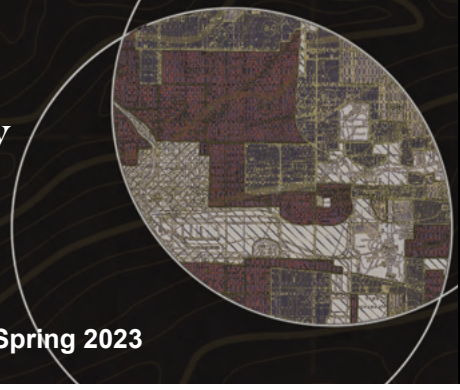


Strategies to Build Racial Equity Into Land Use & Zoning

Nathan Bennett Fleming

Harvard Kennedy School *Anti-Racism Policy Journal*, Spring 2023



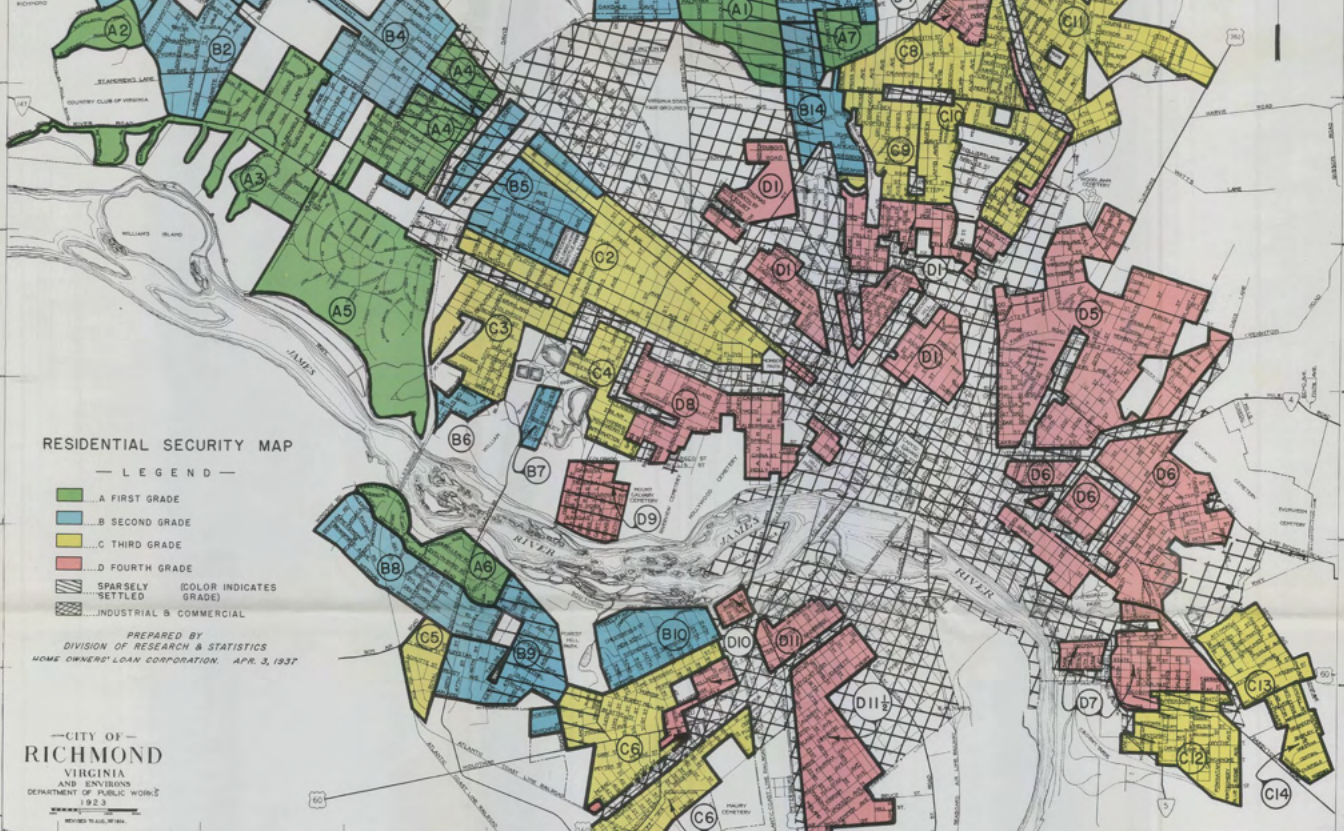
For decades, scholars and advocates have argued that residential segregation is the direct result of explicit government policies. Local governments have enacted a wide range of policies, particularly land use and zoning policies, that have helped to create and maintain residential segregation—leading to inequities in access to opportunity. In recent years, however, there has been growing recognition of the ways that zoning and land use has expanded racial inequality. As a result, local governments have begun to make efforts to infuse racial equity into their zoning and land use decision-making processes. More substantive analysis of these approaches would benefit scholars, advocates, policymakers, and impacted parties.

In this brief essay, I build on existing scholarship by surveying and analyzing innovative approaches to build in racial equity into zoning and land use decisions that are being implemented in jurisdictions nationwide. The essay makes a set of policy recommendations for jurisdictions to strengthen their approach to racial equity in land use and zoning. Analysis of this area is limited, and, as such, this essay will contribute by critically engaging with the ongoing work to address the legacy of racial subordination and marginalization in land use policies.

Race, Inequity & Land Use

Racialized zoning practices have contributed to residential segregation by limiting housing occupancy by Black and minority residents to specified areas, often the least sought-after sections of a jurisdiction.¹ For example, zoning ordinances have disproportionately permitted locally undesirable land uses (LULUs) proximate to Black and minority communities.² This includes commercial, environmental, and industrial LULUs. In many ways, racialized zoning practices have had a cyclical impact, where property disinvestment and abandonment fuel declining real estate values, incentivizing further pollution and undesirable land use.² Similarly, disinvestment leads to fewer quality jobs and schools in neighborhoods where low-income residents and people of color reside.³ As a result, the effect of racial zoning persists and continues to negatively impact communities to this day.

In the summer of 1910, Baltimore, Maryland passed the first racially exclusionary zoning ordinance after a Black attorney purchased a home in a prosperous white neighborhood in the city.⁴ Baltimore's approach towards racial exclusion sparked similar racialized zoning activity over the next six years in New Orleans, Atlanta, Louisville, St. Louis, Oklahoma City, Dade County (Miami), Charleston, Birmingham, Dallas, and several cities in the state of Virginia.⁵ Practices included designating certain blocks for certain races and barring members of different races from these blocks, allowing new residents to move onto a block only if they were



City of Richmond Residential Security Zoning Map, 1923

Map courtesy Robert K. Nelson, LaDale Winling, Richard Marciano, Nathan Connolly, et al., “Mapping Inequality,” *American Panorama*, ed. Robert K. Nelson and Edward L. Ayers. <https://dsl.richmond.edu/panorama/redlining/#loc=11/42.314/-71.238&city=boston-ma>

of the same race as a majority of current residents, and requiring the consent of current residents if a new resident was of a different race.⁶ At least 21 jurisdictions incorporated a racist zoning law modeled after Baltimore’s.⁷ This was until Louisville’s ordinance was challenged in the 1917 *Buchanan v. Warley* case.⁸

In *Buchanan*, the Court relied upon the Fourteenth Amendment provisions requiring states to afford all citizens equal protection under its laws. The Black plaintiff sought to purchase property on an interracial block that contained two Black and eight white households.⁹ Louisville had many interracial communities prior to the enactment of racial zoning measures, which contributed to the Court reasoning that Louisville’s zoning ordinance prohibitively interfered with the contract right of property owners to sell to anyone that they wanted to.¹⁰ The Court ruled Louisville’s racial zoning ordinance unconstitutional.¹¹

Following the Court’s rejection of explicitly racialized zoning policies, local officials either ignored the decision, designed policies that were only slightly distinct from the policies overturned in *Buchanan*, or turned to a race-based approach to land use, planning, and zoning that was neutral on its face but discriminatory in effect.¹² Racialized zoning practices predate the development of comprehensive, citywide zoning codes in the United States. This helps to explain why some of the initial, comprehensive zoning ordinances separated races into designated districts.¹³ New York created the first citywide zoning ordinance in 1916 because affluent business owners in Manhattan wanted to prevent laborers from residing in the shopping district.¹⁴ Atlanta’s 1922 zoning plan divided the city into “R1 white districts” and “R2 colored districts.” The plan explicitly declared that racial zoning was essential to maintaining public order.¹⁵ Richmond, Virginia drafted a citywide

zoning ordinance that restricted the residence of anyone who was not lawfully allowed to marry the majority of the block's current residents. Notably, the state banned interracial marriage.¹⁶

Other jurisdictions, like Austin, Texas, informally relied on racial designations in planning documents to guide zoning ordinances. These planning documents did not mention race explicitly yet carried out the racialized planning designations, thwarting the Buchanan decision.¹⁷ Jurisdictions also designated middle class neighborhoods for "single-family housing use only" as a way to prevent occupation by low-income residents of any race. For example, in St. Louis, neighborhoods with existing restrictive covenants against African American occupancy were classified for single-family housing use only, preserving the white character of these neighborhoods while deterring liquor stores, bars, brothels, and other potential public nuisances.¹⁸ African American communities became blighted by the burden of industrial and environmentally damaging land use, which justified "slum clearance" policies designed to further displace African Americans from central business districts to insulate white commerce.¹⁹ State and local governments executed their "slum clearance" displacement policies in tandem with the federal government, as federal interstate highway routes were often designed in a manner that destroyed existing African American communities.²⁰ The legacy of racialized zoning persists today as many communities of color continue to lack access to quality health centers, grocery stores, employment opportunities, parks and recreation facilities, and public schools.

Local governments also worked in concert with the federal government to execute racialized land use policies that exacerbated and entrenched residential segregation. The federal government allowed local entities to develop segregated public housing projects., The Federal Housing Administration funded segregated local housing developments and subdivisions that promised not to sell to African Americans. The federal government also developed promotional campaigns designed to guide white middle class residents out of multifamily housing into single-family housing, and insured mortgages only if said mortgages were in neighborhoods with little risk of African American residential occupancy.²¹ Local governments also enforced private residential contracts designed to restrict future purchase by African Americans. State supreme courts in Alabama, California, Colorado, Kansas, Kentucky, Louisiana, Maryland, Michigan, Missouri, New York, North Carolina, West Virginia, and Wisconsin upheld practices such as requiring all homeowners in a new subdivision to become members in an ownership association with bylaws that restricted sales to African Americans.²²

Historic racism in zoning has contemporary impacts. As African Americans moved to previously white neighborhoods, association with the slum conditions of the neighborhoods they previously lived in contributed in part to white flight.²³ The value of homes in previously racially restricted communities have vastly increased in value, leading to stark wealth differences between whites and African Americans and restricting those with working class incomes from purchasing homes.²⁴ Federal, state, and local programs such as low-income housing funded by federal tax credits often work to exacerbate existing residential segregation patterns rather than remedy them.²⁵ A disproportionate number of toxic waste facilities are located in African American communities. Those with more wealth and time can participate in zoning hearings and meetings, explaining why these meetings are "disproportionately white, male, elderly, homeowners, longtime residents, and frequent voters."²⁶ When low-income residents are shut out of the zoning process,

A crucial first step towards racially equitable land use policies is the development of mapping and narrative tools to document historic community-level inequities.

zoning outcomes are made without consideration of the voices of those who may be most impacted. Residents of marginalized neighborhoods have lowered life expectancies as these communities face more violence, health disparities, and educational dysfunction.²⁷ Nonetheless, many African American res-

idents face new challenges, as many localities with legacies of racial subordination through land use policies have experienced increases in housing rental and sales prices over the past few decades, leading to the displacement of low- and moderate-income residents.²⁸

Policy Recommendations

In response to the onset of recent social justice movements, local governments have sought to address issues like displacement and the lack of meaningful community engagement while remedying historical racialized land use practices. Many local jurisdictions now have the stated goal of achieving racial equity, “where race can no longer be used to predict life outcomes, and life outcomes for all groups are improved.”²⁹ Jurisdictions are increasingly looking to deploy equitable development practices, which is a “system of policies and investments designed to mitigate displacement and inequitable access to key social, physical, and economic determinants of well-being,” to achieve this goal.³⁰

Many of these jurisdictions are deploying Racial Equity Action Plans (REAPs) to create comprehensive and actionable roadmaps to address the root causes of racial disparities. This includes analyzing data on racial disparities in areas such as housing, education, employment, and health, as well as identifying the social, community-based, and government factors that drive racial equity. REAPs also focus on resilience factors that can advance racial equity and mitigate the effects of systemic and historic racial disparities. In surveying approaches to achieving racial equity in the land use and zoning context throughout the country, I have identified a set of recommendations for jurisdictions looking to enhance their approach towards achieving racially equitable development. These recommendations can be used in whole or in part as necessary, as there is no one-size-fits-all solution to addressing racial equity challenges in land use. Each locality has its own unique history, demographics, and socioeconomic characteristics; therefore, these recommendations should be considered in the relevant local context.

Document Historic Segregation & Inequitable Practices

A crucial first step towards racially equitable land use policies is the development of mapping and narrative tools to document historic community-level inequities. It is vital to invest in research on a community’s specific history of racism in housing and land use before taking further steps to develop policy or plans. To address issues like racial disparities in wealth and health through land-use reforms, it is important that we have a firm understanding of the past actions that produced our

present conditions. Then, cities must acknowledge this history and take informed actions to prove to the community that the government is authentically and intentionally dismantling barriers to fair housing and community equity.

In **Louisville, Kentucky**, the Office of Redevelopment Strategies has launched an interactive story map that illustrates the modern-day consequences of redlining in Louisville.³¹ The story map is designed to contribute to a community discourse to highlight and address the issue of redlining.³² By initiation of this dialogue, the city hopes to remove barriers to opportunity in areas with a history of state-designed residential segregation.

Use Data to Develop Displacement Risk Indices & Develop Community Equity Focus Areas

Localities can use neighborhood data to identify and categorize areas by their level of displacement risk. Identifying these areas can help guide equitable land use policies and can serve as a foundation for the implementation of targeted solutions to prevent displacement. Localities can also use neighborhood data to identify and categorize areas related to their level of neighborhood access to opportunity. When these areas are identified, they can be used in concert with the displacement risk areas to guide equitable land use policies. Juxtaposing the displacement risk areas with the community equity focus areas can help guide equitable land use policies by allowing for the implementation of differing strategies in differing neighborhoods that work together to advance racial equity.

Seattle, Washington has developed its own displacement risk index to identify displacement risk areas by aggregating factors that increase the risk of marginalized populations being displaced. Factors in their index include income, education, percentage of renters, and percentage of housing cost-burdened households. These factors help to identify high-risk areas in the city for displacement.³³ Seattle has also developed an access-to-opportunity that includes factors related to a neighborhood's social, economic, and physical wellbeing. Indicators include high-performing schools, the number of jobs within a two-mile radius, and access to fresh produce. These indicators help to identify areas in the city with low levels of community equity.³⁴ Seattle uses this data to analyze potential growth strategies (such as guiding growth near light rail or near urban villages) and predict the potential impacts on displacement. Neighborhoods are identified as: High Displacement Risk/Low Access to Opportunity, High Displacement Risk/High Access to Opportunity, Low Displacement Risk/Low Access to Opportunity, Low Displacement Risk/High Access to Opportunity. These categorizations allow for the deployment of varying planning and equity strategies according to a neighborhood's unique needs and challenges.

Use the Displacement & Community Equity Areas to Set Goals

Once a city identifies focus areas, they can set goals, targets, and metrics designed to achieve more equitable outcomes. **Chicago, Illinois** has tasked each of its agencies to submit a racial equity goal for each year.³⁵ Similarly, local executive agencies or local legislative bodies could be tasked with setting racial equity goals to implement in high displacement risk areas and in areas with low levels of community equity.

Develop a Citywide Equitable Development Data Tool

Beyond identifying displacement and community equity areas, a data tool could be developed to allow the public and stakeholders to access citywide, district-wide, and neighborhood-level demographic, economic security, and housing affordability data. This tool could guide and shape equitable land use policies. **New York City** has mandated the development of a publicly accessible equitable development data tool.³⁶

Data is provided for six specific categories and is disaggregated by race and ethnicity, where available.³⁷

Require Submission of Racial Equity Reports for Land Use Applicants

If a data tool were to be developed to allow the public and stakeholders to access citywide, district-wide, and neighborhood-level demographic, economic security, and housing affordability data, it could be instrumental in guiding and informing equitable land use decision-making. In some jurisdictions, land use applicants must proactively file reports to assess the displacement impacts of a potential project in order to propose remedial action and to discourage projects that will encourage displacement. These reports identify how the project relates to racial equity strategies, housing goals, and equitable access to opportunity.

New York City also requires a racial equity report that lists the number of units by affordable unit type, expected rents, and the annual household income necessary to afford the units without being cost burdened.³⁸ For commercial projects, applicants must list the number of jobs that are projected, the average income of the projected jobs, and an assessment of the demographics and educational characteristics of candidates that are typically placed in the occupational sector of the projected jobs.³⁹ Applicants must use the data tool to develop an assessment of the community which includes a neighborhood data summarization, and a comparison of said community with borough and citywide data that is disaggregated by race. Housing providers must clearly state the number of future units for each affordable housing category in the proposed project, with the goal of ensuring that residents are informed of the affordability implications of each proposed project.⁴⁰

In **Boston**, proposals presented to the Planning Agency for Large Project Review must include: “1) a narrative description of how the project will further the goals of overcoming segregation and fostering inclusive communities, 2) an assessment of historical exclusion and displacement risk, which consists of a review of potential racial and economic changes in the area where the project is proposed, and a review of the proposal’s potential effect on rents in the area to ensure that longtime residents will not lose their housing.”⁴¹ The Boston Planning and Development Agency is mandated to employ an assessment tool to determine

It is vital to invest in research on a community’s specific history of racism in housing and land use before taking further steps to develop policy or plans.

the displacement impact on current residents and neighborhood small businesses prior to plan approval.⁴² Housing providers must describe their plans to implement designated housing affordability and marketing interventions. Housing providers must choose additional designated intervention to gain approval for housing developments that are located in high displacement risk areas.⁴³

Invest in Building the Infrastructure for Meaningful Community Engagement

Given the disparities in participants in land use and zoning meetings, it is essential for land use applicants to use robust community engagement strategies that proactively gather input from a broad cross-section of residents. To ensure that residents are well positioned to negotiate conditions that can minimize the negative community impacts of proposed projects, it is critical to empower residents. This can be done through investment in a community engagement infrastructure to offset the power imbalance between marginalized residents and sophisticated housing development corporations.

Portland, Oregon has developed a model that drives sustained investment in community engagement. The city contracts with seven independent district coalitions, and each coalition contains up to a dozen geographically based neighborhood associations.⁴⁴ Coalition staff provide training, communications, logistical, technical and advocacy support for residents and their neighborhood associations.⁴⁵ This program is distributed \$2 million directly to the district coalitions, which allows for the hiring of long-term staff.⁴⁶

Require Applicants for Land Use Permissions in High Displacement Areas to Implement Enumerated Interventions

Applicants should be required to implement solutions from a list of interventions that have been proven to effectively mitigate displacement and advance housing equity. These interventions are often the product of hard-fought concessions made in previous community driven development negotiations. In **Boston**, interventions include “deepening the affordability of units beyond what would otherwise be required, providing a higher number of accessible units than otherwise required, matching or exceeding the percentage of family-sized units in the surrounding neighborhood, increasing density to accommodate a greater number of affordable units to protected classes, and partnering with nonprofit developers to assist with affordable housing production.”⁴⁷

Develop Community—Driven Accountability Mechanisms

Once a baseline of existing conditions is set, metrics must be developed and tracked to evaluate the effectiveness of interventions and to measure progress. **King County, Washington** began its equity initiative by creating a baseline of existing conditions with 13 categories such as early childhood development, education, food systems, transportation, and community safety with 67 preliminary indicators such as median childcare cost, reading proficiency, participation in food assistance programs, transportation cost burden, and homicide rate. These categories are used to assess progress in advancing a “fair and just community.”⁴⁸

Boston, MA has developed a non-voting committee to review proposals,

assessments, and develop a plan for ongoing monitoring. This commission makes recommendations to the Planning Development Agency. Committee includes a representative from the Boston Housing Authority, the Office of Fair Housing and Equity, the Department of Neighborhood Development, the Mayor's Commission for Persons with Disabilities, and the Boston Planning and Development Agency.

Developing a scoring system for racial equity on land use applications can also be used to create a threshold for permissible projects and to track projects over time to assess the actual impact compared to the predicted impact of a project.

Conclusion

In confronting and redressing historical racial injustice in housing, zoning, and land use policies, jurisdictions should be informed by the aforementioned promising models. Local jurisdictions should work in collaboration and in partnership with others to build a shared knowledge of impactful and concrete actions that can mitigate racial inequity in land use decisions and advance racial justice. The localities discussed in this brief essay are implementing approaches that are building momentum for scalable reform. By supporting and incorporating these best practices, local governments can build and sustain a national movement for racial equity in land use.

Notes

1. Craig, John A. "Pigs in the Parlor": The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South." *Mississippi College Law Review* 40, no. 1 (2022): 5-102.
2. Mickel, Garima. "Gentrification and the Cycle of (In)equity: Using Land Use Authority to Combat Displacement." *Urban Lawyer* 51, no. 3 (2022): 477-491.
3. Noble, Elizabeth. "Understanding Historic Exclusion, Current Evidence, and Recent Zoning and Land Use Reform Processes for Racial Equity." Retrieved from *Understanding Historic Exclusion Noble Testimony.pdf* (urban.org), 2022.
4. Craig, John A. "'Pigs in the Parlor': The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South." *Mississippi College Law Review* 40, no. 1 (2022): 5-102.
5. Ibid; Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. 1st ed. New York, NY; London: Liveright Publishing Corporation, a division of W.W. Norton & Company, 2017.
6. Craig, John A. "'Pigs in the Parlor': The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South." *Mississippi College Law Review* 40, no. 1 (2022): 5-102.
7. Source: <https://www.cambridge.org/core/journals/social-science-history/article/abs/residential-segregation-at-the-dawn-of-the-great-migration-evidence-from-the-1910-and-1920-census/483A1F-3CEE9EDC8E87BFBAE4059B3769>
8. Freeman, Lance. "Build Race Equity into Rezoning Decisions." Retrieved from *Build Race Equity into Rezoning Decisions* (brookings.edu), 2021.
9. Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. 1st ed. New York, NY; London: Liveright Publishing Corporation, a division of W.W. Norton & Company, 2017.
10. Ibid.
11. Ibid.
12. Craig, John A. "'Pigs in the Parlor': The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South." *Mississippi College Law Review* 40, no. 1 (2022): 5-102.
13. Ibid.
14. Freeman, Lance. "Build Race Equity into Rezoning Decisions." Retrieved from *Build Race Equity into Rezoning Decisions* (brookings.edu), 2021.
15. Rothstein, R. (2017). *The color of law: A forgotten history of how our government segregated America* (1st ed.). New York, NY; London: Liveright Publishing Corporation, a division of W.W. Norton & Company.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.

20. Ibid.
21. Ibid.
22. Ibid.
23. Ibid.
24. Ibid.
25. Ibid.
26. Papazekos, T. (2022). Power play goal: Analyzing zoning law and reparations as remedies to historic displacement in Pittsburgh's Hill District. *Georgetown Journal on Poverty Law and Policy*, 29(3), 420.
27. Rothstein, R. (2017). *The color of law: A forgotten history of how our government segregated America* (1st ed.). New York, NY; London: Liveright Publishing Corporation, a division of W.W. Norton & Company.
28. Mickel, G. (2022). Gentrification and the cycle of (in)equity: Using land use authority to combat displacement. *Urban Lawyer*, 51(3), 477-491.
29. Curren, R., Liu, N., Marsh, D. & Rose, K. (2016). Equitable Development as a Tool to Advance Racial Equity. Government Alliance on Race and Equity. GARE-Equitable-Development.pdf (racialequityalliance.org)
30. Ibid, 5.
31. Curren, R., Liu, N., Marsh, D. & Rose, K. (2016). Equitable Development as a Tool to Advance Racial Equity. Government Alliance on Race and Equity. GARE-Equitable-Development.pdf (racialequityalliance.org)
32. *Redlining Louisville: Racial Capitalism and Real Estate*. Retrieved from *Redlining Louisville: Racial Capitalism and Real Estate* (arccgis.com), n.d.
33. *Seattle 2035 Equity Analysis*. Retrieved from [URL: <https://www.seattle.gov/Documents/Departments/OPCD/OngoingInitiatives/SeattlesComprehensivePlan/2035EquityAnalysisSummary.pdf>], n.d.
34. Ibid.
35. *City of Chicago Departments Racial Equity Goals*. Retrieved from *REL Goals.pdf* (chicago.gov), n.d.
36. Curren, R., Liu, N., Marsh, D. & Rose, K. (2016). Equitable Development as a Tool to Advance Racial Equity. Government Alliance on Race and Equity. GARE-Equitable-Development.pdf (racialequityalliance.org)
37. *Equitable Development Data Explorer*. Retrieved from *Map - NYC Equitable Development Data Explorer*, n.d
38. Ibid.
39. Ibid.
40. Ibid.
41. *Affirmatively Furthering Fair Housing Assessment and Submission Guide*. March 2021. Retrieved from 7716dd5f5053-464c-86bc-26c4dd1de28b (bostonplans.org).
42. Ibid.
43. Ibid.
44. *Community Engagement Systems in Three Cities*. April 2017. Retrieved from MergedFile (macgrove.org).
45. Ibid.
46. Ibid.
47. *Affirmatively Furthering Fair Housing Assessment and Submission Guide*. March 2021. Retrieved from 7716dd5f5053-464c-86bc-26c4dd1de28b (bostonplans.org).
48. Beatty, Alison, and David Foster. "The Determinants of Equity: Identifying Indicators to Establish a Baseline of Equity in King County." 2015.