

**DE FACTO ZONING OF NON-RESIDENTIAL
RESIDENCE:
HOW LOS ANGELES’S LAND-USE LAWS
REGULATE AND EXACERBATE THE URBAN
HOMELESSNESS CRISIS**

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“Foxes have dens and birds have nests, but the Son of Man has no place to lay his head.”

Matthew 8:20

INTRODUCTION

Homelessness rates are increasing in cities across the United States with no signs of stopping anytime soon.¹ Los Angeles in particular has been grappling with its record high homeless population—an estimated 58,000 people do not have access to permanent shelter, with many of them living in encampments in public spaces throughout the city.² Homelessness is currently one of the biggest political issues for voters in Los Angeles, having become the focal point of the 2022 mayoral and city council elections.³ Furthermore, it implicates the lack of affordable housing and an increasing divide between property owners and non-property owners.⁴

1. *State of Homelessness: 2021 Edition*, NAT'L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2021/> [<https://perma.cc/Q3FP-Y4AE>].

2. *5 Facts About the Homelessness in Los Angeles*, L.A. MISSION, <https://losangelesmission.org/homelessness-facts/> [<https://perma.cc/2TQP-GWED>]; see also TILL VON WACHTER ET AL., PREDICTING AND PREVENTING HOMELESSNESS IN LOS ANGELES 4–5 (2019), (describing the current state of homelessness in Los Angeles). It is important to note that these figures likely underestimate homelessness rates. See *infra* note 20 (describing the shortcomings of the U.S. Department of Housing and Urban Development's methods to estimate homeless populations).

3. See Benjamin Oreskes & David Lauter, *L.A. Voters Angry, Frustrated Over Homeless Crisis, Demand Faster Action, Poll Finds*, L.A. TIMES (Dec. 1, 2021), <https://www.latimes.com/homeless-housing/story/2021-12-01/la-voters-are-frustrated-impatient-over-persistent-homelessness-crisis> [<https://perma.cc/R92G-2CE5>] (describing the focus on homelessness in L.A. city politics); Shawn Hubler & Jill Cowan, *Robberies. Drought. Tent Camps. Los Angeles's Next Mayor Faces a Litany of Crises*, N.Y. TIMES (Dec. 12, 2021), <https://www.nytimes.com/2021/12/12/us/los-angeles-mayor-race.html> [<https://perma.cc/AG73-NCXV>] (detailing the challenge that L.A.'s next mayor will face in trying to solve homelessness in the city).

4. See U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, THE IMPORTANCE OF HOUSING AFFORDABILITY AND STABILITY FOR PREVENTING AND ENDING HOMELESSNESS 1–3 (2019) (describing the role of affordable housing in addressing issues of homelessness in the United States).

Cities have tried to deal with their unhoused residents through a variety of different policy initiatives. First, they have attempted to directly provide shelter through laws such as the Right to Shelter in New York, which mandates that the city accommodate any qualified unhoused individual with shelter,⁵ as well as programs such as Project Homekey in California, which used federal dollars to house homeless individuals in vacant hotel and motel rooms for the duration of the COVID-19 pandemic.⁶ However, cities are increasingly turning to policing and the criminalization of activities related to homelessness as the primary method of dealing with unhoused residents, using fines, incarceration, and aggressive ordinance enforcement in order to remove them in public spaces.⁷

Scholars have written extensively about the legality and wisdom of such policies.⁸ But one of the key issues the homelessness crisis raised has been the lack of affordable housing in urban areas today and the zoning laws which play a key role in regulating

5. *Shelter*, N.Y.C. DEPARTMENT OF HOMELESS SERVICES, <https://www1.nyc.gov/site/dhs/shelter/shelter.page> [<https://perma.cc/3ZBU-JAPR>]; see also Bradley R. Haywood, *The Right to Shelter as a Fundamental Interest Under the New York State Constitution*, 34 COLUM. HUM. RTS. L. REV. 157, 167–77 (2002) (examining the legal foundation of the Right to Shelter in caselaw and in the New York Constitution). See *infra* Part II.B.1.

6. MARY TINGERTHAL, NATIONAL ALLIANCE TO END HOMELESSNESS, HOMEKEY: CALIFORNIA'S STATEWIDE HOTELS-TO-HOUSING INITIATIVE 1 (2021), <https://endhomelessness.org/resource/hotels-to-housing-case-studies/> [<https://perma.cc/S6SH-N9ZM>].

7. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 11 (2019) [hereinafter NAT'L L. CTR., HOUSING NOT HANDCUFFS].

8. See Maria Foscarnis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL'Y REV. 1, 3 (1996) (reviewing local government attempts to criminalize activities associated with homelessness and its constitutionality); Maria Foscarnis et al., *Out of Sight—Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. POVERTY L. & POL'Y 145, 146–47 (1999) (addressing how the continuing criminalization of homelessness does not solve its root causes); Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 SOC. PROBS. 131, 132 (2020) (examining how anti-homeless laws facilitate police interactions which negatively impact the urban poor); ALLARD K. LOWENSTEIN INT'L HUM. RTS. CLINIC, YALE L. SCH., "FORCED INTO BREAKING THE LAW": THE CRIMINALIZATION OF HOMELESSNESS IN CONNECTICUT 10–13 (2016) [hereinafter LOWENSTEIN HUM. RTS. CLINIC] (discussing the increasing use of criminal ordinances to regulate homelessness in the United States).

residential development.⁹ Despite its relative youth as a legal regime, land-use regulations are recognized as one of the most important municipal powers over real property.¹⁰ In particular, land-use scholars have begun to scrutinize the desirability of single-family housing, which is the most widespread form of residential zoning.¹¹

While much of the scholarship around affordable housing and zoning investigates the economic relationship between land-use regulation and housing prices, it has paid little attention to how zoning directly regulates homelessness.¹² This Note seeks to fill this

9. See Steven Raphael, *Housing Market Regulation and Homelessness*, in HOW TO HOUSE THE HOMELESS 110, 111–14 (Ingrid G. Ellen & Brendan O’Flaherty eds., 2010) (examining the relationship between housing affordability and homelessness rates); Katherine C. Devers & J. Gardner West, Student Article, *Exclusionary Zoning and Its Effect on Housing Opportunities for the Homeless*, 4 NOTRE DAME J.L. ETHICS & PUB. POL’Y 349, 350–55 (1990) (discussing the impact of exclusionary zoning on homeless populations and their available legal remedies).

10. See Edward Glaeser, *Reforming Land Use Regulations*, BROOKINGS INST. (Apr. 27, 2017), <https://www.brookings.edu/research/reforming-land-use-regulations/> [https://perma.cc/79FR-JA8T] (describing the expansive impact and origin of land-use regulations in the United States).

11. E.g., Michael Manville, Paavo Monkkonen, & Michael Lens, *It’s Time to End Single-Family Zoning*, 86 J. AM. PLAN. ASS’N 106, 106–08 (2020) (contending that planners should work to abolish R1 single-family zoning); Jake Wegmann, *Death to Single-Family Zoning...and New Life to the Missing Middle*, 86 J. AM. PLAN. ASS’N 113, 113–114 (2020) (arguing for the abolishment of single-family housing zoning). Such proposals have predictably ignited a firestorm of debate within the urban planning community as well. See Andrés Rodríguez-Pose & Michael Storper, *Housing, Urban Growth and Inequalities: The Limits to Deregulation and Upzoning in Reducing Economic and Spatial Inequality*, 57 URB. STUD. 223 (2020) (arguing that creating affordable single-family housing in cities would increase access to economic opportunities); Michael Manville, Paavo Monkkonen, & Michael Lens, *Zoning and Affordability: A Reply to Rodríguez-Pose and Storper*, 59 URB. STUD. 36 (2022) (arguing that creating affordable housing requires limits on housing density to be decreased); Lane Kendig, *Eliminating Existing Single-Family Zoning Is a Mistake*, 86 J. AM. PLAN. ASS’N 124 (2020) (contending that ending single-family zoning will not create improved access to affordable housing).

12. See, e.g., Keith R. Ihlanfeldt, *The Effect of Land Use Regulation on Housing and Land Prices*, 61 J. URB. ECON. 420, 432–34 (2007) (suggesting that land use regulation has important effects on the prices of housing and vacant land); John M. Quigley & Larry A. Rosenthal, *The Effects of Land Use Regulation on the Price of Housing: What Do We Know? What Can We Learn?*, 8 CITYSCAPE 69, 81–89 (2005) (arguing that drawing firm general conclusions about the linkage between local regulations and housing prices is not possible); Robert C. Ellickson, *Response to “The Effects of Land Use Regulation on the Price of Housing: What Do*

gap by examining Los Angeles's treatment of homelessness as a form of residential land-use, defined by its conspicuous lack of residence and permanent housing. Furthermore, it employs an emerging school of legal thought, Law and Political Economy,¹³ as a lens to question the traditional and economic normative frameworks used to justify land-use law, particularly with respect to the desirability of excessive low-density residential zoning in cities such as Los Angeles. It argues that the Los Angeles Municipal Code's failure to recognize homelessness as a form of "non-residential residence" can cause informal practices, such as aggressive policing, to function as forms of de facto zoning, therefore removing such policies from proper judicial review. It also contends that the traditional and economic justifications of zoning laws do not provide sufficient guidance with respect to the prevalence of low-density residential zoning. Traditional frameworks of judicial review constitute overly deferential attitudes to municipal land-use decisions, while economic approaches to land-use regulation pay insufficient attention to questions of distribution and coercion.

Part I provides an overview of the homelessness crisis in urban areas today as well as the legal regimes which govern land-use regulations. Part II evaluates Los Angeles's zoning patterns and practices with respect to homelessness and excessive low-density residential housing. Part III discusses considerations of liberty and autonomy for homeless individuals and proposes a zoning designation specifically for homeless residence, as well as a provision within the state's zoning statute that would require cities be zoned to ensure that enough housing can be developed to meet all of their residential needs.

I. The Homelessness Crisis and Land-Use Regulations

Land has historically been at the center of the United States' most contentious political issues, including the relationship of the

We Know? What Can We Learn? by John M. Quigley and Larry A. Rosenthal, 8 CITYSCAPE 261, 262–63 (2005) (debating the merits of econometric studies attempting to establish causal links between land-use regulations and housing prices).

13. See generally Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, and K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020) [hereinafter *LPE Framework*].

colonists with Native American tribes,¹⁴ the Homestead Act and the settling of the Western United States,¹⁵ and the 2008 Financial Crisis's over-securitization of mortgages.¹⁶ Today, land still represents a crucial form of wealth conglomeration for most Americans.¹⁷ Land-use regulations have been used in the United States for around 100 years,¹⁸ but continued use of zoning patterns which stifle residential development, particularly in the face of increasing homelessness rates across the United States, raise serious questions about how they should be implemented and evaluated.¹⁹ This Part of the Note discusses the background of the homelessness crisis and the legal regimes governing land-use regulations. Part I.A details the legal and social background for the issue of urban homelessness today. Part I.B summarizes the typical legal responses to homelessness adopted by American cities. Finally, Part I.C gives an overview of land-use regulations in the United States, including their mechanisms of judicial oversight.

A. America's Homelessness Crisis

Homelessness has reached an all-time high in the United States. It is estimated that close to 600,000 people across the country (which is likely an undercount) do not have access to permanent shelter, representing a 30% increase from 2015.²⁰ Those who suffer

14. Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 595–96 (1823).

15. See Trina William Shanks, *The Homestead Act: A Major Asset-Building Policy in American History*, in INCLUSION IN THE AMERICAN DREAM: ASSETS, POVERTY, AND PUBLIC POLICY 20–41 (Michael Sherraden ed., 2005) (discussing the significance and impact of the Homestead Act as the major land policy of the late nineteenth and early twentieth centuries).

16. See Manuel Adelino et al., *The Role of Housing and Mortgage Markets in the Financial Crisis*, 10 ANN. REV. FIN. ECON. 25, 26–28 (2018) (describing the role of housing prices in triggering the 2008 Financial Crisis).

17. See Thomas M. Shapiro, *Race, Homeownership and Wealth*, 20 WASH. UNIV. J.L. & POL'Y 53, 58–59 (2006) (exploring racial disparities in homeownership as a form of wealth accumulation).

18. DWIGHT H. MERRIAM & SARA C. BRONIN, RATHKOPF'S THE LAW OF ZONING AND PLANNING § 1:2 (4th ed. 2021).

19. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, HOMELESSNESS IN AMERICA: OVERVIEW OF DATA AND CAUSES 3 (2015), [hereinafter NAT'L L. CTR., HOMELESSNESS IN AMERICA].

20. NAT'L ALL. TO END HOMELESSNESS, *supra* note 1. It is important to note that these numbers, provided by the U.S. Department of Housing and Urban Development, are likely to underestimate homelessness rates. For example, the HUD point-in-time metric estimates the population on any given night rather

from such housing insecurity are also more likely to be incarcerated, suffer from mental health issues or drug addiction, and have a lower life expectancy than the average population.²¹ The issue of homelessness also implicates racial disparities as Black and Hispanic people are disproportionately represented amongst the homeless population.²²

These current statistics do not capture the impact of the COVID-19 pandemic on housing instability, as the sudden spike in unemployment in 2020 caused eviction proceedings to skyrocket in cities throughout the United States.²³ During the pandemic, shelters have had to reduce capacity or close entirely in order to comply with public health guidelines, and cities have significantly curtailed social services, undercutting crucial resources for an already vulnerable population.²⁴ As a matter of health, the COVID-19 pandemic has been especially acute for homeless people.²⁵ Because the majority of homeless individuals live in crowded camps and shelters, they face a materially higher risk of transmission than those who are able to shelter at home.²⁶ Homeless individuals also have more limited access to healthcare services and tend to suffer from weaker immune

than aggregating an annual estimate which likely would be much higher. See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, DON'T COUNT ON IT: HOW THE HUD POINT-IN-TIME COUNT UNDERESTIMATES THE HOMELESSNESS CRISIS IN AMERICA 10–14 (2017) (describing the shortcomings of metrics used to count homeless populations).

21. Rolim Lima et al., *People Experiencing Homelessness: Their Potential Exposure to COVID-19*, 288 PSYCHIATRY RSCH. 1, 1–2 (2020).

22. See generally Marian Moser Jones, *Does Race Matter in Addressing Homelessness? A Review of the Literature: Race and Homelessness*, 8 WORLD MED. & HEALTH POL'Y, 139 (2016).

23. *The Impact of the Covid-19 Pandemic on Homelessness in the United States*, UNITED WAY (Jan. 12, 2021), <https://unitedwaynca.org/blog/the-impact-of-the-covid-19-pandemic-on-homelessness-in-the-united-states/> [<https://perma.cc/D733-44LN>].

24. *Id.* The economic implications of COVID-19 also affect the availability of services such as shelters, because “[j]ob and income loss throughout the country have seen people from coast to coast get evicted from their homes, creating a major increase in the number of people seeking out resources and support systems designed to help the homeless.” *Id.*

25. See Melissa Perri et al., *COVID-19 and People Experiencing Homelessness: Challenges and Mitigation Strategies*, 192 CAN. MED. ASS'N J. 716, 716–18 (2020) (detailing the disproportionate impact of the COVID-19 pandemic on homeless populations).

26. Lima, *supra* note 21, at 1–2.

systems, demonstrated by higher rates of fatality than the general population.²⁷

Geographically, homelessness is generally concentrated in urban areas,²⁸ with the largest populations in San Francisco, Los Angeles, and New York.²⁹ California alone has an estimated homeless population of over 161,000 people,³⁰ a fact that led the state's governor to recently declare it a state emergency.³¹ The sentiment is also echoed at the city level—homelessness has become one of the primary issues of political discourse in Los Angeles. The Mayoral and City Council candidates in the 2022 elections centralized their platforms around building affordable housing and addressing the spiraling numbers of homeless people in the city.³² Beyond the raw numbers, the quality of life for unhoused people has also been a persistent and growing issue, particularly with respect to sanitation and police harassment.³³

27. *Id.*

28. MEGHAN HENRY & M WILLIAM SERMONS, GEOGRAPHY OF HOMELESSNESS 6 (2010). However, rural homelessness is likely undercounted in estimates of homelessness rates. See NAT'L L. CTR., HOMELESSNESS IN AMERICA, *supra* note 19, at 10.

29. *Homelessness Statistics by State*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/homelessness-statistics/> [https://perma.cc/R73L-S8RR]. This is likely an underestimate as well. See *supra* note 20 and accompanying text.

30. *California Homelessness Statistics*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/homelessness-statistics/ca/> [https://perma.cc/RM3N-LW84].

31. Press Release, Office of Governor Gavin Newsom, Governor Newsom Takes Emergency Actions & Authorizes \$150 Million in Funding to Protect Homeless Californians from COVID-19 (Mar. 18, 2020), <https://www.gov.ca.gov/2020/03/18/governor-newsom-takes-emergency-actions-authorizes-150-million-in-funding-to-protect-homeless-californians-from-covid-19/> [https://perma.cc/2WEM-NXXZ].

32. Dakota Smith, *Candidates Visit L.A. Homeless Encampments. Not Everything Goes According to Plan*, L.A. TIMES (Sept. 20, 2021), <https://www.latimes.com/california/story/2021-09-20/la-mayor-race-homeless-encampments> [https://perma.cc/XX7R-6GZA]; see also Peter Jamison et al., *L.A. to Declare 'State of Emergency' on Homelessness, Commit \$100 Million*, L.A. TIMES (Sept. 22, 2015), <https://www.latimes.com/local/lanow/la-me-ln-homeless-funding-proposals-los-angeles-20150921-story.html> [https://perma.cc/FQY2-3EVB] (“Though other big U.S. cities have seen rising homelessness numbers, L.A.’s problem has gained special notoriety.”).

33. BERNARD E. HARCOURT, POLICING L.A.’S SKID ROW: CRIME AND REAL ESTATE DEVELOPMENT IN DOWNTOWN LOS ANGELES [AN EXPERIMENT IN REAL TIME] 9–24 (Univ. of Chicago Pub. L. & Legal Theory Working Paper No. 92,

New York has also recently grappled with its homeless population, which is currently at record highs.³⁴ During the pandemic, New York City moved many of its unhoused individuals into empty hotels, a move praised by homelessness advocates, but soon reversed its actions when the city began to open up, shuttling homeless individuals back into crowded shelters.³⁵ The city has also come under increased criticism for its sweeps of public streets, which often involve destroying encampments where members of the homeless population reside.³⁶ Such practices were not isolated to New York City, but are prevalent in urban areas across the country.³⁷

B. Legal Responses

1. Right to Shelter and Housing Initiatives

One of the most notable legal directives addressing homelessness has been to provide shelter for those who do not have permanent housing. New York City's Right to Shelter, which has

2005) (describing living conditions of Los Angeles's Skid Row neighborhood); *see generally* FORREST STUART, DOWN, OUT, AND UNDER ARREST: POLICING AND EVERYDAY LIFE IN SKID ROW (2016) (documenting aggressive neoliberal policing practices in Skid Row).

34. *Basic Facts About Homelessness: New York City*, COAL. FOR THE HOMELESS (Jan. 2022), <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/> [https://perma.cc/UUU4-JEX9].

35. Andy Newman, *N.Y.C. Halts Plan to Move Homeless People From Hotels After Legal Filing*, N.Y. TIMES (Oct. 3, 2021), <https://www.nytimes.com/2021/07/09/nyregion/nyc-homeless-hotels-covid.html> [https://perma.cc/3AGG-NDFJ].

36. Andy Newman & Nicole Hong, *New York Is Pushing Homeless People Off the Streets. Where Will They Go?*, N.Y. TIMES (Oct. 15, 2021), <https://www.nytimes.com/2021/08/02/nyregion/homeless-camps-relocate.html> [https://perma.cc/EJ8Y-T8BT].

37. *See* AM. C.L. UNION, OUTSIDE THE LAW: THE WAR AGAINST UNHOUSED PEOPLE 19–60 (2021) (documenting practices that restrict and endanger the lives of homeless residents in municipalities across the United States) [hereinafter ACLU]. High rates of homelessness also pose a significant financial burden on the public—a single unhoused person is estimated to cost taxpayers over \$30,000 a year in healthcare costs, social services, welfare, and policing. NAT'L ALL. TO END HOMELESSNESS, ENDING CHRONIC HOMELESSNESS SAVES TAXPAYERS MONEY 1 (2017). It should be noted that estimates of the costs of homelessness can vary significantly depending on the study. *See generally* Dennis P. Culhane, *The Cost of Homelessness: A Perspective from the United States*, 2 EUR. J. HOMELESSNESS 97 (2008) (surveying literature on the public costs of homeless populations in the United States).

been around for over forty years, is a prime example of such a local initiative; it provides that the city must provide shelter to any unhoused person who meets a particular standard of need or is homeless “by reason of physical, mental, or social dysfunction.”³⁸ New York City’s current shelter system provides services and temporary housing for tens of thousands of residents and operates with a budget in the billions of dollars.³⁹ The COVID-19 pandemic has also spurred additional initiatives to house the homeless.⁴⁰ In an effort to prevent the spread of COVID-19 in condensed homeless shelters and encampments across the state, California adopted Project Homekey, which used federal and state coronavirus relief funds, as well as philanthropic donations, to put homeless persons in vacant hotel rooms.⁴¹ Cities and states around the country also implemented similar programs during the pandemic, but many of these initiatives were merely temporary.⁴²

2. Criminalization of Homelessness

Increasing rates of homelessness have also led cities to begin taking more aggressive actions to curtail their unhoused populations. Los Angeles has recently amended its municipal code to ban “sitting,

38. See *supra* note 5 and accompanying text. New York’s Right to Shelter resulted from a consent decree between the litigants of *Callahan v. Carey* and New York City. Since its inception, New York State and has repeatedly been subject to legal and political challenges. *The Callahan Legacy: Callahan v. Carey and the Legal Right to Shelter*, COAL. FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter/> [https://perma.cc/L6RS-7DJA]; see also *Protecting the Legal Right to Shelter*, COAL. FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/protecting-the-legal-right-to-shelter/> [https://perma.cc/755L-QY5T] (tracing the history of the Coalition’s Right to Shelter litigation in New York).

39. Gabriel Poblete, *How NYC’s Right to Shelter Mandate Works*, NYN MEDIA (Oct. 6, 2021), <https://nynmedia.com/content/how-nycs-right-shelter-mandate-works> [https://perma.cc/376T-CYNM].

40. Erika Bolstad, *Prompted by Pandemic, Some States Buy Hotels for the Homeless*, PEW TRUSTS (Dec. 4, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/12/04/prompted-by-pandemic-some-states-buy-hotels-for-the-homeless> [https://perma.cc/2DEY-UGDR].

41. TINGERTHAL, *supra* note 6.

42. Bolstad, *supra* note 40.

lying, or sleeping” in public areas under particular circumstances.⁴³ The ordinance has just started to be enforced in specified areas due to a provision which allows the City Council to designate areas where it will be applied.⁴⁴ New York City has similarly taken a stricter approach to homeless populations in Manhattan, with increasing police sweeps to clear homeless encampments off of sidewalks.⁴⁵ These recent measures have yet to be legally challenged, but federal courts have previously held that ordinances which criminalize homelessness as a status are unconstitutional under the Eighth Amendment’s prohibition of cruel and unusual punishment.⁴⁶ Beyond the legality of such responses to the increasing sizes of unhoused populations, there are considerable ethics and efficacy concerns with cities’ inhumane treatment of homeless people⁴⁷: not only do they discriminate against them for their residential status, or lack thereof, they also often prevent such individuals from having access to crucial

43. L.A., CAL., MUN. CODE § 41.18 (2022). *See also* David Zahniser, *L.A.’s New Homeless Encampment Law: A Humane Approach or Cruel to Unhoused People?*, L.A. TIMES (Aug. 2, 2021), <https://www.latimes.com/california/story/2021-08-02/los-angeles-new-homeless-anti-camping-law-humane-cruel> [<https://perma.cc/S7SS-SFZM>] (reporting on the anti-camping ordinance adopted by Los Angeles); Benjamin Oreskes, *Using New Law, L.A. City Council Bans Homeless Encampments at 54 Spots*, L.A. TIMES (Oct. 20, 2021), <https://www.latimes.com/homeless-housing/story/2021-10-20/l-a-city-council-bans-homeless-encampments-at-54-spots> [<https://perma.cc/CJH8-BYRE>] (reporting on the anti-camping ordinance adopted by Los Angeles).

44. MUN. CODE § 41.18(d); Oreskes, *supra* note 43 (reporting on the anti-camping ordinance adopted by Los Angeles).

45. Newman & Hong, *supra* note 36.

46. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1137 (9th Cir. 2006); *Martin v. City of Boise*, 920 F.3d 584, 616–17 (9th Cir. 2019) (holding that ordinances that criminalize homelessness as a status are a violation of the Eighth Amendment). *See infra* Part II.B.

47. There is also movement and advocacy for employing a human rights framework in order to address homelessness as a social problem. For scholarship advocating for a human right to housing as a legal response to the issue of homelessness see Maria Foscarinis, *Homelessness and Human Rights: Towards an Integrated Strategy*, 19 ST. LOUIS U. PUB. L. REV. 327 (2000); Maria Foscarinis, *Homelessness in America: A Human Rights Crisis*, 13 J.L. SOC’Y 515 (2012); *Homelessness and Human Rights*, U.N. HUM. RTS., OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/issues/housing/pages/homelessnessandhumanrights.aspx> [<https://perma.cc/ZZM6-YXRF>].

public services, and from accumulating financial or material resources.⁴⁸

3. Judicial Intervention and Injunctive Relief

One of the more unique legal responses has come from the federal judiciary. A federal district court judge in the Central District of California recently issued an injunction against the City of Los Angeles to allocate \$1 billion of the city's budget to build affordable housing and shelters.⁴⁹ The Court cited the deplorable conditions faced by homeless populations in Los Angeles, particularly during the COVID-19 pandemic, and chastised the city government for its repeated failures to address the crisis.⁵⁰ However, the injunction was never enforced as the city immediately appealed to the Ninth Circuit, which reversed the district court order largely on procedural grounds.⁵¹

48. See LOWENSTEIN HUM. RTS. CLINIC, *supra* note 8, at 4–5 (discussing how laws criminalizing homelessness are counterproductive because they financially punish unhoused people).

49. LA All. for Human Rights v. City of L.A., No. LA CV 20-02291-DOC-(KESx), 2021 U.S. Dist. LEXIS 76053 (C.D. Cal. 2021), *rev'd* 14 F.4th 947 (9th Cir. 2021). In a particularly extraordinary and detailed opinion, Judge David O. Carter firmly emphasized the need for judicial intervention: “This ever-worsening public health and safety emergency demands immediate, life-saving action. The City and County of Los Angeles have shown themselves to be unable or unwilling to devise effective solutions to L.A.’s homelessness crisis. For the reasons discussed below, the Court must now do so.” 2021 U.S. Dist. LEXIS 76053 at *106; see also Benjamin Oreskes et al., *Judge Orders L.A. City and County to Offer Shelter to Everyone on Skid Row by Fall*, L.A. TIMES (April 20, 2021), <https://www.latimes.com/homeless-housing/story/2021-04-20/judge-carter-la-city-county-shelter-skid-row-homeless-fall> [<https://perma.cc/D67A-7N9Y>] (reporting the details of the district court injunction).

50. LA All. for Hum. Rts., 2021 WL 1546235, 2021 U.S. Dist. LEXIS 76053 at 64.

51. LA All. for Hum. Rts., 14 F.4th 947, 961 (9th Cir. 2021) (“The district court undoubtedly has broad equitable power to remedy legal violations that have contributed to the complex problem of homelessness in Los Angeles. But that power must be exercised consistent with its discretionary authority and Article III.”); see also Eric S. Tars et al., *Can I Get Some Remedy?: Criminalization Of Homelessness and the Obligation to Provide an Effective Remedy*, 45 COLUM. HUM. RTS. L. REV. 738 (2013) (providing an analysis of potential equitable remedies to homelessness).

C. Land Use Regulations

Discussions of the homelessness crisis have been tied closely to concerns with the lack of affordable urban housing, igniting renewed scrutiny on land-use regulations.⁵² Land-use regulations dictate requirements and limitations for land development and use,⁵³ including but not limited to: zoning ordinances, environmental impact report requirements, special-use permit programs, and building codes.⁵⁴ Zoning laws in particular are one of the primary and most important powers of city governments, allowing them to exclude specific uses on designated sites.⁵⁵ They are a relatively new legal mechanism, first implemented in their modern form around 100 years ago as urban growth began to explode in the United States.⁵⁶ By allowing municipalities to control how land in a concentrated population was used, cities were able to organize their space to promote land-use efficiency, reduce nuisances, and preserve the environment.⁵⁷ Zoning laws are used in practically every major city in the United States.⁵⁸

1. Judicial Oversight

Land-use regulations are primarily subject to constitutional limitations,⁵⁹ as developed by caselaw as well as the individual state statutes which govern the land-use power.⁶⁰ The leading case on the constitutionality of zoning ordinances is *Village of Euclid v. Ambler Realty Co.* decided by the Supreme Court in 1926.⁶¹ The plaintiff

52. See *supra* note 9 and accompanying sources.

53. See PATRICIA E. SALKIN, *AMERICAN LAW OF ZONING* § 1:2 (5th ed. 2021) (explaining the role that land-use regulations play in land development).

54. MERRIAM AND BRONIN, *supra* note 18, § 1:15.

55. *Id.* § 1:3.

56. John R. Nolon, *Historical Overview of the American Land Use System: A Diagnostic Approach to Evaluating Governmental Land Use Control*, 23 *PACE ENV'T L. REV.* 821, 829–34 (2006).

57. Glaeser, *supra* note 10.

58. Jenny Schuetz, *Is Zoning a Useful Tool or a Regulatory Barrier?*, BROOKINGS INST. (Oct. 31, 2019), <https://www.brookings.edu/research/is-zoning-a-useful-tool-or-a-regulatory-barrier> [<https://perma.cc/MEV4-5GNX>].

59. This includes the U.S. Constitution as well as state constitutions. See *S. Burlington Cnty. NAACP v. Mount Laurel Twp.*, 336 A.2d 713 (N.J. 1975) (reading an affordable housing requirement with respect to land-use designations into the New Jersey constitution).

60. MERRIAM & BRONIN, *supra* note 18, § 2:1.

61. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

owned land that was restricted to residential use and sued the city on the grounds that the prevention of industrial use decreased the value of his land which violated his constitutional rights under the Fourteenth Amendment.⁶² The Court held that a land-use regulation is valid so long as it bears a rational relation to the police power of the state, namely that it is instituted for the sake of public welfare.⁶³ Therefore, for a land-use regulation to be held unconstitutional it must be “arbitrary and unreasonable.”⁶⁴

While zoning ordinances are rarely challenged as a matter of due process, insufficient procedural compliance and the failure to meet *Euclid*'s rational basis test have been grounds for invalidation.⁶⁵ Discrimination against protected classes has also been deemed to violate the Equal Protection Clause,⁶⁶ and particularly burdensome zoning ordinances are subject to challenges under the Takings Clause.⁶⁷ Nevertheless, the core inquiry with respect to the validity of

62. *Id.* at 384–85.

63. *Id.* at 387. With respect to housing, the Court highlighted aesthetics as one of the legitimate justifications of land-use regulation. It discussed the ways that in certain circumstances, “apartment houses . . . come very near to being nuisances,” seemingly acting as “a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district.” *Id.* at 394–95. In this way, “the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.” *Id.* at 394.

64. *Id.* at 395.

65. *See, e.g.,* *Spaw, L.L.C. v. City of Annapolis*, 156 A.3d 906, 927–28 (Md. Ct. App. 2017), (holding that multiple citations constituted adequate notice in the context of a zoning ordinance violation).

66. *See, e.g.,* *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985) (holding that denial of a permit for a group home unconstitutionally discriminated against the mentally challenged under the Equal Protection Clause). *Cleburne* is also an example of an instance where the Supreme Court applied an arguably stricter level of scrutiny than a pure rational basis review for a challenge on zoning laws. *See generally*, Richard B. Saphire, *Equal Protection, Rational Basis Review, and the Impact of Cleburne Living Center, Inc.*, 88 KY. L.J. 591 (1999) (examining *Cleburne* as a functional departure from rational basis review despite its explicit application of the rational basis standard). Such interventions demonstrate that despite a generally deferential approach to land-use regulations, courts do police inappropriate zoning designations, albeit on a relatively unpredictable basis. *See infra* note 68 and accompanying text.

67. *See e.g.,* *First Eng. Evangelical Lutheran Church of Glendale v. Cnty. of LA.*, 482 U.S. 304, 321–22 (1987) (finding that a zoning ordinance adopted in response to flooding on plaintiff's property constituted a taking under the Takings Clause, requiring just compensation).

land-use regulations as an exercise of municipal power is the question of the rational basis of the police power allowed under *Euclid*.⁶⁸

Courts can also look to state statutes and constitutions to impose judicial limitations on zoning ordinances. Because the power to regulate land-use regulations technically belongs to the state, most states, including California, enact enabling statutes which delegate the power to cities.⁶⁹ In some instances, state courts have applied stricter levels of scrutiny to land-use regulations.⁷⁰ However, the analytical structure of state-level limitations remains generally similar to the rational basis analysis under *Euclid*—ordinances are typically required to merely serve one of the zoning statute's listed purposes that are related to the general public welfare.⁷¹

2. Single-Family Housing Zoning

68. MERRIAM & BRONIN, *supra* note 18, § 2:2. While zoning designations today are rarely overturned as a matter of facial invalidity, courts have been more prone to overturn or invalidate a designation as applied. *Id.* ("Thus, the question of the constitutionality of local ordinances under federal or state constitutions, both on their face and as applied, is always present, and in its latter aspect, is one of the most important grounds for challenging the validity of zoning ordinances and decisions.").

69. California's statute in particular allows local zoning to regulate "the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes," as well as signs and billboards, building specifications, lot use, intensity of land use, parking and loading, setback lines (required distance of hazards from private property), and public spaces. CAL. GOV'T CODE § 65850 (Deering 2021); *see also* Richard Briffault, *Home Rule, Majority Rule, and Dillon's Rule*, 67 CHI.-KENT L. REV. 1011, 1011–12 (1991) (discussing the merits of Dillon's Rule, which treats zoning powers as a delegation by the state to municipalities).

70. For example, the New Jersey Supreme Court invalidated a large-lot zoning ordinance on the grounds that it unreasonably restricted affordable housing under the New Jersey Constitution. *S. Burlington Cnty. N.A.A.C.P. v. Mount Laurel Twp.*, 336 A.2d 713 (1975). However, many of these interventions suffer from inconsistency and ad hoc decision-making. *See* Daniel R. Mandelker & A. Dan Tarlock, *Shifting the Presumption of Constitutionality in Land-Use Law*, 24 URB. LAW. 1, 10–18 (1992) (discussing recent shifts by courts to more heavily scrutinize land-use regulations); *see also infra* Part II.C.1.

71. MERRIAM & BRONIN, *supra* note 18, § 2:21; *see, e.g.*, *Hernandez v. City of Hanford*, 41 Cal. 4th 279, 296–97 (2007) ("[S]o long as the primary purpose of the ordinance or action . . . is the advancement of a legitimate *public* purpose . . . the ordinance reasonably relates to the general welfare of the municipality and constitutes a legitimate exercise of the municipality's police power.").

The severe lack of affordable housing in states like California and New York has renewed attention to the way land-use regulations constrict residential development in urban areas.⁷² There has been a significant amount of commentary on single-family housing zoning in particular, especially given its historical use as a legal mechanism to racially segregate cities.⁷³ Many scholars point out that pervasive single-family housing zoning tends to artificially restrict housing supply by preventing residential development.⁷⁴ Such zoning patterns effectively force people to buy more residential space than they require at accordingly higher prices.⁷⁵

California has recently taken a drastic step to address the prevalence of single-family housing zoning. In 2021, it signed SB 9 and SB 10 into law, which permit the development of duplexes in single-family housing zones and streamline the mandatory rezoning process at the city level.⁷⁶ The effects of these new laws have yet to be seen, as no cities have been rezoned in compliance with these laws at the time of this writing, but their passage (as well as their significant

72. See *supra* note 11 and accompanying sources.

73. E.g., Alexander von Hoffman, *Single-Family Zoning: Can History Be Reversed?*, JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. (Oct. 5, 2021), <https://www.jchs.harvard.edu/blog/single-family-zoning-can-history-be-reversed> [<https://perma.cc/VFG9-RZZ7>] (discussing the controversy over single-family housing zoning).

74. See Manville et al., *supra* note 11 (arguing to end single-family zoning). Commentators somewhat differ on what types of regulations they believe are the most problematic—scholars with a more libertarian bent tend to scrutinize building codes and environmental regulations as burdening developers with significant additional costs in housing construction. See Vanessa Brown Calder, *Zoning, Land-Use Planning, and Housing Affordability*, CATO INST. (Oct. 18, 2017), <https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability> [<https://perma.cc/U682-FUBX>] (arguing that burdensome development rules and regulations contribute to a lack of affordable housing); see also M. Nolan Gray, *How Californians Are Weaponizing Environmental Law*, THE ATLANTIC (Mar. 12, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/signature-environmental-law-hurts-housing/618264/> [<https://perma.cc/XMB3-DJDQ>] (arguing that environmental reporting requirements for development projects are excessive). More progressive perspectives, such as those of Manville, Monkkonen, and Lens, largely focus on single-family housing zoning as the most restrictive regulations on residential development. Manville et al., *supra* note 11.

75. Manville et al., *supra* note 11, at 106–07 (“Many people, however, are effectively barred from [prosperous and amenity-rich] neighborhoods because access to them is sold primarily in large, expensive, and inefficient chunks—through R1.”).

76. CAL. GOV’T CODE §§ 66452.6, 65852.21, 66411.7 (Deering 2021).

political opposition) demonstrates the serious attention garnered by land-use regulations such as single-family housing zones.⁷⁷

II. Policing as De Facto Zoning and Reconsidering the Normative Foundations of Land-Use Regulations

Scholarship has primarily examined the intersection of homelessness and land-use regulation in terms of the economic relationship between zoning ordinances and increasing housing prices in urban areas—establishing that such regulations contribute to, or cause unaffordable residential costs reveals a clear policy directive of cutting down on such regulations.⁷⁸ However, both scholarship and political discourse have paid little attention to how zoning laws treat homelessness as a form of residence, or lack thereof, and the potential issues that might arise from this relationship.

This part examines the official and unofficial ways that homelessness is spatially regulated in Los Angeles and uses the emerging legal school of thought, Law and Political Economy, to question some of the current normative assumptions surrounding land-use regulation.⁷⁹ Part II.A analyzes the current zoning patterns

77. *To Save California, Sacrifice Single-Family Zoning*, L.A. TIMES (Aug. 22, 2021), <https://www.latimes.com/opinion/story/2021-08-22/editorial-sb9-sb10-california-housing> [<https://perma.cc/8FDP-YWUX>] (“[Ending single-family zoning] is an important piece of a larger effort in the state — and the nation — to fix failed policies and misplaced priorities that have led to a broken housing market and woefully inadequate housing safety net.”); *see also* Memorandum, California Governor Newsom Signs Three Important New Bills into Law Impacting Residential Zoning and Development, Gibson Dunn (Oct. 25, 2021), <https://www.gibsondunn.com/wp-content/uploads/2021/10/california-governor-newsom-signs-three-important-new-bills-into-law-impacting-residential-zoning-and-development.pdf> [<https://perma.cc/6XLW-RRZL>] (discussing the potential impact of SB 9 and SB 10); *SB 9 and SB 10*, L.A. CONSERVANCY (updated Sept. 17, 2021), <https://www.laconservancy.org/issues/sb-9-and-sb-10> [<https://perma.cc/LKX4-35HT>]; *SB 9 & 10 Polling: California Voters Strongly Oppose 2 Housing Bills*, BUS. WIRE (Aug. 9, 2021), <https://www.businesswire.com/news/home/20210809005634/en/> [<https://perma.cc/LKX4-35HT>] (detailing the political controversy and opposition to SB 9 and SB 10).

78. *See supra* notes 9–11 and accompanying sources.

79. Law and Political Economy, or LPE, is an emerging school of critical legal thought that questions the neoliberal assumptions of legal scholarship and caselaw in an effort to address contemporary socio-political issues through the law:

of Los Angeles with respect to their relationship to the homeless population of the city. Part II.B then argues that informal policing practices have filled in the gaps of the zoning code's failure to adequately address homelessness as a form of residence, constituting a form of *de facto zoning* that places it outside the scope of proper judicial review. Finally, Part II.C discusses the dominance of single-family housing zoning as the primary land-use designation in cities such as Los Angeles, contending that the current normative frameworks of land-use law fail to provide adequate guidance in assessing the desirability of such zoning practices.

A. Los Angeles's Zoning Patterns

Chapter 1 of the Los Angeles Municipal Code governs the process of zoning in the City of Los Angeles.⁸⁰ There are forty-nine different types of zoning designations listed in the Municipal Code, but these can mostly be categorized into agricultural, residential, commercial, open space, industrial, and site-specific zones.⁸¹ Residential designations are by far the most important category,⁸² functioning similarly to a series of concentric circles with each

Our work is rooted in the insight that politics and the economy cannot be separated and that both are constructed in essential respects by law. We believe that developments over the last several decades in legal scholarship and policy helped to facilitate rising inequality and precarity, political alienation, the entrenchment of racial hierarchies and intersectional exploitation, and ecological and social catastrophe. We aim to help reverse these trends by supporting scholarly work that maps where we have gone wrong, and that develops ideas and proposals to democratize our political economy and build a more just, equal, and sustainable future.

Law and Political Economy, LPE PROJECT, <https://lpeproject.org>. See also *supra* note 13.

80. L.A., CAL., MUN. CODE CH. 1 (2022). Zoning decisions and approvals are made through seven area planning commissions which consist of the North Valley, South Valley, West Los Angeles, Central Los Angeles, East Los Angeles, South Los Angeles, and Harbor Area. *Id.* § 11.5.2.

81. *Id.* §§ 12.00–12.82. Certain institutions like the University of Southern California and the Los Angeles International Airport have their own zoning designations. *Id.* §§ 12.216.5–12.16.8, 12.19.1.

82. Manville et al., *supra* note 11, at 107. Residential designations constitute the bulk of zoning in Los Angeles as well as cities across the United States. *Id.*; see also Fig.1.

subsequent category allowing for additional uses.⁸³ The “RA” (Suburban Zone), “RE” (Residential Estate), “RS” (Suburban Zone), “R1” (One-Family Zone), and “RU” (Residential Urban Zone) designations all primarily restrict land-use to single-family houses and related activities.⁸⁴ “R2” (Two-Family Zone) allows for the development of two-family housing units.⁸⁵ “RD” (Restricted Density Multiple Dwelling Zone), “R3” (Multiple Dwelling Zone), “R4” (Multiple Dwelling Zone), and “R5” (Multiple Dwelling Zone) expand use for multi-family housing development, such as apartment complexes.⁸⁶ The particular ways that Los Angeles is zoned depend on the area of the city, with conspicuous patterns emerging in accordance with the relative wealth of each neighborhood or area,⁸⁷

83. MUN. CODE §§ 12.07–12.12.

84. *Id.* §§12.07.01–12.08.01. The expansion of single-family housing zones came at the behest of homeowner groups in Los Angeles. Andrew H. Whittemore, *Zoning Los Angeles: A Brief History of Four Regimes*, 27 PLAN. PERSPS. 393, 400 (2012).

85. MUN. CODE § 12.10.

86. *Id.* §§12.10–12.12. “R4” and “R5” also include allowances for buildings such as churches, nursery schools, fraternity and sorority houses, museums, and hospitals.

87. Zoning patterns in the city strongly correlate with economic prosperity. The West Los Angeles area, which includes some of the wealthiest neighborhoods of the city such as Brentwood, Bel Air, and Westwood, is almost entirely zoned for single-family housing, with pockets of multiple dwelling, commercial, and industrial designations in West Los Angeles and Venice, as well as a site designation for the Los Angeles International Airport. The North Valley and South Valley areas are zoned similarly, with a proportional mix of designations including open spaces, agricultural use, commercial use, industrial use, and residential use. Nevertheless, the majority of land in the areas is designated for single-family housing. Most of the multi-family housing zones in Los Angeles are in the Central and South Los Angeles areas, which include some of the lowest-income neighborhoods. With the exception of Hollywood, which is primarily zoned for single-family housing and open space (designated for Griffith Park and its observatory, a major tourist attraction to the city), the majority of Central and South Los Angeles is zoned for multiple dwelling use, with substantial areas designated for single-family housing, commercial use, and industrial use. The northern half of the East Los Angeles area, a relatively wealthy area, is zoned almost exclusively for single-family housing. The southern half of the area, in contrast, is mostly designated for multiple dwelling use, with large areas zoned for industrial activity. *Zoning Information Mapping Access System (ZIMAS)*, CITY OF L.A., DEP’T OF CITY PLAN., <http://zimas.lacity.org> [<https://perma.cc/GK4T-MNWN>]; see also POL’Y LINK AND USC PROGRAM FOR ENV’T & REG’L EQUITY (PERE), AN EQUITY PROFILE OF THE LOS ANGELES REGION 78 (2017) (detailing the wealth distribution across Los Angeles neighborhoods).

but approximately 70% of Los Angeles is zoned for single-family housing.⁸⁸ (see Fig.1).

88. Manville et al., *supra* note 11, at 107. The exact estimates of single-family zoning depend on how exactly percentage of land designation is being measured, but this figure is roughly in line with or even below other major cities such as Seattle or San Jose, which are 80% and 90% zoned for single-family housing respectively. This does not include the suburbs of urban areas as well, which are almost exclusively zoned for single-family housing. *Id.*

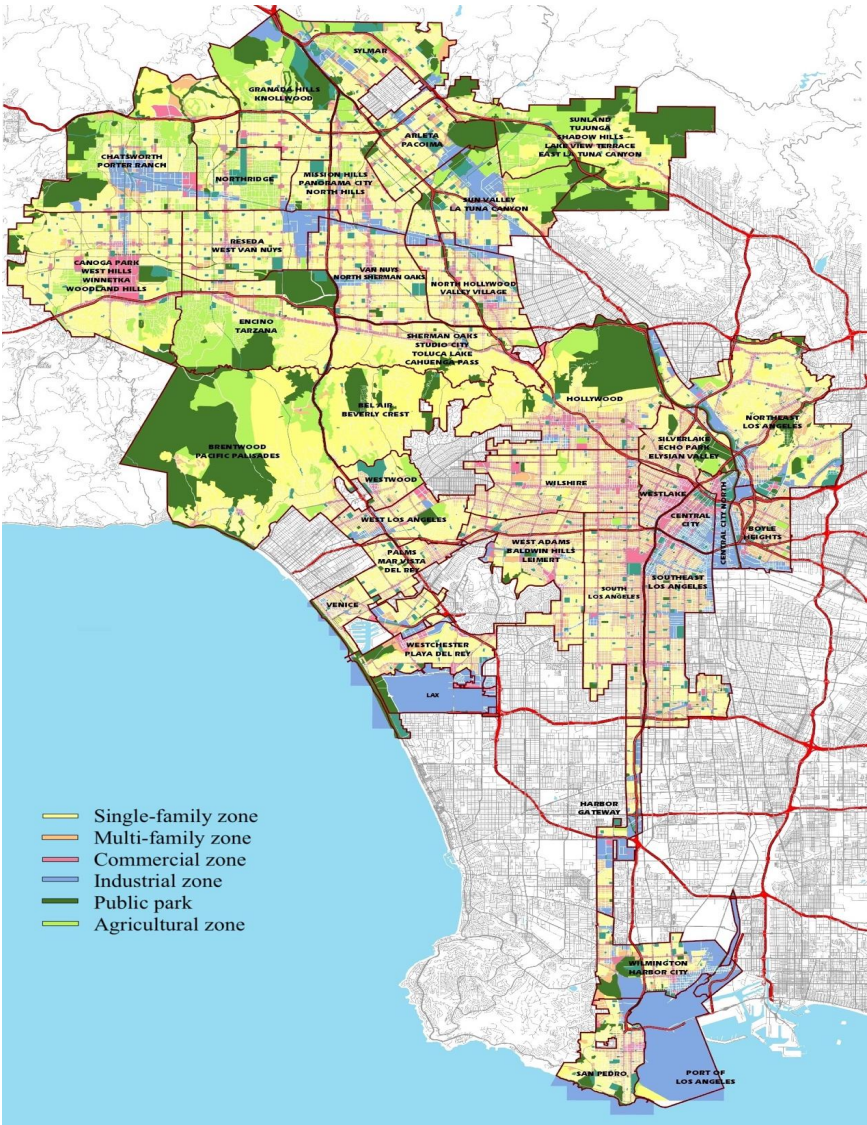


Fig.1

B. De Facto Zoning of the Homeless Population

1. The Municipal Code's Failure to Recognize Homelessness as a Form of Residence

The Los Angeles Municipal Code's approach to homelessness, whether intended or not, takes an extreme position—the only guidance it offers about where “homelessness” as a status is permitted is that it is not.⁸⁹ The Municipal Code addresses Los Angeles's homelessness population in three main ways. First, it allows for the development of homelessness shelters in the event of the declaration of a “shelter crisis” by the Mayor or the City Council.⁹⁰ A “shelter crisis” has been declared before by the city in 2018, but such measures were largely emergency and did not provide permanent housing solutions for unhoused people.⁹¹ Second, the Code has an “inclusionary zoning” requirement⁹² as required by California's zoning statute.⁹³ Specifically, this provision mandates that any development projects involving buildings with ten or more housing units must either make a portion of the units “affordable” to low-income households or construct off-site housing units for low-income households.⁹⁴ Third, the Municipal Code prohibits the

89. See *supra* Part I.B.2.

90. MUN. CODE §§ 12.80–81. These shelters can be established on any city-owned and operated property, “R3” zones, “R4” zones, “R5” zones, and certain commercial and industrial use sites. *Id.*

91. Elijah Chiland, *Garcetti Declares ‘Shelter Crisis’ to Address Homelessness*, LA CURBED (Apr. 17, 2018), <https://la.curbed.com/2018/4/16/17243382/los-angeles-homeless-shelters-garcetti-plan> [https://perma.cc/6HJW-5RJJ]. Los Angeles County declared its own “shelter crisis” to establish temporary housing for homeless populations in the county during the COVID-19 pandemic, working with the state in implementing Project Homekey. Press Release, Los Angeles County First District Supervisor Hilda L. Solis, Chair Solis' Statement on LA County Shelter Crisis Declaration (Oct. 19, 2021), <https://hildalsolis.org/chair-solis-statement-on-la-county-shelter-crisis-declaration/> [https://perma.cc/DJ7G-AKJU].

92. MUN. CODE § 11.5.11.

93. CAL. GOV'T CODE § 65850(g) (Deering 2021).

94. MUN. CODE § 11.5.11. The merits of inclusionary zoning as a means of addressing housing affordability are heavily debated. See, e.g., Robert C. Ellickson, *The Irony of Inclusionary Zoning*, 54 S. CAL. L. REV. 1167, 1170 (1981) (inclusionary zoning ordinances increase general housing prices and further limit middle-income housing opportunities); Antonio Bento et al., *Housing Market Effects of Inclusionary Zoning*, 11 CITYSCAPE 7, 8 (2009) (finding that cities that enacted inclusionary zoning ordinances saw measurable effects, both in terms of

obstruction of a street, sidewalk, or public-right-of-way “by sitting, lying, or sleeping, or by storing, using, maintaining, or placing personal property” under particular circumstances as listed in the code.⁹⁵ This provision was adopted in September 2021 and was explicitly intended to address “the homeless crisis.”⁹⁶ However, Section 41.18’s effective ban on homelessness simply denies residence in Los Angeles to the city’s nearly 60,000 homeless individuals.⁹⁷

2. Selective Policing as a Form of De Facto Zoning

Los Angeles’s explicit regulations of homelessness indicate that the Municipal Code recognizes the existence and problematic nature of its growing homeless population.⁹⁸ However, the city’s zoning patterns fail to create any practical residential space for such individuals—the homeless population exists whether or not it is legally acknowledged.⁹⁹ By largely ignoring the issue of unhoused

the decrease in single-family homes and increase in multifamily housing units); Brian R. Lerman, *Mandatory Inclusionary Zoning—The Answer to the Affordable Housing Problem*, 33 B.C. ENV’T AFFS. L. REV. 383, 415 (2006) (debating the effectiveness of inclusionary zoning as a means of addressing a lack of affordable housing).

95. MUN. CODE § 41.18.

96. Memorandum, Amendment of Ordinance Section 41.18, City of Los Angeles (July 2, 2021), https://clkrep.lacity.org/online/docs/2020/20-1376-S1_ord_draft_7-02-21.pdf [<https://perma.cc/Z8XZ-J4H2>]. This amendment has generated a significant amount of controversy. See, e.g., *Where Will People Go? Frequently Asked Questions About “41.18”*, COUNCILMEMBER MIKE BONIN, <https://11thdistrict.com/4118-faq/> [<https://perma.cc/9MYZ-J42T>] (arguing that 41.18 will be unable to address the housing issues it was passed to remedy); Rashno Razmkhah, *War On Homelessness in Los Angeles*, THE CORSAIR (Nov. 13, 2021), <https://www.thecorsaironline.com/corsair/2021/11/11/war-on-homelessness-in-los-angeles> [<https://perma.cc/SNK7-6C44>] (“While temporary housing through social programs are band-aids for bullet wounds, it is essential to continue to advocate for the basic needs of the unhoused members of the surrounding communities and demand policy change against laws that criminalize homelessness such as section 41.18 as a more long term solution.”).

97. See *supra* note 43 and accompanying sources. The validity of this provision is further complicated when considering its questionable legality, as federal courts have held that municipal regulations that effectively “criminalize homelessness” are unconstitutional. See *supra* note 46 and accompanying sources.

98. See Amendment of Ordinance Section 41.18 *supra* note 96 (“WHEREAS, the homeless crisis has reached epic proportions across the City of Los Angeles”).

99. NAT’L ALL. TO END HOMELESSNESS, *supra* note 1 (detailing the increasing severity and rates of homelessness in the United States).

people who live in the city, land-use regulations sanction a form of *de facto zoning* in which homeless individuals are segregated into certain “undesirable” areas through informal policing practices. This is well illustrated by the case of the Skid Row neighborhood in Los Angeles, which occupies about fifty city blocks in Central Los Angeles¹⁰⁰ and is known for its concentration of marginalized and homeless individuals.¹⁰¹ Today, it is home to 13,000 residents living in extreme poverty, with its population largely consisting of undereducated, working-age men suffering from physical disabilities, mental illness, and drug addiction.¹⁰² One-third of the neighborhood’s residents live on the streets, in shelters, or temporary housing.¹⁰³

The disconnect between Skid Row’s legal land-use designations and its function as a place of “last resort” for those who struggle in life is no accident. In 1976, Los Angeles instituted a “containment plan” for Skid Row, unofficially designating it as a neighborhood for the destitute of the city.¹⁰⁴ The containment plan arose as a political compromise between business interests and a number of progressive non-profit organizations, serving the dual purposes of preventing the downtown area from being grazed for

100. *History of Skid Row and the Trust*, SKID ROW HOUSING TRUST, <https://skidrow.org/about/history/> [https://perma.cc/XL4U-3DCG]. The neighborhood is primarily zoned for industrial use, with some site designations on the west side for multiple dwelling buildings, commercial activity, and public facilities. ZIMAS, *supra* note 87.

101. *History of Skid Row and the Trust*, *supra* note 100 (“Also known as Central City East, the area has a longstanding history as a residential neighborhood for those with the least.”). As discussed by Harcourt, the real estate development community in Los Angeles played a significant role in shaping and fighting the developmental trajectory of Skid Row. Harcourt, *supra* note 33, at 8 (“L.A.’s Skid Row is at the heart of an urban struggle that may reveal how America’s disorderly urban neighborhoods experience change. It is a battle over land and lofts, and it covers everything from zoning to public toilets.”); *see also* Brady Collins & Anastasia Loukaitou-Sideris, *Skid Row, Gallery Row and the Space in Between: Cultural Revitalisation and its Impacts on Two Los Angeles Neighbourhoods*, 87 TOWN PLAN. REV. 401, 404–22 (2016) (examining the spatial and political interactions between Skid Row and a surrounding gentrified neighborhood).

102. STUART, *supra* note 33, at 24.

103. *Id.*

104. *Id.* at 51–52; *see also History of Skid Row*, *supra* note 100 (“The recommendation was that all housing and services for the homeless be centered in the Skid Row neighborhood where they would both be protected for the pressures of gentrification, but also concentrate the homeless away from Bunker Hill and the new financial core of the city.”).

redevelopment as well as functioning as a “magnet” to pull impoverished residents away from the rest of the downtown area.¹⁰⁵

This type of “containment” has primarily been enforced through policing and criminalization policies.¹⁰⁶ There are a number of methods employed by cities to spatially regulate the existence of homeless persons. This includes hostile architecture and landscaping, which use fences, rocks, spikes, and boulders to prevent homeless encampments, as well as “move along” and “stay away” orders from public spaces.¹⁰⁷ Such orders are backed with the threat of fines, arrests, and incarceration, which can burden struggling individuals with further financial and criminal difficulties.¹⁰⁸ The main issue with this type of “public space” regulation is that it is selective: the implementation and aggression of enforcement is driven by concerns with space and aesthetics, which in turn is driven by a conception of the particular peoples being regulated.¹⁰⁹ Sociologist Forrest Stuart documents the way that Skid Row is shaped by a particular brand of heavy-handed policing—Los Angeles’ Safer Cities Initiative, launched in 2006, constituted an intense and expensive campaign to reduce crime in neighborhoods like Skid Row.¹¹⁰ It adopted a zero-tolerance approach to law enforcement that reflected a then-popular “broken windows” philosophy, which encourages aggressive measures against minor forms of “disorderly behavior” such as panhandling,

105. STUART, *supra* note 33, at 51–52. The plan actually explicitly discouraged low-income housing outside of Skid Row and encouraged light industrial building construction “to reinforce the edges between Skid Row and other land uses.” *Id.*

106. Richard Berk and John McDonald concluded in an empirical study that efforts by the Los Angeles Police Department to aggressively address crime in Skid Row primarily accomplish the de-concentration and reduction of the presence of homeless individuals rather than any substantive reduction in crime. Richard Berk & John McDonald, *Policing the Homeless: An Evaluation of Efforts to Reduce Homeless-Related Crime*, 9 CRIMINOLOGY & PUB. POL’Y 813, 836 (2010).

107. NAT’L L. CTR., HOUSING NOT HANDCUFFS, *supra* note 7.

108. *Id.*; see also *infra* note 182 and accompanying text.

109. Dennis P. Culhane, *Tackling Homelessness in Los Angeles’ Skid Row: The Role of Policing Strategies and the Spatial Deconcentration of Homelessness*, 9 CRIMINOLOGY & PUB. POL’Y 851, 851 (2010). Scholars have also examined the way that zoning laws play a role in attempts to address crime rates. See James M. Anderson et al., *Reducing Crime by Shaping the Built Environment with Zoning: An Empirical Study of Los Angeles*, 161 U. PA. L. REV. 699, 754 (2013).

110. STUART, *supra* note 33, at 5–6.

drunkenness, and obstruction of public spaces.¹¹¹ In the campaign's first year, officers made 9,000 arrests and issued 12,000 citations.¹¹²

Such selective policing is not limited to Skid Row. In 2019, unhoused individuals residing in Echo Park, one of the city's public parks, began facing increased harassment and ordinance enforcement by the police, largely triggered by complaints from surrounding neighbors.¹¹³ Despite the involvement of the City Councilman for the area, as well as protests against aggressive police action against the homeless in Echo Park, the police ultimately disbanded the encampment in March 2021.¹¹⁴ The motivations for such encampment sweeps were clear; as the county sheriff, Alex Villanueva, put it during a public meeting:

People understand that when we lose control of our public space, when we fail to regulate our public space, we're surrendering it to anybody who shows up, in whatever condition they show up, and they're here,

111. *Id.* at 10–11. Broken windows policing has been heavily criticized in academic literature. See BERNARD HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* (2005) (engaging in an empirical and normative critique of broken windows policing practices); Jeremy Kaplan-Lyman, *A Punitive Bind: Policing, Poverty, and Neoliberalism in New York City*, 15 YALE HUM. RTS. & DEV. L.J. 177 (2012) (critiquing broken windows theory as a method of neoliberal policing in New York City). There is also little evidence to demonstrate that Los Angeles's Safer Cities Initiative has reduced crime rates. GARY BLASI AND FORREST STUART, *HAS THE SAFER CITIES INITIATIVE IN SKID ROW REDUCED SERIOUS CRIME?* 11 (2008). Regardless, setting aside the merits of such approaches to policing and law enforcement, the existence of such practices meant to spatially and behaviorally structure the urban poor demonstrates the void left by Los Angeles's zoning regime.

112. STUART, *supra* note 33. In addition to the problematic nature of excessively burdensome and discriminatory policing practices, Stuart contends that such interventions constitute *therapeutic policing*, or “a paternalistic brand of spatial, behavioral, and moral discipline designed to ‘cure’ those at the bottom of the social hierarchy of the individual pathologies deemed responsible for their abject circumstances.” *Id.* Such concerns of paternalism also implicate concerns of autonomy and freedom, as discussed below. See *infra* Part III.A.

113. See ACLU, *supra* note 37, at 34 (“[Such aggressive law enforcement approaches] are emblematic of a widespread pattern and practice in Los Angeles City and County that involves discriminatory animus directed at unhoused community members as the primary response to the region’s housing displacement crisis.”).

114. *Id.*

and they're going to do all the bad things that we're seeing in these photos.¹¹⁵

By failing to adequately address spaces for homeless and impoverished individuals to merely reside, informal practices are left to fill the gap which are often at odds with the ways in which areas in the city are formally zoned.¹¹⁶ In this sense, it is impossible to ignore American zoning law's history of racial exclusion in urban areas. After the Supreme Court struck down explicitly racial zoning in *Buchanan v. Warley*,¹¹⁷ cities began devising subtler ways to maintain racial segregation.¹¹⁸ This is well-illustrated by the comprehensive zoning plan St. Louis instituted in 1919, which designated its predominately white neighborhoods as "single-family residential" neighborhoods.¹¹⁹ Predominantly Black neighborhoods, in contrast, were intentionally designated as multi-family, commercial, or industrial.¹²⁰ According to the architect of that plan, its purpose was to prevent movement into "finer residential districts . . . by colored people."¹²¹ Such history illustrates the more nefarious intentions that can underlie official zoning regimes and demonstrates why it is important to scrutinize the ways in which zoning laws operate in practice.

115. *Los Angeles County Sheriff Alex Villanueva Calls for Local State of Emergency to Address Homeless Crisis*, CBS LOS ANGELES (Aug. 13, 2021), <https://losangeles.cbslocal.com/2021/08/13/la-county-sheriff-alex-villanueva-calls-local-state-emergency-address-homeless-crisis/> [<https://perma.cc/7WQS-T3TK>].

116. As Culhane noted, despite justifications of public health or crime reduction, selective policing practices are primarily used to spatially regulate nuisances in public spaces associated with homeless individuals. Culhane, *supra* note 109, at 852 ("[T]he [Safer Cities Initiative] intervention was not intended as an intervention to address homelessness, but instead it was developed to fight the crime problems created by the *spatial concentration* of homelessness in encampments and on the streets of Skid Row.").

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

118. As demonstrated by the racial motivations underlying the early zoning designations in America, the explicit prohibitions and judicial limitations on zoning laws were circumvented through non-explicit racial forms of segregation. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 45–48 (2017). This Note contends that de facto zoning functions in the same way—by spatially regulating homeless persons through policing rather than zoning, such practices escape judicial protections on zoning.

119. *Id.* at 46.

120. *Id.*

121. *Id.*

3. Lack of Proper Judicial Oversight

These forms of de facto zoning are also problematic because they are effectively removed from proper judicial oversight. Despite the generally deferential nature of judicial oversight of land-use regulations, such constitutional and statutory limitations provide a key defense against unreasonable, arbitrary, or even malicious zoning practices.¹²² De facto forms of zoning are insulated from such challenges primarily because they are not official zoning provisions at all; rather, they are informal or unofficial practices by the government.¹²³ In Los Angeles's case, policing practices often function as the zoning mechanism for homeless residents in the city.¹²⁴ Therefore, they are not subject to the requirements of *Euclid* or the constraints imposed by state enabling statutes.¹²⁵

This is not to say that they are insulated from constitutional challenges at all. In fact, the Ninth Circuit enjoined Los Angeles's enforcement of its anti-camping ordinances against homeless individuals, which was done through aggressive policing action, on the grounds that they constituted violations of the Eighth and Fourteenth Amendments.¹²⁶ However, such ordinances and their respective enforcement were not subject to limitations on *zoning*; rather, they were struck down because they criminalized the status of

122. Mandelker & Tarlock, *supra* note 70, at 11–18 (describing the various constitutional, procedural, and economic reasons that courts have invalidated zoning ordinances). This is not to say that the overly deferential attitude of land-use regulation case law is helpful in all circumstances, especially when it comes to normative questions of how zoning designations should be made. *See infra* Part II.C.1.

123. Courts have even explicitly categorized zoning powers as a category of state power, which is strictly tied to land, and distinguished it from an all-encompassing general police power. *E.g.*, *DeSena v. Gulde*, 265 N.Y.S.2d 239, 246 (N.Y. App. Div. 1965) (“The fear of disorder arising from the threat of picketing and demonstration, and the resultant economic loss, which the appellants considered as bases for the zoning regulation here, are alien to the legitimate objects of zoning.”).

124. *See supra* Part II.B.

125. *See supra* Part I.C.1.

126. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1137 (9th Cir. 2006) (“These cases establish that the state may not make it an offense to be idle, indigent, or homeless in public places. Nor may the state criminalize conduct that is an unavoidable consequence of being homeless—namely sitting, lying, or sleeping on the streets of Los Angeles’s Skid Row.”).

homelessness itself.¹²⁷ This is a crucial distinction because while the municipal laws and police actions are subject to constitutional scrutiny as a matter of excessive criminal penalty, such inquiry is untethered from the normative purposes and justifications of zoning law—land-use designations that regulate municipal space must still fall within the boundaries of proper procedure, purpose, and statutory limitations as imposed by the state.¹²⁸ The sole issue before the *Jones* court was whether the challenged city ordinances crossed the line from conduct to status with respect to homelessness, as there was no consideration of the ordinance as a matter of spatial regulation.¹²⁹

C. Addressing the Prevalence of Single-Family Housing Zoning

The second way that Los Angeles's land-use regulations intersect with its homelessness crisis, is its prevalent use of single-family housing zoning.¹³⁰ As mentioned above, Los Angeles, in addition to many other large cities in the United States, predominantly reserves most of its available land for single-family housing.¹³¹ The relationship between homelessness and single-family zoning (in addition to other forms of land-use regulation) is a contested question, but there are a number of potential connections. First, homeless shelters are disallowed in single-family zoned areas, only being permitted in "R4" and "R5" designated areas,¹³² or any multiple dwelling zones, commercial zones, or industrial zones in cases of emergency.¹³³ Second, single-family housing is posited to artificially constrain the housing supply in urban areas, contributing to housing unaffordability, which in turn contributes to a corresponding increase in homelessness.¹³⁴ While a definitive investigation of the precise causal relationship between homelessness

127. *Id.* at 1133 ("[T]he state may not punish a person for who he is, independent of anything he has done.").

128. *See supra* Part I.C.1.

129. The court recognized the ordinance as a regulation of public space, but the analysis still only considered it as a matter of potential conduct rather than as any sort of land or property use. *Jones*, 444 F.3d at 1123.

130. Manville et al., *supra* note 11, at 107.

131. L.A., CAL., MUN. CODE §§ 12.07–12.08.1 (2022); *see supra* Part I.A.

132. MUN. CODE §§ 12.07–12.12.

133. *Id.* § 12.81.

134. *See supra* note 12, and accompanying text (discussing various studies that attempted to determine causal links between zoning and housing prices).

and single-family zoning is beyond the scope of this Note, these issues raise the question of what the value of single-family housing as the most prevalent zoning designation in cities like Los Angeles is.¹³⁵

1. Traditional Framework of Zoning as Part of the State's Police Power

There are two predominant normative frameworks for understanding the justifications and purposes of land-use regulation, particularly with respect to zoning ordinances. The first is the traditional view, embodied in cases such as *Euclid* and its progeny that municipal governments should have the freedom and flexibility, pursuant to their general police powers, to designate areas for particular uses in order to avoid the nuisances which arise from the co-mingling of undesirable industrial activity with residential areas, as well as to preserve neighborhood aesthetics.¹³⁶ The Court noted the many benefits of zoning ordinances, such as organizing fire departments, improving the security of home life, preventing street accidents, and regulating noise, as a rational basis of regulation.¹³⁷

Unfortunately, the deferential standards employed by cases like *Euclid* provide little guidance as to the wisdom and desirability of particular land-use regulations, such as single-family housing zoning. By rooting the validity of zoning ordinances in the general police power, the traditional view of land-use regulation only

135. See Manville et al., *supra* note 11. It should also be noted that scholars who raise the issue of single-family housing zoning specify that the objection is to the land-use designation rather than the type of residential unit itself. *Id.* at 106 (“We are arguing against a type of law, not a type of building People in detached single-family homes neither need nor deserve laws ensuring that nothing will surround them but structures like their own.”).

136. See *supra* Part I.C.1. Along with significant changes in land-use regulations since *Euclid*, the constitutional analysis of zoning ordinances has shifted from a focus on the Fourteenth Amendment's Due Process Clause to the Fifth Amendment's Takings Clause. For a discussion of these shifts, see Melvyn R. Durchslag, *Village of Euclid v. Ambler Realty Co., Seventy-Five Years Later: This is Not Your Father's Zoning Ordinance*, 51 CASE W. RES. L. REV. 645, 648–60 (2001) (explaining how the public choice theory intersects with the Takings Clause).

137. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394–95 (1926) (citing these benefits as examples that “demonstrate the wisdom or sound policy” of restrictive land-use regulations).

determines its outer boundaries, such as insufficient due process, violations of equal protection, and excessive regulations that effectively constitute takings.¹³⁸ With respect to single-family housing, there is therefore little to be gleaned from traditional justifications for land-use regulation—provided that all proper procedure is followed and that no constitutional rights are directly violated by the zoning provision, courts have largely given their blessing to single-family housing, even its most problematic forms.¹³⁹ Courts have reviewed land-use regulations with increased scrutiny in certain circumstances, including the excessive zoning of large-lot sites,¹⁴⁰ but such interventions are far and few in between, as the lack of normatively grounded and clear standards has resulted in an incoherent body of caselaw.¹⁴¹

2. The Law and Economics Perspective on Land-Use Regulations

Economic perspectives have provided a more concrete approach to determining the desirability of certain land-use regulations.¹⁴² While law and economics scholarship on land-use regulation encompasses a number of different viewpoints, the core

138. MERRIAM & BRONIN, *supra* note 18; *see supra* note 122 and accompanying text (discussing the merits of traditional judicial oversight of land-use regulation).

139. SALKIN, *supra* note 53, § 1:11 (“Zoning generally, and the standard components of zoning ordinances, have not experienced a major judicial disapproval since 1926 when the Supreme Court of the United States disposed of the fundamental question whether this kind of land-use restriction is offensive to the Constitution of the United States.”).

140. *See supra* notes 65–71 and accompanying text.

141. Mandelker & Tarlock, *supra* note 70, at 2 (“Although courts are seldom explicit, many decisions are explainable only on the ground that judges sense that zoning decisions are in need of more rigorous judicial control beyond the existing control doctrines.”). The ad hoc nature of caselaw surrounding land-use regulation should not be interpreted to mean that judicial review of zoning is undesirable or that it should be dispensed. Rather, it merely points to its insufficiency as a guide to navigating normative questions of how cities should be zoned in the first place. The constitutional and statutory limitations as applied by courts still constitute a valuable defense against unreasonable, arbitrary, or malicious zoning practices. *See supra* Part II.B.3.

142. ROBERT C. ELLICKSON ET AL., LAND USE CONTROLS: CASES AND MATERIALS 30 (5th ed. 2020) (“Economics provides a theory of the purposive behavior of private landowners, the primary targets of land use regulatory systems.”) [hereinafter LAND USE CONTROLS].

principle is to maximize economic welfare, primarily measured by property value, through reducing externalities associated with inefficient land-use patterns.¹⁴³ By zoning such types of “noxious uses” within a particular area, municipal governments can restrict such uses to certain parcels of land, thereby increasing the value of surrounding land (such as land zoned for residential uses) that would otherwise be polluted.¹⁴⁴

One of the core questions for legal scholars and economists studying land-use regulation is the relationship between increased use of regulations and housing prices.¹⁴⁵ In theory, such regulations protect property values by preventing spillover effects from noxious land-use.¹⁴⁶ With respect to single-family housing, a plethora of economic studies concur that such zoning patterns are associated with increased housing prices.¹⁴⁷ Property scholar Robert C. Ellickson advances this conclusion in a seminal article, arguing that “anti-growth regulations” such as single-family housing zoning result in

143. WILLIAM A. FISCHER, *THE ECONOMICS OF ZONING LAWS: A PROPERTY RIGHTS APPROACH TO AMERICAN LAND USE CONTROLS* 234–37 (1985) (“The traditional story, at least as it is understood by economists, is that zoning is necessary because in the absence of public controls, activities that adversely affect the value of housing will locate in residential neighborhoods.”). An early and demonstrative example of the nuisance abatement that land-use regulation was intended to address is the case of *Hadacheck v. Sebastian*, which upheld an ordinance prohibiting brick manufacturing in an urban area. 239 U.S. 394 (1915).

144. Quigley & Rosenthal, *supra* note 12, at 76. Another significant way that zoning laws are intended to address externalities is through segregation of space by public contribution, also called “fiscal externalities.” Specifically, this type of land-use regulation prevents those in lower income brackets from receiving benefits from a larger tax base and reduces the negative externality of those who pay more in property taxes by introducing something like a license fee, reflecting the potential benefit of living in higher income areas in the housing prices themselves. As Quigley and Rosenthal put it, “[a]ccording to this view, collectively charted land use controls ensure that public services will be provided only to those who pay their full costs.” *Id.* at 79; *see also* MERRIAM & BRONIN, *supra* note 18, § 1:18 (discussing the purpose of fiscal externalities in nuisance cases).

145. *See supra* note 12 and accompanying sources.

146. Quigley & Rosenthal, *supra* note 12, at 71.

147. *See, e.g.*, Christian A.L. Hilber, *Neighborhood Externality Risk and the Homeownership Status of Properties*, 57 J. URB. ECON. 213, 238–39 (2005) (finding that the presence of negative externalities decreases owner-occupation of residential units); Ihlanfeldt, *supra* note 12 (finding that single-family housing zoning is correlated with increased housing prices).

high property values.¹⁴⁸ However, he posited that this actually constitutes a distortion of the market¹⁴⁹—assuming relatively inelastic housing supply and relatively elastic housing demand, such suburban growth controls through land-use regulation, including single-family housing zoning, function as a market monopoly for property owners to artificially constrain housing supply and increase the value of their homes at the expense of residential developers as well as consumers.¹⁵⁰

There are two issues with relying on such law and economics frameworks to understand the desirability of single-family housing. First, attempts at establishing causal relationships between land-use regulations and housing prices suffer from methodological issues. Economists Joseph Quigley and Larry Rosenthal, for example, have questioned the validity of the models used by such scholarship.¹⁵¹ Despite the flurry of contemporary econometric studies linking land-use regulations to high housing prices, Quigley and Rosenthal contend that isolating the effects of particular regulations is tenuous and inherently suffers from data inconsistency issues.¹⁵² Furthermore, the causal relationship between land-use choices and the underlying conditions being measured (such as prices, segregation, or housing quality) is not straightforward, making it tenuous to estimate the extent to which the effect on those variables can be traced to specific land-use regulations themselves.¹⁵³ While economic studies of the relationship between land-use regulations and housing prices help shed light on general trends, it is difficult to

148. Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 396 (1977).

149. *Id.* at 400–01.

150. *Id.* at 392–94, 96. Ellickson is certainly in line with many progressive critics on the point that land-use regulations which restrict growth are in fact undesirable. However, the justification is slightly different because, for Ellickson and other law and economics scholars, such restrictions are undesirable since they result in inefficient markets which artificially inflate housing prices rather than because of distributional or fairness concerns. That is not to say that distribution or fairness considerations are irrelevant for Ellickson, but they are not the primary arguments against anti-growth measures in land-use regulations. See *infra* note 163 and accompanying text.

151. Quigley & Rosenthal, *supra* note 12, at 100 (“Perhaps the most important reason why empirical research is not definitive is the difficulty of measuring the regulatory environment facing households and builders in a satisfactory manner.”).

152. *Id.* at 72.

153. *Id.* at 81, 100.

draw definitive conclusions or accurate predictions about the impact of land-use regulations on a neighborhood and the housing market.¹⁵⁴ Law and economics scholars such as Ellickson have even conceded this point.¹⁵⁵

Second, assuming that such causal relationships can be determined through econometric modeling, a fixation on the efficiency of the housing market and maximizing economic welfare leaves questions of distribution and coercion to the side. Legal scholars Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, and K. Sabeel Rahman have argued that legal frameworks such as law and economics function as part of a “Twentieth-Century Synthesis” which has entrenched legal thought within an overly market- and efficiency-oriented perspective.¹⁵⁶ By emphasizing economic efficiency as the primary value in legal decision-making, the synthesis is able to assume the guise of neutrality with respect to any constructive vision of the social-good.¹⁵⁷ However, they contend that this has led to the overriding of questions of fairness with respect to how the law distributes resources,¹⁵⁸ and forms of economic coercion that are tolerated, and even sanctioned, by legal regimes that prioritize wealth maximization.¹⁵⁹ Instead, they advocate for a reorientation of legal scholarship around three points of analysis: power, equality, and democracy.¹⁶⁰

154. *Id.* at 87, 89.

155. LAND USE CONTROLS, *supra* note 143, at 41 (recognizing the difficulty of detecting externalities associated with land-use).

156. *LPE Framework*, *supra* note 13, at 1790 (“[E]fficiency analysis anchors both the descriptive framing and the normative assessment of law. Efficiency itself is typically defined—in practice if not always in theory—as a kind of ‘wealth maximization’ that works to structurally prioritize the interests of those with more resources.”).

157. *Id.* at 1813–14.

158. This is not to say that fairness concerns are absent in economic approaches to the law but, rather, that they remain tertiary considerations in determining desirable legal outcomes. See Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1121–23 (1972) (describing the role of “justice” and distributional considerations in deciding between different rules of liability).

159. *LPE Framework*, *supra* note 13, at 1815–17.

160. *Id.* at 1835 (“[A] legal imaginary of democratic political economy, that takes seriously underlying concepts of power, equality, and democracy, can inform a wave of legal thought whose critique and policy imagination can amplify and accelerate these movements for structural reform.”).

3. Examining Land-Use Law as a Matter of Power, Equality, and Democracy

Despite the constraints that they impose on development, zoning patterns such as single-family housing are maintained largely due to the interests of homeowners who have fought fiercely to maintain anti-growth regulations in Los Angeles.¹⁶¹ These efforts can be traced back to the 1960s, during which time the amount of land that could accommodate low-density housing began to dwindle.¹⁶² When developers sought to construct denser residential buildings, homeowner groups in the Valley and the Westside of Los Angeles successfully lobbied for building height restrictions, additional single-family housing zoning designations, and protections for areas traditionally used for agricultural and industrial purposes in order to prevent their redevelopment for residential use.¹⁶³ Furthermore, they had an influential role in the city-planning department's 1972 "Concept Los Angeles" plan, which called for preserving single-family housing zones, and containing residential growth to high-density areas of the city.¹⁶⁴ Homeowner group power came to a head in 1986, when they successfully passed Proposition U, which halved the floor-to-area ratio requirements in a majority of the city's commercial and industrial zones, effectively imposing a relatively restrictive height limit.¹⁶⁵ These anti-growth interests continue to determine land-use regulation policy in Los Angeles today,¹⁶⁶ with the most recent city planning framework, promulgated in 1996, continuing Concept Los Angeles's vision of preserving low-density housing zones.¹⁶⁷ Additionally, the recently passed SB 9 and SB 10 have been met with fierce resistance by homeowner groups.¹⁶⁸

The history of single-family housing zoning in Los Angeles, and its inherently political motivations, demonstrate the imbalance of

161. von Hoffman, *supra* note 73.

162. Whittemore, *supra* note 84, at 399–405.

163. *Id.*

164. *Id.*

165. PAAVO MONKKONEN & KATE TRAYNOR, HOW PROPOSITION U RESTRAINS LOS ANGELES HOUSING DEVELOPMENT 1–2 (2017). Proposition U further restricted housing supply by preventing mixed-use commercial and residential development along business corridors of the city. *Id.*

166. von Hoffman, *supra* note 73.

167. Whittemore, *supra* note 84, at 405.

168. See *supra* notes 76–77 and accompanying text (discussing changes to Los Angeles's residential zoning policy).

interests that resulted in the city's zoning patterns—those who own single-family housing as property are the ones who have played the leading role in maintaining single-family housing zoning.¹⁶⁹ Setting aside quantitative assessments of whether such zoning patterns truly protect property values, such land-use regulations entrench an outsized form of coercion from a minority interest over land-use governing a majority of the city.¹⁷⁰ This is particularly apparent in the continued zoning emphasis on low-density housing despite the significant shortfall of housing in Los Angeles, as well as in California at large, with estimates in the hundreds of thousands of residential units.¹⁷¹ In this sense, there is a serious issue with respect to equality as a normative value within the realm of land-use regulations—housing as a basic and fundamental good is being crowded out and denied to a large portion of the city's residents.¹⁷²

Finally, there are democratic concerns in the zoning designation process. This is especially seen in the composition of Neighborhood Councils, which were interest groups organized for each particular zoning area and set up to influence land-use planning decisions at the city level.¹⁷³ A 2007 study found that these councils were largely unrepresentative of their constituents, being wealthier than and racially distinct from the demographics they claimed to represent as well as having a disconnect between the issues that they

169. Whittemore, *supra* note 84, at 399–404.

170. *Id.* at 407 (“The complaints of suburban homeowners over limited clout in City Hall seem out of touch considering that there is an actual group of have-nots who do not live in single-family homes on the Westside but in . . . often overcrowded rental units in the denser parts of Los Angeles.”).

171. *Id.* at 406.

172. Martha Nussbaum’s “capabilities” framework is a helpful reference here—it examines the fundamental elements of human entitlements as a partial theory of justice. Its situation in the context of human development speaks particularly well to the social issue of homelessness, as the second capability is bodily health, which includes having adequate shelter. MARTHA C. NUSSBAUM, *CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH* 33 (2011). Housing scholars Sam Bowman, John Myers, and Ben Southwood go even further to posit that the lack of affordable housing in the West reverberates into and exacerbates economic inequality, obesity, falling fertility rates, and climate change. Sam Bowman, John Myers, & Ben Southwood, *The Housing Theory of Everything*, WORKS IN PROGRESS (Sept. 14, 2021), <https://www.worksinprogress.co/issue/the-housing-theory-of-everything/> [<https://perma.cc/GVB8-PRRM>].

173. Whittemore, *supra* note 84, at 405.

and their constituents were concerned with.¹⁷⁴ Land-use designations affect every single resident of a city but the outsized influence of a small minority in making zoning ordinances make judicial review an important part of the legal regime of land-use law.¹⁷⁵

III. Protecting the Values of Liberty and Equality in Zoning Reform

This Note has addressed the issues found in the relationship between Los Angeles's zoning patterns and its current homelessness crisis, namely that *de facto* forms of zoning through selective policing practices impede proper judicial oversight and that the current normative frameworks governing land-use law fail to adequately consider questions of distribution and coercion. But one of the tensions in coming up with a solution to these problems lies in providing for the material needs of homeless individuals while maintaining their autonomy and liberty interests. This part introduces two solutions to these issues. Part III.A discusses the question of balancing the liberty of unhoused peoples with public welfare. Part III.B advocates for a new zoning designation that explicitly zones for homeless residence in public spaces. Finally, Part III.C proposes a statutory provision in the California's zoning enabling act that requires cities to be zoned to accommodate housing requirements.

A. Protecting the Liberty Interests of Homeless Individuals

The issues discussed above, and their solutions, would by no means solve the problem of homelessness entirely.¹⁷⁶ But the issue's exacerbation by inadequate land-use regulations can be mitigated to a large degree. In devising solutions with respect to zoning ordinances and homelessness, protecting the liberty and autonomy interests of homeless individuals while also maintaining legitimate state interests in public health and welfare is a centrally important

174. *Id.*; accord JULIET MUSSO ET AL., TOWARD COMMUNITY ENGAGEMENT IN CITY GOVERNANCE: EVALUATING NEIGHBORHOOD COUNCIL REFORM IN LOS ANGELES 20, 30 (2007).

175. See *supra* Part II.B.3.

176. See NAT'L L. CTR., HOMELESSNESS IN AMERICA, *supra* note 19, at 3 (discussing the various causes of the homelessness crisis).

consideration.¹⁷⁷ It is crucial to recognize that those who are homeless already have their freedoms restricted to a large degree—their existence revolves almost exclusively around public and communal spaces, which are available to all people.¹⁷⁸ Legal philosopher Jeremy Waldron points to two elements of freedom that can be restricted: existential freedom, which is the freedom to exist in a particular space, and freedom of activity, which is the freedom to act in a particular manner within a given space.¹⁷⁹ Existential freedom cuts to the core of why laws that criminalize homelessness are problematic—they deny homeless individuals the freedom to exist at all.¹⁸⁰ Maintaining freedom of activity is also essential to helping those who are homeless escape their poverty:

When a person is needy, he does not cease to be preoccupied with freedom; rather, his preoccupation tends to focus on freedom to perform certain actions in particular. The freedom that means most to a person who is cold and wet is the freedom that consists in staying under whatever shelter he has found. The freedom that means most to someone who is exhausted is the freedom not to be prodded with a nightstick as he tries to catch a few hours [sic] sleep on a subway bench.¹⁸¹

This is precisely one of the issues with the stringent policing practices of initiatives such as the Safer Cities Initiative. By being overly punitive towards the most minor violations, laws such as these ones burden homeless individuals further in their attempts to seek shelter,

177. Jeremy Waldron has made the crucial point that those seeking to address homelessness as a social issue often overlook the question of liberty and autonomy given the urgency of materially providing for basic necessities, such as housing. He contends that the free choice of homeless people to exist and conduct their lives, particularly given the constraints imposed on such individuals by private property regimes, cuts to the core of what it means to be a free society. Jeremy Waldron, *Homelessness and the Issue of Freedom*, 1 J. CONST. L. 27, 27–28 (2019).

178. *Id.* at 31–32.

179. *Id.* at 33–34.

180. *Id.* at 32.

181. *Id.* at 34.

provide for their basic material needs, and accumulate financial resources.¹⁸²

B. Creating Explicit Zoning Designations for the Homeless Population

A new zoning designation that exclusively deals with homeless residence would fill these gaps by permitting both the status of homelessness (siting, lying, sleeping, or storing, using, maintaining, or placing personal property, in or upon any street, sidewalk, or other public right-of-way) as well as designating areas for homeless shelters. Such a designation would be a natural extension of the existing approach to zoning, as homelessness is a form of residence, albeit being defined by a lack of residential space.

Explicitly zoning for homelessness is not a novel solution. In the 1990s, Toronto attempted to deal with rising rates of homelessness by zoning for municipal shelters throughout the city, provisions which remain in place to this day.¹⁸³ Los Angeles's

182. This dynamic is well described in the Lowenstein Human Rights Clinic report:

A simple citation for violating a city ordinance easily traps people in the criminal justice system. For people living in homelessness, citation fines are typically out of reach. Their only option is to contest citations in court. But without an address or reliable transportation, they often fail to receive notice and do not appear in court. Failure to appear in court can result in a warrant for arrest. For that individual, the next act of sleeping on a bench or holding up a sign asking for money could lead to jail. Even if the charges are ultimately dismissed, an arrest carries devastating consequences. Spending even a night or two in jail can mean missing work or losing a spot at a shelter. Criminal records make securing housing, employment, and social services more difficult and, in some cases, impossible. These dynamics further entrench homelessness and poverty, leading people back to the park bench or the city plaza, where they likely will be fined or arrested yet again.

LOWENSTEIN HUMAN RIGHTS CLINIC, *supra* note 8, at 2.

183. Prashan Ranasinghe & Mariana Valverde, *Governing Homelessness Through Land-Use: A Sociolegal Study of the Toronto Shelter Zoning By-Law*, 31 CAN. J. SOCIO. 325, 330–33 (2006); *see also* Memorandum from the Executive Director of the Toronto Planning Department to the Planning and Housing Committee (Feb. 28, 2019) (on file with *Columbia Human Rights Law Review*)

municipal code currently only allows for non-emergency homeless shelters in R4, R5, and commercial zones.¹⁸⁴ Furthermore, the zoning provisions make no mention of residence of unsheltered homeless persons, which constitute approximately one-third of homeless individuals.¹⁸⁵

This would solve multiple issues with the current zoning patterns. First, it would clarify the exact areas that unsheltered homeless people are allowed to reside. Under the Los Angeles Municipal Code, residence of homeless individuals is restricted within five hundred feet of a “sensitive use,” five hundred feet of a posted signage of an “overpass, underpass, freeway ramp, tunnel, bridge, pedestrian bridge, subway, wash, spreading ground, or active railway,” one thousand feet of a homeless shelter, and anywhere the City Council posts signage prohibiting homelessness residence due to safety and health concerns.¹⁸⁶ Furthermore, such provisions can only be enforced in areas specifically designated by a City Council resolution.¹⁸⁷ The prohibition and allowance of homeless residence in the city of Los Angeles is therefore up to the whim of the City Council, creating large amounts of uncertainty and ambiguity for those whose lives depend on the ad hoc political decisions of the city’s law makers.¹⁸⁸ A zoning designation dedicated primarily for homeless residence would provide certainty with respect to where homeless individuals can reside in public spaces, or where available shelter will be.

Second, the permissibility of both unsheltered and sheltered homeless residence addresses a serious issue of liberty with respect to

(discussing proposed amendments to Toronto’s homeless shelter zoning ordinances).

184. L.A., CAL., MUN. CODE § 12.81 (2022).

185. SAMANTHA BATKO ET AL., UNSHELTERED HOMELESSNESS: TRENDS, CHARACTERISTICS, AND HOMELESS HISTORIES 1 (2020). Scholars have also noted the important distinction between unsheltered and sheltered homeless persons when it comes to public policy. *See, e.g.*, Robert C. Ellickson, *The Homelessness Muddle*, 99 PUB. INT. 45, 45–46 (1990) (explaining how increased spending on shelters increased the number of homeless people because people stayed at shelters instead of on their friends and family’s couches); Will Sarvis, *The Homelessness Muddle Revisited*, 49 URB. LAW. 317, 317–20 (2017) (discussing who is considered “homeless” for the purposes of law and policy).

186. MUN. CODE § 41.18(c).

187. *Id.* § 41.18(d).

188. *See* Oreskes, *supra* note 43 (reporting on the anti-camping ordinance adopted by Los Angeles).

homeless peoples. In *Martin v. City of Boise*, the question of Eighth Amendment violations by certain anti-camping provisions in Boise revolved around whether shelter was “practically available” due to the religiously coercive nature of the shelter options for plaintiffs.¹⁸⁹ Some commentators also point out similar issues with shelter unavailability due to restrictions based on disabilities, medical conditions, mental illness, substance abuse disorders, and sexual orientation.¹⁹⁰ The absence of practical availability therefore undermines true choice of residence, particularly if the option to reside in public spaces is taken away.¹⁹¹ By allowing residence through either public space or shelter, true choice, even if the options are recognizably undesirable, is still maintained.

Third, the explicit designation of homelessness as a form of residence would bring zoning practices related to homeless people within the scope of judicial review as a matter of zoning, which, as discussed above, is evaded when done through informal practices.¹⁹² This is not to say that the caselaw is perfect by any means; there are certainly issues with its overly deferential attitudes to cities as well as the ad hoc and often incoherent nature of judicial review of land-use regulations.¹⁹³ Nevertheless, they constitute an important constitutional and statutory protection against arbitrary, capricious, and malicious zoning practices.¹⁹⁴

Sociologists Prashan Ranasinghe and Mariana Valverde make two arguments against the use of land-use regulations as a method of dealing with issues like homelessness. First, they contend that zoning as a legal mechanism is inadequate to deal with homelessness, because zoning is fundamentally a regulation of *use* rather than *persons*, making it a crude tool to address an issue that

189. *Martin v. City of Boise*, 920 F.3d 584, 618 (9th Cir. 2019).

190. Joy H. Kim, Note, *The Case Against Criminalizing Homelessness: Functional Barriers to Shelters and Homeless Individuals' Lack of Choice*, 94 N.Y.U. L. REV. 1150, 1176–83 (2020).

191. *Martin*, 920 F.3d at 616 (“[T]he Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.”); Kim, *supra* note 190, at 1160 (“[P]unishing individuals experiencing homelessness for sleeping outdoors—regardless of whether shelter beds are technically available in local shelters—is often the equivalent of punishing individuals for having no choice but to sleep outdoors”).

192. See *supra* Part II.B.

193. See *supra* Part II.C.1.

194. See *supra* note 122 and accompanying text.

has to do with the plight of individuals.¹⁹⁵ Second, they argue that land-use regulations are inherently undemocratic due to the nature of municipal politics, which are very often dominated by the interests of property-holding elites.¹⁹⁶

However, the use-person distinction is not as strong as Ranasinghe and Valverde posit.¹⁹⁷ The Ninth Circuit has recognized homelessness as a status, due to its nonvolitional nature, and found that ordinances which prohibit encampments on public streets constitute the criminalization of a person.¹⁹⁸ In other words, an act that is so fundamental to the status of a person is synonymous with personhood itself.¹⁹⁹ This is not only limited to the arena of homelessness—for example, the cases involving the constitutionality of anti-sodomy laws and their infringement on the rights of LGBTQ+ people demonstrate the tenuous logic of an act-person distinction.²⁰⁰

With respect to the question of democracy, there may be concerns that homeowner groups, which constitute a minority special interest,²⁰¹ can use such homelessness zone designations to further

195. Ranasinghe & Valverde, *supra* note 183, at 328. This argument is premised on the notion that uses, in contrast to persons, have no rights and, thus, “land-use law in particular, and municipal politics by extension, can do very little to provide meaningful solutions for many homeless people.” *Id.* This assumes that rights-based solutions are the only valid approach to addressing social issues, but as this Note maintains, frameworks like LPE can provide an alternative *distributional* analysis to legal structures that perpetuate homelessness.

196. *Id.* at 328–29.

197. Interestingly, Valverde herself argues in a separate article for dispensing the use-person distinction as a matter of municipal law, recognizing that functionally such laws govern things, uses, and activities in ways that are difficult to distinguish. Mariana Valverde, *Taking Land Use Seriously: Toward an Ontology of Municipal Law*, 9 L. TEXT CULTURE 34, 37 (2005) (“Municipal law certainly governs persons, and even specific groups of persons, and not only dispossessed or marginal groups.”).

198. *Martin v. City of Boise*, 920 F.3d 584, 616–17 (9th Cir. 2019) (holding that ordinances which criminalize homelessness as a status are a violation of the Eighth Amendment).

199. *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136 (9th Cir. 2006) (“[C]onduct at issue here is involuntary and inseparable from status—they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping.”).

200. See *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (“When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.”).

201. See *supra* Part II.C.3.

segregate homelessness away from their own residential areas (a practice also known as NIMBYism or “Not In My Backyard”).²⁰² But the primary issue with this argument is that it fails to recognize the fact that land-use regulation affects homelessness regardless of whether a municipality is taking active steps to alleviate social issues—it assumes that the existing regulations function as a neutral baseline when in fact they do not.²⁰³ The prevalence of single-family housing and other restrictive forms of residential zoning inherently crowds out other forms of land use, including for things like homeless shelters and the construction of more dense residential buildings.²⁰⁴ Therefore, despite legitimate concerns about interests driving local land-use decisions, the use of zoning and land-use regulations as a matter of municipal power cannot be ignored because such practices are responsible for the social problem of homelessness in the first place.

Finally, some may object by claiming that explicitly zoning for homelessness would legitimize a social problem by formally recognizing it within the municipal code. However, such concerns are mitigated for two reasons. First, the Los Angeles Municipal Code, as well as those of many other cities, already provides for the valid use of homeless shelters or use of public areas as living spaces.²⁰⁵ Therefore, the expansion and modification of such categories does not change the legal recognition and acceptance of urban homelessness. Second, the legal regimes of cities should not be seen as static frameworks that embody any sort of municipal ideal—rather they are malleable and adapt in order to meet a city’s needs at a particular

202. NIMBYism has been a persistent issue in the development of “undesirable” uses near residential areas. See Patrick Devine-Wright, *Rethinking NIMBYism: The Role of Place Attachment and Place Identity in Explaining Place-Protective Action*, 19 J. CMTY. APPL. SOC. PSYCH. 426, 427–32 (reviewing literature on NIMBYism as an explanation of public opposition to local development).

203. This is the exact same logic that ensnared the Supreme Court in *Lochner v. New York*, 198 U.S. 45 (1905). The notion that intervention into an existing legal or economic regime (in this case zoning laws) constitutes judicial or political infringement assumes that it is currently neutral with respect to homelessness. However, as discussed above, existing land-use regulations and zoning practices in Los Angeles contribute to the homelessness crisis as is. See Cass R. Sunstein, *Lochner’s Legacy*, 87 COLUM. L. REV. 873, 874–75, 882 (1987) (arguing that the *Lochner* Court confused government inaction with neutrality even though the common law regime already embodied a non-neutral economic order).

204. See *supra* Part II.C.2.

205. See *supra* Part II.B.2.

time. Enacting a zoning designation for homelessness does not constitute recognizing it as desirable or inevitable but is rather a response to a pressing social issue facing Los Angeles.

C. Minimum Housing Requirements in California's Zoning Statute

The introduction and implementation of a zoning designation for the city's homeless population can alleviate uncertainty for homeless persons and bring spatial regulation of the population back within the scope of judicial review over zoning patterns.²⁰⁶ However, the intersection of homelessness and zoning laws also implicates Los Angeles's fixation on low-density housing.²⁰⁷ As discussed above, a reorientation of land-use regulation theory around questions of power, equality, and democracy points out the underlying issues with the prevalence of single-family housing zoning, specifically its tertiary considerations of distribution and coercion.²⁰⁸ An emphasis on equality requires viewing zoning regimes as playing an essential role in meeting the basic and fundamental human need for housing.²⁰⁹

One practical way to implement this principle would be to enact an amendment to California's zoning statute, requiring that zoning patterns ensure enough residential units can be developed to meet the city's residential needs, with cities calculating their housing requirements on a regular basis in order to ensure that their zoning patterns are in compliance. This provision would need to contain both procedural and substantive elements. The procedural portion would detail the particular calculations that need to be made, namely the number of housing units necessary to accommodate the city's residents based on the most recent census data as well as the current number of housing units available with respect to the city's current zoning patterns. Furthermore, this information would need to be submitted in each jurisdiction's annual housing element report, which is already required under the statute and is reviewable by the California Department of Housing and Development.²¹⁰ The substantive portion would be fairly straightforward—the number of housing units available must meet or exceed the number required by

206. *See supra* Part III.B.

207. *See supra* Part I.C.2.

208. *See supra* Part II.C.3.

209. *See supra* note 172 and accompanying text.

210. CAL. GOV'T CODE § 65400(a)(2) (Deering 2021).

the city's residential needs. The enactment of such a provision would be similar to some of California's current land-use regulation mandates; the statute currently has a similar scheme with respect to its inclusionary zoning provisions, with the Department of Housing and Development having the authority to review compliance of zoning ordinances with the statute's affordable housing requirements.²¹¹

This amendment would accomplish two primary objectives. First, it would address the significant housing shortage in California, which is estimated to be in the hundreds of thousands.²¹² There are currently tens of thousands of illegal residential units in Los Angeles, housing around 200,000 people.²¹³ The failure of a zoning regime to even *allow* for enough housing for its residents to be developed, let alone *provide* it, constitutes a readily apparent defect in its ability to adhere to the principle of equality, namely, the equal provision of a fundamental human good.²¹⁴ Second, it would retain adequate deference to local decision-making. By stipulating a broad requirement for residential zoning without mandating particular methods or specific land-use patterns, this amendment would give cities the flexibility to decide how exactly they will meet their housing needs, while still providing a mode of oversight and enforcement.²¹⁵

There are two potential concerns with such a statutory provision. The first is that the mere *allowance* of enough residential development does not itself necessitate sufficient residential development. There are a myriad of ways that development can be stifled even if it is technically permissible under a city's zoning patterns—the imposition of stringent financial and regulatory burdens such as impact fees, for example, can be a method of disincentivizing development.²¹⁶ Furthermore, coercive political power, as demonstrated by the influence of homeowner groups on city politics in Los Angeles, can be used to stall project approval at the

211. *Id.* § 65850.01(a).

212. *See* Whittemore, *supra* note 84, at 406 (discussing the data surrounding housing and housing development in Los Angeles).

213. *Id.*

214. *See supra* note 172 and accompanying text.

215. *See* MERRIAM & BRONIN, *supra* note 18 (discussing the increasing trends towards flexibility and discretion in local land-use decisions).

216. *See* Vicki Been, *Impact Fees and Housing Affordability*, 8 CITYSCAPE 139, 143 (2005) (discussing the function of impact fees as shifting public costs onto developers and landowners).

area planning commission level.²¹⁷ Second, even if the requirement is met by a city, distributional issues could arise such that multi-family housing zones would be altered to allow for more development, rather than a scenario in which low-density residential areas would be sacrificed to meet residential needs.²¹⁸

Both concerns are valid and are more than plausible outcomes of any new statutory requirement. However, that is not to say they are inevitable—cities like Toronto demonstrate that zoning ordinances designed to assist homeless populations can overcome political opposition and NIMBYism from interest groups.²¹⁹ Proposals such as this statutory requirement, or zoning designations specifically for unhoused individuals alone, are not intended to alleviate the homelessness crisis in and of themselves. Rather, they are tools that, combined with local judgment and sufficient political will, constitute necessary steps toward alleviating issues of insufficient residential development and arbitrary policing practices as a mode of spatial regulation of unhoused people.

CONCLUSION

An examination of the intersection of Los Angeles's land-use regulations and its homelessness crisis reveals serious gaps in land-use law, as a matter of both informal practices that spatially regulate residential land-use without undergoing appropriate judicial review, and normative frameworks meant to guide the implementation of zoning law. This Note proposes two solutions to address these issues—explicitly zoning for homeless residential areas and amending California's zoning statute to require that cities be zoned in a way that sufficiently provides for its residential needs. Nevertheless, it is important to recognize that despite the importance of land-use regulation in exacerbating the homelessness crisis in cities such as Los Angeles, it is inherently limited in its ability to solve the problem entirely. Zoning reform must take place in

217. See *supra* Part II.C.3.

218. While low-income minority areas have occasionally exercised influence over land-use decisions, homeowner groups, which have historically protected low-density zoning and anti-growth measures, typically crowd out other residential concerns. Whittemore, *supra* note 84, at 399–404 (“In delivering so much attention to the plight of suburban homeowners, the City Council forgot the more formidable problems of the inner city.”).

219. See *supra* note 183 and accompanying sources.

conjunction with other legal and non-legal efforts, such as increased government funding for housing development, emphasis on social services for homeless populations, judicial intervention in ordinances that criminalize homelessness, and re-examination of urban policing practices, particularly in their more paternalistic forms.