supra note 9.
zoning and the positive effects of gentrification imply a high likelihood of success.

IV. CONCLUSION

Recall those shiny new apartment complexes and high-end boutiques noted at the start. When critics label these developments as gentrification, they are quick to point fingers at wealthy new residents moving into a community. However, in-movers and the process of gentrification are not to blame. Rather, zoning is the true culprit, maintaining and enforcing the negative results of gentrification that spark outcry and derision. Gentrification relies on the existing regulatory structure and is much more likely to cause lasting harm when it occurs in tandem with exclusionary and rigid zoning regimes. These harsh regulations stifle the myriad of benefits gentrification could bring to declining neighborhoods, allowing profit-driven developments to reshape and harm communities. Unconcerned with the health and well-being of established communities, most zoning regimes authorize the displacement of longtime residents, as well as their exclusion from the increased amenities and higher paying jobs that usually accompany gentrification.

Zoning is not only a barrier to equitable development, but it is also responsible for perpetuating residential segregation in American cities since the early 1900s. Given this long history of misuse and highly suspect intentions, it is unsurprising that this regulatory tool continues to impede community-centered urban planning and hinder incentives for affordable development. Attributing all of these failings solely to gentrification allows lawmakers to evade accountability and shirk any responsibility to implement changes. Accurately recognizing zoning as a predominant factor places the burden on city leaders, rather than allowing them to dismiss revitalization and shifting neighborhoods as independent occurrences. Gentrification is not merely a sociological phenomenon; it is also a legal issue. Addressing the legal aspect requires a proactive approach to reform: modifying zoning codes with a focus on flexibility.
and inclusionary practices.\textsuperscript{247} Local governments across the country should look closely at their own practices and seek out ways to adopt changes similar to those Cincinnati is starting to make. These reforms, while local in scale, will have widespread impacts, and no change is too small.

\textsuperscript{247} See Rothstein, supra note 6, at 205-06, 211; see also Welcome to Connected Communities, supra note 8; see also Berry, supra note 4, at 252.