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Merging Inclusionary Zoning and Community Land Trusts to Increase Affordable Housing in Baltimore Without Displacing Neighborhoods

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COMMENT

MERGING INCLUSIONARY ZONING AND COMMUNITY LAND TRUSTS TO INCREASE AFFORDABLE HOUSING IN BALTIMORE WITHOUT DISPLACING NEIGHBORHOODS

By: Chelsea King*

I. INTRODUCTION

Throughout history, Baltimore City has continually struggled to manage affordable housing and residential segregation, and as such, is currently facing a housing crisis.[1] The housing crisis that Baltimore faces today is in large part due to decades of systemic racial oppression.[2] Throughout history, Baltimore City officials have denied African Americans access to fair and just mortgages while also making it unlawful for African American people to live on the same blocks as Caucasians, forcing African American communities into concentrated pockets of poverty.[3] Consistent systemic disinvestment in predominantly African American neighborhoods, by both the public and private sectors, have led to poor education, housing, and employment opportunities for these citizens.[4]

The common responses to fixing low-income neighborhoods have often started with encouraging residents to move to the suburbs by providing them with adequate resources, such as a voucher.[5] Residents who do not wish to leave are often priced out because of private developers, on City-stipends,

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[1] *See generally* Michael Snidal & Gregory Friedman, *Baltimore must fund an inclusionary housing study*, BALT. SUN (last visited Oct. 6, 2018, 11:42 AM), http://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0728-inclusionary-housing-20170727-story.html.

[2] *Id.*

[3] *See generally* Emily Badger, *Baltimore shows how historic segregation shapes biased policing today*, WASH. POST (Aug. 10, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/08/10/baltimore-shows-how-historic-segregation-shapes-biased-policing-today/?utm_term=.493068c3d578.

[4] *See generally* Snidal, *supra* note 1.

[5] *See generally* Barbara L. Bezdeck, *To Attain "The Just Rewards of So Much Struggle": Local-Resident Equity Participation in Urban Revitalization*, 35 HOFSTRA L. REV. 37 (2006).

who demolish and rebuild buildings which causes property values to increase.[6] These methods merely relocate America's poor and force residents to cut ties with their social and economic networks in the neighborhoods.[7] These displacement methods are rarely able to solve problems in the demolished and rebuilt neighborhoods and merely spread more problems throughout the city.

This comment will analyze how two current housing policies, inclusionary zoning and community land trusts, can be intertwined to increase affordable housing in Baltimore without displacing neighborhood residents. Incorporating the two concepts together will allow the city to revitalize communities and neighborhoods without displacing its residents. This solution allows the neighborhoods the ability to maintain their own identities while giving the residents of the community the opportunity to build equity for future generations. Merging the two concepts will allow for cities to revitalize communities, without displacing residents, and allow for neighborhoods to maintain their own identity.

II. HISTORICAL DEVELOPMENT

A. Baltimore's Housing Crisis

Baltimore was home to approximately 614,664 people in 2016, many of whom do not have access to housing.[8] According to the U.S. Department of Housing and Urban Development ("HUD"), "families who pay more than 30% of their income for housing are considered cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care."[9] In July 2017, 25% of Maryland renters spent 50% of their household income on rent alone.[10] Each year there are approximately 150,000 cases filed in Maryland rent court and approximately 7,000 families are evicted annually.[11] Economists argue that there is a lack of housing supply because of strict government regulation, but supply is not the root of the problem, price is.[12]

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[6] Bezdeck, *supra* note 5, at 63.
[7] *Id.* at 70.
[8] U.S. CENSUS BUREAU, QuickFacts Baltimore City, Maryland (2016), *available at* https://www.census.gov/quickfacts/fact/table/baltimorecitymaryland/PST045216.
[9] U.S. Department of Housing and Urban Development, Affordable Housing (2017) https://www.hud.gov/program_offices/comm_planning/affordablehousing/.
[10] Robert J. Strupp, *Baltimore faces an affordable housing crisis*, BALT. SUN, (July 14, 2017), http://www.baltimoresun.com/news/opinion/readersrespond/bs-ed-rr-housing-city-20170714-story.html.
[11] *Id.*
[12] Snidal, *supra* note 1.

Baltimore's housing crisis is not merely a result of post-industrial divestment in the city; it is also a product of systematic racism. Baltimore has sought to categorize and isolate different classes of people within its separate geographic bounds.[13] These practices were applied on a local level, endorsed on a federal level, and have had lasting negative effects on the social and economic welfare of Baltimore's citizens.[14]

B. Building a Segregated City

In 1797, Baltimore was a fully incorporated city, complete with public works, paved streets and its own laws.[15] The City hired Thomas Poppleton "to plan and control future street extensions."[16] Poppleton implemented a hierarchy of streets, including main streets, side streets, and smaller alleys, with each street reflecting the "needs" of different social classes.[17] The main streets sat along the largest houses, smaller houses lined the smaller side streets, and the alleyways "held tiny houses for immigrant and laborers."[18]

As Baltimore's industries continued to grow, trade routes were forced to extend beyond the city limits and Baltimore began to play a major role in revolutionizing the railroad.[19] Contemporaneously, Baltimore was considered the fastest growing city in the United States.[20] The city's economic success attracted many immigrants, and by 1820, Baltimore had the largest African-American population in the country.[21]

Between 1850 and 1900, Baltimore's population tripled in size, growing from 169,000 to 508,957.[22] The City's prominent business owners were in control of the planning of the neighborhoods, communities and establishing the "pecking order" of Baltimore's social fabric.[23] These business owners were mainly white men and were exclusive of any African Americans, Jews or Catholic Europeans.[24] This segregation reinforced and "dictat[ed] patterns of housing, employment. . . and education."[25]

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[13] *See infra* Section II.B.
[14] *Id.*
[15] Baltimore City Department of Planning, Comprehensive Master Plan, The History of Baltimore, 25, 28 (2006) [hereinafter *The History of Baltimore*] https://planning.baltimorecity.gov/sites/default/files/History%20of%20Baltimore.pd.
[16] *Id.* at 28.
[17] *Id.* at 27.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *The History of Baltimore, supra* note 15, at 32.
[22] *Id.* at 33.
[23] Sherry Olson, Baltimore 12-13 (Brian J.L. Berry et al. eds, 1976).
[24] *Id.*
[25] Yvette N. Pappoe, Comment, *Remedying the Effects of Government-Sanctioned Segregation in Post-Freddie Gray Baltimore*, 16 Yvette N. Pappoe, Comment,

The restrictions placed on African Americans regarding housing, employment, and education turned the African American housing market into a "pressure cooker."[26] African Americans were having to pay "more for equivalent space, but whites would pay more for solid or 'safe' property than for blocks with mixed races.[27] These price differentials incentivized realtors to organize the turnover of blocks or neighborhoods, one by one, at a rate that would just maintain the pressure."[28] In 1910, the Baltimore City government endorsed this type of segregation when then Mayor J. Barry Mahool signed a city ordinance making it illegal for members of one racial category to live on the same block as any race other than their own.[29] The ordinance prohibited African Americans from buying certain real estate properties and prohibited white people from selling to them.[30]

This type of ordinance was popular throughout Baltimore City, as well as other cities across the country because mixing races was thought to lead to, "irritation, friction, disorder, and strife."[31] These ordinances were not deemed unconstitutional until 1917 when the National Association for the Advancement of Colored People ("NAACP") brought an ordinance from Louisville, Kentucky in front of the Supreme Court.[32] Without being able to segregate neighborhoods with ordinances, private property owners in elite neighborhoods responded by imposing racially restrictive covenants on the sale of their properties.[33] These covenants prohibited African Americans from buying or occupying certain real estate properties and prohibited white people from selling their properties to anyone other than other white people.[34]

Remedying the Effects of Government-Sanctioned Segregation in Post-Freddie Gray Baltimore, 16 U. MD. L.J. RACE RELIG. GENDER & CLASS 115, 117 (2016)(quoting MARISELA B. GOMEZ, RACE, CLASS, POWER, AND ORGANIZING IN EAST BALTIMORE: REBUILDING ABANDONED COMMUNITIES IN AMERICA 18 (2015)).

[26] Olson, *supra* note 23, at 13.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Olson, *supra* note 23, at 13; *See generally Buchanan v. Wareley*, 245 U.S. 60 (1917) (holding that preventing a person of color from occupying a residence on a block which contained more white people than blacks was not a legitimate exercise of the police power of the state).

[33] Olson, *supra* note 23, at 13.

[34] *See* Garrett Power, Article, *Mead v. Dennistone: The NAACP's Test to "...Sue Jim Crow Out of Maryland With the Fourteenth Amendment*, 63 MD. L. REV. 773 (2004) (In 1923, Mayor Howard Jackson formed a Committee on Segregation to encourage "neighbors, government officials, and real estate agents to use restrictive covenants.").

Between 1910 and 1920, Baltimore's population continued to grow from 558,485 to 733,826, and in 1918, Baltimore grew from 30 square miles to nearly 90 square miles.[35] African Americans were still prohibited from housing choices in this new area.[36] They were confined largely to West Baltimore and forced to rent which prevented them from building equity.[37] In 1924, the National Association of Real Estate amended its code of ethics to require that realtors "never be instrumental in introducing into a neighborhood character of property that or occupancy, members of any race or nationality, or any individual whose presence will be clearly detrimental to the neighborhood."[38] This policy deterred realtors from even showing African American residents homes in white neighborhoods, in efforts to not have their license revoked.[39] Slowly, the few neighborhoods in which African Americans were allowed to reside became more dense which resulted in the creation and expansion of the ghettos.[40]

1. Maintaining and Endorsing Segregation in Baltimore at the Federal Level Using "Redlining"

Due to the impact the Great Depression had on Baltimore, the city had to rely largely on federal aid to survive.[41] During this time of need for Baltimore City, Congress created the Home Owners' Loan Corporation ("Loan Corporation") to assist in "refinancing urban mortgages in danger of default.[42]" The Loan Corporation offered low-interest loans to homeowners that needed to regain their property after a foreclosure.[43] Subsequently, in 1934, Congress passed the National Housing Act of 1934, which established

[35] *The History of Baltimore, supra* note 15, at 38.
[36] *Id.*
[37] *Id.*
[38] Pappoe, *supra* note 25 at 119-120; *See also* NAREB Code of Ethics, Oregon History Project, (last visited Dec. 7 2017), https://oregonhistoryproject.org/articles/historical-records/nareb-code-of-ethics/#.Win5nLQ-foB NAR 1924 Code of Ethics 34. (The policy was revoked in 1950.).
[39] Pappoe, *supra* note 25, at 120.
[40] *Id.*
[41] *The History of Baltimore, supra* note 15 at 40. ("On September 31, 1931, the Baltimore Trust Company closed its thirty-two-story skyscraper; by 1933, the Governor closed all banks to try and prevent mass bank withdrawals. For the next six years Baltimore spiraled deeper into despair; 29,000 Baltimoreans were officially unemployed in 1934").
[42] Pappoe, *supra* note 25, at 121 (quoting Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 35, 51 (1993)).
[43] *Id.*

the Federal Housing Administration ("FHA").[44] The FHA is a government entity that sought to encourage homeownership by insuring private mortgages.[45] The FHA advised banks to avoid giving loans in neighborhoods they deemed to have, "undesirable racial concentrations," because they believed these loans would be the riskiest.[46] In efforts to excluded certain homes from federal mortgage programs, in the FHA would color homes near the predominantly African American neighborhoods red, creating the discriminatory practice of "redlining".[47]

Due to the inability of African American's to secure government backed loans, they were forced to turn to other alternatives to obtain housing, such as renting from slumlords or contracting with private lenders.[48] This created pockets of poverty which made businesses reluctant to operate in these areas and damaged the educational system.[49] Redlining promoted homeownership for white people, as well as economic and educational success.[50] Meanwhile African Americans were isolated to the pockets of poverty.[51] According to research conducted at the Virginia Commonwealth University's Center on Society and Health, "Baltimore neighborhoods that were redlined in the 1930s still have lower rates of ownership and college attainment and high rates of poverty and segregation today."[52]

In 1948, restrictive covenants were deemed unconstitutional by the Supreme Court in *Shelly v. Kraemer,* however, the damage was already done to the African American Baltimoreans.[53] President Harry S. Truman recognized the extreme need for "decent homes in wholesome surroundings for low-income families now living in the squalor of the slums," and signed

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[44] Emily Badger, *The long, painful and repetitive history of how Baltimore became Baltimore*, WASH. POST (Apr. 29, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/04/29/the-long-painful-and-repetitive-history-of-how-baltimore-became-baltimore/.

[45] Badger*, supra* note 44.

[46] *Id.*

[47] Pappoe, *supra* note 25, at 121.

[48] *See* Valerie Strauss & Richard Rothstein, *From Ferguson to Baltimore: The consequences of government-sponsored segregation*, WASH. POST (May 3, 2015). https://www.washingtonpost.com/news/answer-sheet/wp/2015/05/03/from-ferguson-to-baltimore-the-consequences-of-government-sponsoredsegregation/?utm_term=.c8f4fd04996c.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] Badger, *supra* note 44.

[53] See generally *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding that the Equal Protection Clause prohibits racially restrictive housing covenants).

the Housing Act of 1949 into effect.[54] Although the goal of this Housing Act was to aid cities in clearing slums and rebuilding areas, it reinforced the concentration of poverty by providing more income limitations and enforcing more specific income ceilings.[55]

2. *White Flight and Urban Revitalization*

By 1950, Baltimore City's population topped out at approximately 950,000 residents while American manufacturing also peaked and accounted for the majority of jobs in Baltimore.[56] Subsequently, in the 1970's, manufacturing began to decline, forcing many factories to shut down.[57] Between 1960 and 1995, Baltimore lost nearly 100,000 manufacturing jobs.[58] During the time between 1950 and 1970, Baltimore's African American population doubled while the majority of the city's Caucasian population moved to the suburbs.[59] By 1997, Baltimore's population rose from less than one-quarter to two-thirds African American.[60]

Starting in the 1950s, White Flight which resulted in vacant houses, and urban decay started to truly expose the conditions of the African American neighborhoods.[61] In response, Baltimore City officials, backed by the federal government, launched several failed urban renewal projects in which entire neighborhoods (mostly low-income African American neighborhoods) were demolished in the hope that they could start over, and revive Baltimore's economy.[62] However, these efforts "squandered public resources and taxpayer dollars on projects that mostly benefited politicians and business interests."[63] Thousands of poor, predominantly African American families were displaced

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[54] Harry S. Truman, Statement upon Signing the Housing Act of 1949 (July 15, 1949), *available* at http://www.presidency.ucsb.edu/ws/?pid=13246.
[55] Pappoe, *supra* note 25, at 125.
[56] Bryce Covert, *The Economic Devastation Fueling the Anger in Baltimore*, THINK PROGRESS (Apr. 28, 2015, 3:50PM), https://thinkprogress.org/the-economic-devastation-fueling-the-anger-in-baltimore-8511b97c0630/.
[57] *Id.*
[58] *Id.*
[59] Andy Write, *A Brief Economic History of Modern Baltimore*, Putting Baltimore's People First (2004), https://andywrit1301.files.wordpress.com/2012/09/briefeconomichistory.pdf.
[60] Andy Writ, *A Brief Economic History of Modern Baltimore*, Putting Baltimore's People First (2004), https://andywrit1301.files.wordpress.com/2012/09/briefeconomichistory.pdf.
[61] Write, *supra* note 59.
[62] Cathryn A. Paul, *How Housing Policy Caused Segregation in Baltimore*, WASH. TIMES (Sept. 28, 2015), https://www.washingtontimes.com/news/2015/sep/28/cathryn-paul-baltimores-segregation-caused-housing/.
[63] *Id.*

in the failed efforts to rebuild the impoverished neighborhoods.[64] Between 1951 and 1971, 80% to 90% of the 25,000 families displaced for new highways, housing projects and schools were African American.[65]

C. The Importance of Preventing Neighborhood Displacement

Four elements create and define a neighborhood: physical boundaries; shared facilities; social network with a foundation of some shared identity, either race, class or culture; and some sentimental or emotional ties to it all.[66] Improving neighborhoods is far from an easy task. Within neighborhoods, "the social system is vulnerable to change, as families grow up and regional housing market opportunities shift."[67] Generally, neighborhood residents want improvements in their economic situations, jobs within close proximity to their homes, basic amenities, such as grocery stores, quality public education, and respectable property values.[68] Additionally, "the people in the neighborhood generally want to maintain their social system – status, cultural group, and lifestyle. They develop institutions – formal or informal, legal or illegal, to protect the kind of neighborhood they have."[69] In neighborhoods where the housing market is poor due to inflicted disadvantage to its own residents, those residents may prioritize the social system over anything else.[70] Emotional and social ties to an area are very important in order to have a functioning neighborhoods and cities.[71]

When implementing urban renewal strategies, the United States "has relied upon the massive relocation of poor people and the destruction of poor people's neighborhoods with only token recognition to the costs and burdens imposed on those displaced."[72] The majority of those that are displaced are African Americans.[73] Even when displacement occurs with good intentions,

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[64] *Id.*
[65] Badger, *supra* note 43.
[66] Olson, *supra* note 23, at 11.
[67] *Id.*
[68] *Id.* at 12.
[69] *Id.*
[70] *Id.*
[71] *See generally* Olson, *supra* note 23.
[72] Bezdek, *supra* note 5, at 38.
[73] Badger, *supra* note 42. (In a recent survey on urban renewal "67 percent of people displaced by such demolition projects nationwide are black. Those people who moved lost their social networks as well as their homes. Over time, deindustrialization took their decent blue-collar jobs, too. And because we never invested in the kid of education low-income urban communities would need to find work in post-industrial world, low-skilled workers today are left with worse prospects today than they had two generations ago.").

it interrupts the social fabric of the neighborhoods and forces residents to start anew.[74]

Therefore, urban revitalization and desegregation measures should aim to not abruptly uproot residents, allowing residents to maintain their social networks and routines. When drafted appropriately, inclusionary zoning ordinances and community land trusts offer ways in which cities can desegregate housing patterns in a slow and gradual manner, providing residents with support throughout the process.

D. Inclusionary Zoning As a Way to Eliminate Housing Segregation in Baltimore

Zoning was recognized as a constitutional form of police power after the Supreme Court held in *Village of Euclid v. Ambler Realty Co*, that the power to create zoning regulations is derived from the state's police powers.[75] Zoning ordinances were created in efforts to eliminate nuisances and aid public welfare in increasing urban populations.[76] Constitutional ordinances must not be unreasonable and must have substantial benefit to the public health, safety or general welfare.[77]

Inclusionary zoning promotes economic and racial integration by allowing low income individuals and families to move to neighborhoods they would not normally be able to afford.[78] Lower income families and society both benefit when cities break up concentrations of poverty.[79] Lower income families reap the benefits of the more developed neighborhoods and society benefits from gentrification.[80] These ordinances benefit not only the low-income working class, but also the middle-income working class such as teachers and police officers.[81]

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[74] Badger, *supra* note 42.
[75] *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926).
[76] *Id.* at 392.
[77] *Id.*
[78] Michael Kroopnick, *Affording Baltimore: Public-Private Approaches to Workforce Housing*, 40 Urb. Law. 331, 348 (2008).
[79] *Id.*
[80] *Id.*
[81] Karen D. Brown, *Expanding Affordable Housing Through Inclusionary Zoning: Lessons From the Washington Metropolitan Area*, 1-2 (Oct. 1 2001), http://www.brookings.edu/~/media/Files/rc/reports/2001/10metropolitanpolicy_brown/inclusionary.pdf (last visited November 18, 2017)("Linking affordable housing to market-rate, private development, inclusionary zoning increased the chance that low- and moderate- income families will live in healthy communities that appeal to people with resources and choice. Beneficiaries of these ordinances include not only minimum wage workers but also teachers, police officer, and service workers – productive citizens who form the foundation of any community.").

1. Basic Premises of Inclusionary Zoning

Zoning is the predominant way in which cities regulate land and has enjoyed broad deference by the courts since its approval in 1926.[82] Municipalities may regulate individual parcels of land so as to keep discordant parcels separate from one another, and to promote commercial activity while preserving public health and safety.[83] However, as with many municipal regulations, zoning has been distorted to "protect the more expensive and higher-class single-family homes, which creates scarcity that adds economic value, and, as a result, absorbs a hidden cost of excluding the more affordable and lower-class multifamily housing," and become effectively exclusive in nature.[84] Rather than manage land for some kind of mutual public good, zoning has been corrupted by the municipal governments to perpetuate many forms of segregation that "[restrict] affordable housing opportunities to locations that are racialized as '[B]lack' and [result] in an uneven distribution of public sector resources, access to wealth, stigmatized reputation, and constrained opportunities for social mobility."[85]

A recent trend[86] to combat decades of government-sanctioned housing segregation through zoning and other discriminatory legal practices, is to re-conceptualize zoning as a means by which the city can regulate land to require inclusion.[87] City government can use this "inclusionary zoning"[88] to require developers to provide housing units for low-income buyers in exchange for a variety of incentives. The ultimate goal is to provide long-term affordability to diversify the housing market by breaking down institutions that have kept cities racially segregated for decades.

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[82] Audrey G. McFarlane & Randall K. Johnson, Article, Cities, *Inclusion and Exactions*, 201 Iowa L. Rev. 2145, 2151 (2017).
[83] *Id.*
[84] *Id.* at 2151-152.
[85] *Id.* at 2154.
[86] Inclusionary zoning began as a 1974 experiment in Montgomery County, Maryland to "increase the availability of affordable housing by requiring that developers provide below-market units in exchange for a range of different incentives." McFarlane, *supra* note 76, at 2154-155. Inclusionary zoning ordinances can be found in 27 states and the District of Columbia. *Id.* at 2155.
[87] *Id.*
[88] Inclusionary zoning ordinances can be mandatory or voluntary, but are generally most effective (i.e., provide the most units) when required by law. *See* Heather L. Schwartz et al., RAND Corp., Is Inclusionary Zoning Inclusionary, 23 (2012)("at least three studies have concluded that mandatory programs generally yield more units than voluntary programs").

Application of an inclusionary zoning ordinance is typically triggered by the size of the project, which is based on the strength of the housing market.[89] Markets with high estate prices protect developers because "the more expensive the market, the less of an impact the requirement will have on the profitability of development."[90] This trigger then leads to the imposition of a set requirement of affordable units.[91] Typically, the burden is on the developers to create these housing units because they are already engaged in the housing markets.[92] Developers are required to offer a mix of units with different prices, amenities, and layouts, that comply with the ordinance in exchange of some kind of incentive.[93]

There are a number of benefits that a city can offer to incentivize inclusionary zoning. Conventional incentives include: direct subsidies; payment in lieu of taxes ("PLOT"); and tax credits. Additionally, density bonuses are popular because they give developers the ability to build more square feet than would otherwise be permitted under the zoning ordinance.[94] Another proposed incentive is to construct affordable zoning off-site.[95] Although this is inherently counterintuitive to the purpose of inclusionary zoning, it promotes integrate housing.[96]

There have been few successful challenges to inclusionary zoning ordinances.[97] One theory behind this is "because developers have still found it lucrative to fulfill inclusionary zoning requirements and build profitable residential developments.[98] Some developers even consider it the right thing

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89 McFarlane, *supra* note 76, at 2156.
90 McFarlane, *supra* note 76, at 2156.
91 *Id.*
92 *Id.* at 2161.
93 *Id.* at 2155.
94 It's possible that these bonuses can actually cost a jurisdiction more due to higher administrative costs. McFarlane, *supra* note 76, at 2157.
95 *Id.* at 2158-59 ("This offsite development occurs because developers would simply prefer to write a check than find ways to build affordable housing that can coexist alongside market-rate housing"). *See also* Iglesias, *supra* n. 72 at 590 ("If the developer builds the affordable housing units off-site, it is likely that land will not be located in the same neighborhood as the market-rate units, and all else being equal, the off-site affordable housing units are less likely to be located in predominately white, high opportunity areas.").
96 *Id.* at 2158-59 ("This offsite development occurs because developers would simply prefer to write a check than find ways to build affordable housing that can coexist alongside market-rate housing"). *See also* Iglesias, *supra* n. 72 at 590 ("If the developer builds the affordable housing units off-site, it is likely that land will not be located in the same neighborhood as the market-rate units, and all else being equal, the off-site affordable housing units are less likely to be located in predominately white, high opportunity areas.").
97 McFarlane, at 2147.
98 *Id.*

to do."[99] Less optimistic hypotheses for why there are few challenges are that inclusionary zoning does not provide long-term affordable housing, or because many ordinances include excessive loopholes.[100] In order to truly achieve long-term affordability, developers will often place a deed restriction that requires the units to remain at affordable levels for anywhere from 20 to 99 years.[101]

2. Mandatory v. Voluntary Inclusionary Zoning Ordinances

Inclusionary zoning can either be mandatory or voluntary. A mandatory zoning ordinance requires developers to reserve a certain number of units that are to be developed as affordable housing units.[102] Voluntary inclusionary zoning gives developers the option to participate in the program while incentivizing them with density bonuses.[103] Whether a jurisdiction decides to implement a mandatory or voluntary inclusionary zoning program largely affects whether the program is likely to be effective.[104] Mandatory programs have proven to be far more effective, while voluntary programs are only effective in jurisdictions where the incentives offered are worthwhile to the developer.[105] The incentive to incorporate the affordable housing units must outweigh the option to forego the affordable units. However, it is rare that the incentives are ever this lucrative.[106] Chapel Hill, North Carolina was able to create a voluntary program that was *de facto* mandatory because, while developers were not required to include affordable units, the planning board would only approve a new development which built inclusionary units.[107]

Inclusionary zoning was first established in 1974 in Montgomery County, Maryland with the Moderately Priced Dwelling Unit (MPDU).[108] The MPDU has been the most successful inclusionary zoning program in the country, producing 10,600 affordable housing units between the program's establishment and 1999.[109] Montgomery County's program requires developers that meet or exceed 50 units to participate in the program affording

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[99] McFarlane, *supra* note 76, at 2147.
[100] McFarlane, *supra* note 76, at 2175-76.
[101] *Id.* at 2160.
[102] Brown, *supra* note 75.
[103] *Id.*
[104] *Id.*
[105] Nicholas Brunick et al., *Voluntary or Mandatory Inclusionary Housing 2* (2003), Wellesley Institute, http://www.bpichicago.org/documents/mandatoryv.voluntary5.06.pdf (stating the 15 most productive inclusionary housing programs are mandatory programs).
[106] *Id.*
[107] *Id.*
[108] Brown, *supra* note 75.
[109] Kroopnick, *supra* note 72, at 349.

them with a density bonus of up to 22%.[110] This bonus operates on a sliding scale that is correlated to the number of affordable units the developer sets aside within the development.[111]

3. *Analyzing Baltimore's Mandatory Inclusionary Zoning Ordinance*

Baltimore adopted its mandatory inclusionary zoning ordinance in 2007, when the city was transforming its downtown and water-front neighborhoods.[112] The goal of the ordinance was to provide housing for both the upper class, the moderate class, and low-income class.[113] The ordinance aimed to reward those that had chosen to reside in Baltimore during its prior years and time of development, and to ensure that they would be able to remain in the city and reap the benefits of the newly developed neighborhoods.[114] However, this ordinance has been amended nearly 100 times, and still has far too many exceptions, making the ordinance cumbersome and impractical for the city.[115] Baltimore's inclusionary zoning fails to achieve the goals of affordable housing integration.

Baltimore's mandatory inclusionary zoning ordinance required any residential developer, with a development project that included 30 units or more, designate at least 10% of the units as affordable housing units for the city.[116] The city's ordinance ensured that any developer, subject to the inclusionary ordinance, be made whole receiving cash payments from the city's Affordable Housing Trust Fund or through density bonuses.[117] Although Baltimore's inclusionary zoning ordinance is technically titled a mandatory ordinance, it contains too many loopholes to actually be effective.

III. ISSUE

Many families can no longer afford to live in the new up-and-coming neighborhoods of Baltimore and also do not want to invest in the areas they can afford because of the crime rates.[118] Moving to a surrounding county is often not considered an option because it is unaffordable.[119] Furthermore, renting is not an option for most of these families because they do not earn

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110 *Id.*
111 Kroopnick, *supra* note 72, at 349.
112 BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B Introductory Note (2018).
113 *Id.*
114 *Id.*
115 *Id.*
116 *Id.*
117 HOUS. AND URB. RENEWAL art. 13, § 2B.
118 Kroopnick, *supra* note 72, at 336.
119 *Id.*

enough money to meet the income requirements of most landlords and property management companies.[120] Nevertheless, housing may still be out of reach even for families eligible to rent. In 2017, 50% of Maryland renters spent 50% or more of their household income on their rent.[121] The Maryland Department of Housing and Community Development predicts that in the next 10 years, there will be a shortage of 157,000 affordable rental units.[122] In order to make the city viable for the working families, and to keep residents from being forced to move outside the city, Baltimore must create affordable housing in its desirable neighborhoods.

Forcing people to move out of the city because of the high price associated with living in desirable neighborhoods, and a desire to avoid the more affordable, yet crime ridden, neighborhoods is not good for the city's economy.[123] Baltimore lost 28% of its population between 1970 and 2000 and lost another 60,000 jobs during the 1990s.[124] Maintaining its population benefits Baltimore because it enhances the city's revenue by growing its tax base and expanding its economy. The city must continually attract new residents to successfully grow and improve the quality of the neighborhoods.

A. Issues with Baltimore City's Inclusionary Zoning Ordinance

Baltimore determines eligibility for affordable housing under the inclusionary zoning ordinance by comparing the household income to the Area Median Income ("AMI").[125] There are four different price levels of affordable housing: extremely low housing cost, very low housing cost, low housing cost; and moderate housing cost.[126] Households are determined to be eligible for affordable housing units at: (1)"extremely low housing cost," if the household income is at, or below, 30% of the AMI; (2)"very low housing cost" if the household income is greater than 30%, but not more than 60% AMI; (3)"low housing cost" if the household income is greater than 60% AMI, but not more

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[120] Kroopnick, *supra* note 72, at 337 ("[t]he average metropolitan Baltimore rent of $1,219 ... requires a tenant income of at least $50,000"--a price out of reach for more than half of Baltimore families who cannot afford the average market-rate home located within the high-demand neighborhoods of Baltimore and its suburbs)(quoting Jay Hancock, *Apartment Shortage Is a Threat to Md. Economy,* BALT. SUN, June 25, 2006, at 1C).
[121] Robert J. Strupp, *Baltimore Faces an Affordable Housing Crisis*, BALT. SUN, (July 14, 2017), http://www.baltimoresun.com/news/opinion/readersrespond/bs-ed-rr-housing-city-20170714-story.html.
[122] Kroopnick, *supra* note 72, at 337.
[123] *Id.* at 335.
[124] *Id.* at 337.
[125] BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B-3(d) (2018).
[126] BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B-1(e) (2018).

than 80% AMI; and (4) "moderate housing cost" if the household income is greater than 80%, but not more than 120% AMI.[127] At first glance this categorization may seem fair, but the AMI to which Baltimore residents are compared to is calculated using data from the metropolitan region that encompasses Baltimore City, as published by HUD.[128] Therefore, Baltimore City residents are compared to those households of Anne Arundel County, Baltimore County, Carrol County, Harford County, Howard County, and Queen Anne's County, all of which have significantly higher median incomes than Baltimore City.[129]

Using this broad range to compare household incomes makes little policy sense when considering that Baltimore's inclusionary zoning ordinance does not apply to anywhere outside of Baltimore City. In fact, zoning ordinance aside, Baltimore City has nothing in common with these areas.[130] In 2015, Baltimore City had 80% high school graduation rate, whereas the surrounding counties had a 90% rate[131]; unemployment in Baltimore City was 18%, while this rate was only 7% in the surrounding counties[132]; and Baltimore City's poverty rate was 24% compared to 8% in the surrounding counties.[133] With such a wide range of differences of education, employment, and poverty rates it is unjust to compare the household income of city residents to residents in the surrounding counties.

Another flaw within the inclusionary zoning ordinance of Baltimore is that is it not structured in a way that provides the necessary number of affordable housing units to those residents in need.[134] This is because the many exceptions and loopholes in the ordinance make it easy to be exempt from, and thus causes the production of affordable housing units to suffer.[135] The main reason that Baltimore adopted such a weak inclusionary zoning ordinance was that city officials were concerned that too strict of an ordinance would disincentivize developers from investing in new developments in Baltimore City.[136]

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[127] BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B-1(e) (2018).
[128] 2017 HUD Median Income for Maryland Counties (https://sites.google.com/site/marylandmortgagelimits/hud-median-incomelimits); *But see* U.S. Census, Balt. City, MD, Quick Facts (2016) https://www.census.gov/quickfacts/fact/table/baltimorecitymarylandcounty/AGE295216).
[129] *Id.*
[130] Rothstein, *supra* note 45, at 9.
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] Rothstein, *supra* note 45, at 9.
[136] McFarlane, *supra* note 76, at 2166.

Currently, the ordinance only applies to developers building more than 30 residential units.[137] Developers that have 30 or more housing units are required to make at least 20% of those units affordable.[138] Furthermore, if the units are for rental purposes, 30% must be allocated to eligible households at an extremely low rental cost, 25% must go to eligible households at or below a very low rental cost, 25% must be awarded to eligible households at or below a low rental cost, and the remainder must go to eligible households at a rental cost that does not exceed 1/12 of 30% of 100% of the AMI.[139] If the units are for ownership, 20% of them are required to be designated as affordable housing units.[140] Of the 20%, at least a quarter must be provided to eligible households at a very low ownerships cost.[141] Additionally, half of the affordable housing units must be provided to eligible households at a low ownership cost, and the remainder must be provided to eligible households at a moderate ownership cost.[142] A developer can easily avoid these requirements building 29 units at a time.

The ordinance does offer a benefit to developers willing to take on a residential project of 30 or more units with affordable units.[143] The ordinance states that developers may be "entitled to 100% cost offsets either through cash payments from the City's Affordable Housing Trust Fund[1] or through discretionary density bonuses, which are available upon application from the board of Municipal and Zoning Appeals," subject to the approval of the Housing Commissioner.[144] The end goal is to make each developer whole "for every affordable unit that is created, sold, and rented at the city's behest."[145] Although this benefit sounds enticing, it actually produces very few affordable housing units.[146]

Another impediment is Baltimore's excessive regulation at the state level that may discourage development.[147] Currently, Maryland developers are required to obtain "three levels of local government approval before low-income housing tax credit applications will even be considered for funding"

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[137] BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B-21(a) (2018).
[138] BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B-21(a) (2018).
[139] *Id.*
[140] BALT. MD. HOUS. AND URB. RENEWAL art. 13 § 2B-21(b)(1) (2018).
[141] BALT. MD. HOUS. AND URB. RENEWAL art. 13 § 2B-21(b)(2)(ii) (2018).
[142] BALT. MD. HOUS. AND URB. RENEWAL art. 13, § 2B-21(b)(2)(ii) (2018).
[143] The Inclusionary housing fund began with $2 million in 2007, and as of October 2014, had only $70,000 in its bank account. *See generally* Danielle Sweeney, *Inclusionary Housing Fund Running on Empty, Advisory Board Told,* Baltimore Brew (Oct. 22, 2014) https://www.baltimorebrew.com/2014/10/22/inclusionary-housing-fund-running-on-empty-advisory-board-told.
[144] McFarlane, supra note 76, at 2164.
[145] *Id.*
[146] *Id.*
[147] Pappoe, *supra* note 25, at 140-41.

in areas with opportunity for high development.[148] This deters developers from spending the money to develop the affordable housing units in areas of high-opportunity until the requirements for approving the funding are relaxed.[149]

IV. SOLUTION: COMMUNITY LAND TRUSTS AS A WAY TO ENSURE LONG-TERM HOUSING AFFORDABILITY IN BALTIMORE

Baltimore's policymakers should view the housing crisis from a racial viewpoint and attempt to remedy the racial injustices accordingly. Achieving this goal of reducing racial injustices will help alleviate economic hardship. Baltimore City should incorporate community land trusts into their current inclusionary zoning ordinance to curb racial injustices.

Community land trusts can operate in conjunction with Baltimore's inclusionary zoning ordinance to provide both fair and affordable housing units in Baltimore City. Inclusionary zoning and community land trust are able to work together because "they're really two different things. One is essentially a regulatory mechanism that provides housing resources and the other is a form of ownership where land is shared."[150] Community land trusts can facilitate long-term affordability of these units by acting as stable buyers for affordable housing units.

Community land trusts are locally-based, non-profit organizations, operated by people invested in a community, that acquire properties through private donations and government subsidies.[151] When individuals build on land owned by community land trusts, the community retains title to the deed for the land on which a home sits, and a low-or moderate-income homebuyer owns the home itself.[152] This is possible because the community land trust leases the land to the homeowner, typically for 99 years.[153] In return, the community land trust regulates and restricts how much profit a homeowner is allowed to make in the event the homeowner sells the home.[154] This regulation of the profit ensures that the home remains affordable for the next low-income

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[148] *Id.* (quoting Lora Engdahl, New Homes, New Neighborhoods, New Schools: A Progress Report on the Baltimore Housing Mobility Program 1 (2009)).
[149] Pappoe, *supra* note 25, at 140-41.
[150] Alexis Stephens, *Should Community Land Trusts Rank Higher in the Affordable Housing Toolbox?*, NEXT CITY (Nov. 3, 2014), https://nextcity.org/daily/entry/should-community-land-trusts-be-higher-in-the-affordable-housing-toolbox. (Last accessed Oct. 6, 2018).
[151] *Id.*
[152] *Id.*
[153] *Id.*; *See also* Jamie Ross, *Inclusionary Zoning and Community Land Trusts*, FLA. LAND INST. http://www.flhousing.org/wp-content/uploads/2015/09/CLT-Primer-Benefit-of-Using-CLT-to-Implement-Inclusionary-Zoning.pdf (last visited Jan. 25, 2018).
[154] Ross, *supra* note 143.

owner.[155] This allows the community to set the price of the home when it is placed for sale and ensures that the home remains affordable without the effects of market inflation.[156] The use of community land trusts allows for a guarantee of affordable houses, something that has been effectively denied to the low-income African American communities in Baltimore City.[157] Currently with Baltimore's inclusionary zoning ordinance, the number of affordable housing units is currently determined by the developers, who have all the power and control.[158] However, this model would allow for the community land trusts to regain control of the availability of affordable homes from developers.

One of the greatest benefits of community land trusts is their stability, even in tough economic conditions.[159] Experts from the Lincoln Institute of Land Policy found that, "even in 2009, [CLT properties] were eight times less likely to be foreclosed than conventional mortgages, even though community land trust property tends to be owned by lower-income people, who might be under more stress than the average mortgage holder."[160] This stability allows occupants of affordable houses in the community land trust to remain in the homes while keeping the market prices of the homes for future occupants affordable.

Community land trusts either operate independently as non-profit organizations, or they can obtain more legal authority with the city.[161] The latter is the method Chicago's Land Trust chose ("CCLT") in 2006, and it was created with donations and municipal support.[162] The Chicago ordinance required, "residential developers receiving city assistance whose deals involve city-owned land must set aside 10 of their units at affordable pricing – or donate $100,000 per mandated unit to the City's Affordable Housing Opportunity Fund."[163] This requirement guaranteed the security of affordable housing units to raise revenue that would later be invested into affordable housing through community land trusts.[164] In order to achieve this kind of model, community leaders must organize and establish the community land trusts, and municipal governments should later offer financial support.[165]

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155 Stephens, *supra* note 140.
156 Stephens, *supra* note 140.
157 *Id.*
158 *Id.*
159 *Id.*
160 I*d.*
161 *Id.*
162 *Id.*
163 *Id.*
164 *Id.*
165 *Id. supra* note 140; *See also* Kevon Paynter, *Baltimore's Push to Solve Its Affordable Housing Crisis With Community Land Trusts*, YES! MAGAZINE (Aug. 23,

Community land trusts promote the idea of community control.[166] This makes community land trusts ideal for low-income, minority communities, that seek to command control of the market rates within their community limits. Community land trusts are especially important for areas such as Baltimore where there is a history of urban-renewal projects that displaced residents, especially those residents of African-American neighborhoods.[167]

The biggest challenge with community land trusts is availability of land and funding, particularly banking enough money to purchase enough properties such that the community land trusts will make a difference within a particular neighborhood.[168] Community land trusts, as non-profit organizations, will likely need a diverse and constant stream of revenue in order to be effective. Community land trusts are most successful if they are started when land is still cheap, especially if rents are expected to rise, such as the case for Baltimore City.[169]

Until 2010, when the General Assembly changed state laws, community land trusts were not able to operate in Maryland due to a holdover from rules governing leases.[170] To date, Baltimore City has only one community land trust, the Charm City Land Trust, which was started by a donation to Amazing Grace Church from a bank.[171] This community land trust just purchased its first home for a very low income family for $1.[172] Although there is only one functional community land trust in Baltimore City, Northeast Baltimore Housing Initiative proposed a business plan for another community land trust, in which Mayor Catherine Pugh has since endorsed, and $40 million in bonds annually will be issued to community land trusts.[173]

Community land trusts have a diverse application that could be incredibly useful to Baltimore in solving the housing crisis. Community Land trusts can operate independently as non-profit groups, and therefore have the capacity to purchase any of Baltimore's 30,000 abandoned housing units. Additionally, they have the ability to work within the regulatory structure of inclusionary zoning. This allows them to supplement affordable

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2017), http://www.yesmagazine.org/new-economy/baltimores-push-to-solve-its-affordable-housing-crisis-with-community-land-trusts-20170823.

[166] Natalie Sherman, *Community Land Trusts Make their* Pitch, BALTIMORE SUN (Dec. 1, 2015, 1:35 PM), http://www.baltimoresun.com/bs-bz-community-land-trust-20151130-story.html.

[167] *Id.*

[168] Stephens, *supra* note 140.

[169] Sherman, *supra* note 155, at 30.

[170] *Id.*

[171] Paynter, *supra* note 154, at 30.

[172] *Id.*

[173] *Id.;* Luke Broadwater*, Pugh Backs Call for Multimillion Dollar Investment in Affordable Hosuing in Baltimore,* BALT. SUN (May 13, 2017), *http://www.baltimoresun.com/news/bs-md-ci-baltimore-2020-20170513-story.html.*

housing where inclusionary zoning does not. A community land trust can also assist affordable housing by purchasing affordable units which allows them to oversee, and ensure, the long-term affordability in the properties. Furthermore, Baltimore can merge the concepts of inclusionary zoning and community land trusts by allowing developers to choose between donating to the community land trust affordable housing fund or building the required number of affordable units required by inclusionary zoning.

V. CONCLUSION

Baltimore's housing crisis has largely been a result of the city's history with racial segregation. This segregation needs to be recognized and corrected in order for Baltimore's housing crisis to ever be solved. In reviewing Baltimore's history, it is clear that unless compelled to do so, Baltimore City will most likely not take steps to eliminate *de facto* racial segregation in the near future. If a proper and strict mandatory zoning ordinance were to be followed, it would allow the city to truly integrate in ways that urban renewal and revitalization never will. Furthermore, Baltimore's history of regulatory mechanisms has proven to favor white property ownership. Therefore, it is imperative that the city implement a mandatory ordinance with very few loopholes in an effort to not allow the developers to be in control and find exemptions. All developers, including public, private or a CLT, should make a serious effort to not disrupt the social fabric of neighborhoods by displacing residents, which will result in low-income minorities no longer being subject to concentrated poverty pockets.