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## NOTES

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# INCENTIVIZING LOCAL REFORM AND URBAN RENEWAL DURING AN ECONOMIC CRISIS

*Christian J. Ascunce\**

### INTRODUCTION

*“We’ve reached the limits of suburban development: People are beginning to vote with their feet and come back to the central cities.”*

*–Shaun Donovan<sup>1</sup>*

More and more people, especially young people, are choosing to live in central cities instead of the surrounding suburbs. In the largely free market system for housing within a metropolitan area, suburban localities have traditionally dominated the competition. But with a new generation and a recession times are changing. The question becomes, can local city governments finally compete with their suburban counterparts in the market battle for desirable, long-term residents, and if so, how?

Local governments control three major policy areas: education, land use, and law enforcement.<sup>2</sup> Only in these areas can local governments affect the competition for residents. In the ideal world, all localities would produce a strong education system, affordable housing, and effective law enforcement to keep the residents of each local-

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1 Secretary of Housing and Urban Development, quote available at: <http://www.seattlepi.com/local/connelly/article/As-suburbs-reach-limit-people-are-moving-back-to-885858.php>.

2 See Nicole Stelle Garnett, *Restoring Lost Connections: Land Use, Policing, and Urban Vitality*, 36 OKLA. CITY U. L. REV. 253, 254 (2011).

ity well-educated, sheltered, and safe, at least at some satisfactory baseline level, but that is not reality. In reality, each government depends on its constituents for tax revenue and many residents, especially in the current economic crisis, cannot afford seemingly basic amenities. Acknowledging the dependency of residents for revenue as an issue, localities across the country have attempted many different reform programs in education, land use, and law enforcement. These reforms can be at the federal level, the state level, or the local level.<sup>3</sup> Academics and politicians alike hotly debate the effectiveness of reforms in each of these categories.

Frequently absent from the discussions on urban reform are the motivations (or lack thereof) of the government actors actually implementing the reforms. For example, providing mixed-income housing may address economic and racial segregation most effectively in cities, but without additional incentives developers will not provide mixed-income housing (privately or publicly) because mixed-income developments are not as economically profitable. Effectiveness is only one half of the equation and an effective reform means nothing without the incentives required to motivate political and economic actors to implement it. Therefore, attempts at successful reform must not only consider effectiveness but also incentives. This Note considers the effectiveness of various education, land use, and law enforcement reforms *and* the political and economic incentives guiding government action, concluding that law enforcement reforms provide the best, and only tenable, strategy for cities looking to attract more “desirable” residents.

Part I lays the foundation for a public choice analysis of local governance and inter-locality competition for residents. It discusses the predictive accuracy of the Tiebout hypothesis and outlines the inefficiencies and inequalities that currently result from a free-market localism approach.

Next, Part II addresses some of the major societal trends currently occurring and explains why these trends are leading more people to live in cities. From changes in preference, to the availability of jobs, to the opportunity to buy cheap urban land, more and more residents choose city life over suburban life. Nevertheless, the long-

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<sup>3</sup> This Note primarily focuses on local reform efforts. While higher-level reform efforts are undoubtedly helpful and sometimes necessary, they also reduce local autonomy and many currently face budget cuts. Further, higher-level programs lack the flexibility to meet the diverse needs of multiple localities. Therefore, local efforts present a vital mechanism for reform.

term success of cities and the ability to achieve permanent and lasting urban reform will depend on keeping residents in the city.

Part III addresses the three main areas where local governments govern: education, land use regulation, and law enforcement. For each area, I explain ways which local governments can make their locality more attractive to prospective residents. Part III details the many steps that have been taken to address concentrated poverty and crime in U.S. cities and why none have been truly successful. While many programs and policy decisions do provide benefits on some level, all fall short on three main fronts—integrating the urban poor with the affluent, improving city public services, and making the city a more attractive place to live. Further, the recession and budget crisis reduce funding to even lower levels. Federal subsidy programs, like HOPE VI, are facing budget cuts, which may force cities to develop independent local reforms. Because city governments will strive to act in their own self-interest in enacting reforms, Part III also considers the political and economic incentives influencing local government action.

Finally, Part IV argues that political and economic incentives dictate pursuing preventative policing measures under a locality's law enforcement authority as the first and most vital step in revitalizing America's cities. By making cities safer and more orderly, metropolitan residents will be more likely to move to and remain in the city. If cities can manage to attract affluent residents and keep them beyond their time as young professionals, cities will benefit from additional community stability and substantially greater tax revenues that can be spent on education, land use planning, and other aspects of local reform.

## I. LOCALISM AND THE PROBLEM OF INCENTIVES

A proper approach to reforming a specific local government within a metropolitan area begins with a wide examination of how the multiple municipalities within a region or metropolitan area interact. Charles Tiebout provided the foundational model for how these interactions naturally occur.<sup>4</sup> However, despite the great value of the Tiebout hypothesis in predicting individual and government action,<sup>5</sup> his

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4 Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

5 See Michael Howell-Moroney, *The Tiebout Hypothesis 50 Years Later: Lessons and Lingering Challenges for Metropolitan Governance in the 21st Century*, 68 PUB. ADMIN. REV. 97, 98 (2008) (“[T]he predictive validity of Tiebout’s insight into the nature of community homogeneity in metropolitan areas is almost beyond dispute.”). Tiebout’s theory

model results in many inefficiencies in the provision of public goods and the distribution of wealth within a region. This section first explains Tiebout's localism model and its benefits; then it discusses negative consequences resulting from Tiebout's model.

### A. *The Tiebout Hypothesis and Localism*

Tiebout reasoned, under a number of assumptions, that localities will compete for residents or "consumer-voter[s]."<sup>6</sup> Localities desire to attract residents because they provide the funding for local projects in the form of tax revenue. All else equal, consumers will vote with their feet by choosing to live in the locality that best fits the consumer's preferences.<sup>7</sup> Using Tiebout's assumptions, localities differentiate themselves through the provision of public goods (e.g. public schools, public transportation, parks, zoning laws, and law enforcement).<sup>8</sup>

If accurate, Tiebout's hypothesis offers a desirable outcome because it leads to the most efficient provision of public services. Instead of one central government providing public resources, a group of local governments provide a variety of public resources, allowing the consumer to choose to live in the locality that best fits his demand for public goods.<sup>9</sup> Public choice theorists praise a free market system of competing local governments because it provides more options to consumers and allows people to get the most out of their taxes.<sup>10</sup>

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loses some of its predictive value in more rural areas or on a bigger scale because the assumption of free mobility becomes more difficult to satisfy. For the purposes of describing metropolitan areas (the subject of this Note), the predictive value of Tiebout's theory remains significant because movement within the many localities within a metropolitan area is not costly.

6 Tiebout, *supra* note 4, at 418.

7 *Id.*

8 *Id.*

9 *Id.*

10 David J. Reiss, *First Principles for an Effective Federal Housing Policy*, 35 BROOK. J. INT'L L. 795, 803 (2010) ("Government interference in the markets exacerbates problems in the marketplace and causes the free market to take longer to correct itself. We believe in the free market as the best tool to sustained prosperity and opportunity for all. We encourage potential buyers to work in concert with the lending community to educate themselves about the responsibilities of purchasing a home, condo, or land.").

### B. *Inefficiencies Created by a Localist Approach*

Opponents of localism critique the regional inefficiencies it creates by allowing exclusionary zoning. Exclusionary zoning can be defined as zoning which effectively prevents a class of people from becoming members of the locality.<sup>11</sup> Practically speaking, all zoning is exclusionary.<sup>12</sup> However, exclusionary zoning becomes problematic when it prevents the free mobility that Tiebout's model assumes.<sup>13</sup> In today's society, exclusionary zoning most often occurs in the form of affluent suburban communities excluding lower socioeconomic classes, especially the urban poor, from moving into suburban neighborhoods. Such policies and zoning regulations fuel the creation of concentrated pockets of poverty, typically in inner cities, but increasingly in suburban spaces as well.<sup>14</sup> Ever since the "white flight" of the mid-20th century, much of local government policy debate and action has centered on creating greater economic integration, either by

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11 Exclusionary zoning can be used to exclude any number of different groups from those less wealthy to those of a different race to college students. See David D. Troutt, *Katrina's Window: Localism, Resegregation, and Equitable Regionalism*, 55 *BUFF. L. REV.* 1109, 1158 (2008) ("Localism is . . . a post-war instrument of economic segregation, and economic segregation is nearly always a post-civil rights proxy for racial segregation."); see also *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (deciding that a local ordinance excluded college students from a neighborhood through a zoning law prohibiting more than two unrelated people living together was constitutional).

12 For example, a zoning ordinance prohibiting homeowners from building more than two stories on their homes excludes those homeowners who desire three story homes.

13 Tiebout, *supra* note 4, at 419 (assuming that "[c]onsumer-voters are fully mobile and will move to that community where their preference patterns, which are set, are best satisfied."). On the other hand, Tiebout also assumes that communities have an optimal population size. Once that population is reached they seek to exclude additional residents through zoning laws, among other things. *Id.* at 419–20. In other words, some exclusion is necessary and beneficial for localities. See also Alexandra M. Greene, Note, *An Examination of Tiebout Sorting and Residential Segregation Through a Racialized Lens*, 8 *CONN. PUB. INT. L.J.* 135, 145 (2008) ("For the vast majority of consumer-votes in the United States, residential mobility is not just a privilege, but an unattainable dream.").

14 See Elizabeth Kneebone et al., *The Re-Emergence of Concentrated Poverty: Metropolitan Trends in the 2000s*, METRO. POL'Y PROGRAM (Nov. 2011); Sabrina Tavernise, *Outside Cleveland, Snap Shots of Poverty's Surge in the Suburbs*, N.Y. TIMES, (Oct. 24, 2011), [http://www.nytimes.com/2011/10/25/us/suburban-poverty-surge-challenges-communities.html?\\_r=18&hp](http://www.nytimes.com/2011/10/25/us/suburban-poverty-surge-challenges-communities.html?_r=18&hp); Peg Tyre & Matthew Phillips, *Poor Among Plenty: For the First Time, Poverty Shifts to the U.S. Suburbs*, NEWSWEEK, Feb. 12, 2007, at 54.

attracting the affluent back to urban centers<sup>15</sup> or increasing the mobility of the urban poor.<sup>16</sup>

In one sense, economic segregation is exactly what Tiebout desires. He specifically argues for sorting based upon preferences,<sup>17</sup> and often preferences for public services are influenced by income.<sup>18</sup> For example, one group of individuals may prefer that the local government use tax dollars to construct a bike path. At the same time, another group of individuals may not be able to afford bicycles and therefore would strongly prefer that their tax dollars not be used for a public service from which they cannot benefit. In other words, sorting by preferences will often be strongly correlated with sorting by income. No inherent societal wrong occurs purely by sorting based on income. People should be allowed to live in a neighborhood with other individuals of similar socioeconomic status if they so desire. Additionally, as exemplified above, it would be inefficient to provide public services only desired by the upper class for all people. The flip side also holds true. It would be inefficient to provide public services such as public housing or Legal Aid clinics to wealthier residents. So, theoretically, economic segregation can facilitate a more efficient provision of public services, allowing residents to maximize benefits received from their tax dollars.

While localities may operate more efficiently in a world of economic segregation, society does not. Those individuals left with no choice but inner-city ghettos find themselves in situations that are difficult to overcome due to the lack of infrastructure. Without sufficient local provision of public services residents struggle to gain the necessary resources to move away into more stable and adequate localities.<sup>19</sup> Professor Richard Briffault summarizes the current situation of so many struggling inner city localities:

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15 For example, the federal government's HOPE VI program subsidizes urban redevelopment. *See infra* Part III.B.

16 For example, the federal government's Section 8 vouchers subsidize monthly rents for low-income residents, giving them greater residential mobility. *See infra* Part III.B.

17 Tiebout, *supra* note 4, at 418.

18 *See* Edwin S. Mills & Wallace E. Oates, *The Theory of Local Public Services and Finance: Its Relevance to Urban Fiscal Zoning Behavior*, in *FISCAL ZONING AND LAND USE CONTROLS* 5 (Edwin S. Mills & Wallace E. Oates eds., 1975) ("Once we recognize that the demand for public services is systematically related to income, we see that the Tiebout model implies powerful tendencies toward segregation by income level.").

19 *See* MELISSA FAVREAU, *DISCRIMINATION AND ECONOMIC MOBILITY* 11 (2008), available at [http://www.urban.org/UploadedPDF/1001156\\_Discrimination.pdf](http://www.urban.org/UploadedPDF/1001156_Discrimination.pdf) ("[M]any public institutions and services [that are] assumed to have close links to life

These localities typically suffer disproportionately from higher crime, deteriorated structures, aging infrastructure, greater congestion, and a range of social ills. The presence of poor people in a locality tends to drive up the per capita cost of local services. These areas, thus, have greater spending needs but less revenue-raising capacity than more affluent localities. Taxpayers in localities with large concentrations of the poor are likely to be subject to higher tax rates, to receive lower quality basic services, and to have a greater incentive to exit—which places an even greater tax burden on those who are left behind.<sup>20</sup>

Without the income or property to provide a reliable tax base, residents of poor localities are unable to fund essential public services, such as schools, and the community falls into a state of disorder. Under Tiebout's sorting model, presumably no resident prefers to live in such a community, but budget constraints and exclusionary zoning in wealthier localities make it impossible for many residents to live anywhere else.<sup>21</sup>

Neglected localities quickly become concentrated pockets of poverty within a region and hotspots for criminal activity. Concentrated pockets of poverty and high crime, which are currently rising in number and spreading to the suburbs,<sup>22</sup> cause many negative consequences, including substantial spillover effects into surrounding localities.<sup>23</sup> In other words, surrounding localities suffer negative externalities caused by concentrated pockets of poverty within the metropolitan area. The density of cities only adds to the impact of spillovers. Concentrated pockets of poverty and crime also lead to significant consequences for society as a whole.<sup>24</sup> Society suffers a loss in human capital,<sup>25</sup> democracy suffers a decrease in informed decision-making because of lack of knowledge and education,<sup>26</sup> and individu-

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chances and thus income mobility, such as public schools, are so tied to place of residence . . .").

20 Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1137 (1996) (citations omitted).

21 See Greene, *supra* note 13, at 145 ("[M]any consumer-voters are unable to meet the financial demands required to live in *any* community in the United States.").

22 See Kneebone et al., *supra* note 14, at 8–9; Tavernise, *supra* note 14.

23 Greene, *supra* note 13, at 147 n.73.

24 See *id.* at 145–47.

25 *Id.* at 146; see also Mary Campbell et al., *What Does Increased Economic Inequality Imply About the Future Level and Dispersion of Human Capital?*, RUSSELL SAGE FOUND. 1, 20 (2004).

26 See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985 (2000); Greene *supra* note 13, at 146.



als already subject to the hardships of poverty suffer an increase in violence and crime.<sup>27</sup>

In addition, the problems of economic segregation are often amplified when the majority of residents living in a neglected locality are minorities. Numerous sociological studies note the detrimental effects of racial and ethnic segregation.<sup>28</sup> Further, the Supreme Court has recognized the negative ramifications of racial segregation.<sup>29</sup> Potentially most damaging are the negative social perceptions segregation creates among different races.

Finally, urban sprawl and related inefficiencies directly result from competing local governments. Each locality seeks to reach the optimal population size.<sup>30</sup> Once obtained, local governments attempt to exclude new residents so they can continue to produce the optimal provision of public services.<sup>31</sup> The result: residents seeking the suburban lifestyle must move further from the inner city because they are excluded from the already existing suburbs.<sup>32</sup> The problematic nature of urban sprawl is well documented elsewhere, but some of the consequences include greater infrastructure costs, increased travel times and traffic, and more pollution.<sup>33</sup>

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27 See Greene, *supra* note 13, at 146. Impoverished individuals may turn to deviant or illegal activities to earn income. See Michael H. Schill, *Comment on Smart Growth and Affordable Housing* (by Richard P. Voith & David Crawford), in *GROWTH MANAGEMENT AND AFFORDABLE HOUSING* 102 (Anthony Downs ed., 2004). When concentrated in a specific community, similar views within the community reinforce these illicit behaviors. *Id.*

28 See, e.g., David M. Cutler & Edward L. Glaeser, *Are Ghettos Good or Bad?*, 112 Q.J. ECON. 827, 827 (1997) (stating that “blacks in more segregated areas have significantly worse outcomes than blacks in less segregated areas”); Herbert Garfinkel, *Social Science Evidence and the School Segregation Cases*, 21 J. POL. 37, 48 (1959) (“Segregation in public schools is psychologically detrimental to the children of both races . . .”).

29 See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.”).

30 Tiebout, *supra* note 4, at 419 (assumption six).

31 *Id.* (assumption seven). Localities use a number of techniques to prevent new residents from moving into their jurisdiction, including zoning laws. *Id.* at 420; see also LEE ANNE FENNELL, *THE UNBOUNDED HOME* 3 (2009) (“Unable to physically fence out unwanted impacts or fence in desired amenities, households collectively turn to property mechanisms like zoning and covenants . . .”).

32 See Howell-Moroney, *supra* note 5, at 103 (“[L]ow-density zoning serves to restrict opportunities for meeting future housing demand, causing a repetitive cycle in which new development occurs even further out on the urban fringe, where land is least expensive.”).

33 Each locality must provide its own public services including streets, sewers, and schools. The more geographically spread out, the more money localities must spend

Clearly, detrimental social effects occur when local governments compete against each other for desirable residents. On the other hand, competing localities produce desirable outcomes such as consumer choice, political responsiveness and accountability and local autonomy. Regardless of the normative debates over localism, the current structure of independent local governments is unlikely to disappear.<sup>34</sup> This conflict raises a significant policy dilemma: “how to address the intrametropolitan inequalities resulting from the fragmented distribution of regulatory authority among multiple local jurisdictions without undercutting the beneficial effects of interjurisdictional competition.”<sup>35</sup>

Most of the problems in a Tieboutian approach boil down to an incentives issue. Localities possess little to no political or economic incentive to accommodate lower-income residents. Not only do lower-income residents contribute less to the community financially, they also cost the community more financially. Lower-income residents typically possess less valuable property and therefore pay a smaller amount of property taxes. Further, lower-income residents typically depend on greater provision of public goods (e.g. public housing, food banks, and welfare). Unfortunately, the incentives issues go even deeper, to the individuals of the community.

When consumers purchase a home, rationally they want to maximize its value. The motivations to do so are magnified by the fact that for most people, their home is their most valuable possession.<sup>36</sup> Unlike most other goods, consumers actually possess the ability to increase the value of their home not only by replacing the roof and planting trees and shrubs, but also by lobbying local politicians to implement policies that achieve that goal.<sup>37</sup> A house’s value depends greatly on the surrounding area and the public services provided by the locality.<sup>38</sup> Often homeowners can transform these factors in their

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simply to provide for the entire sprawling locality. Also, greater commuting times include the opportunity cost of lost time and productivity.

34 See Howell-Moroney, *supra* note 5, at 105.

35 Nicole Stelle Garnett, *Unbundling Homeownership: Regional Reforms from the Inside Out*, 119 YALE L.J. 1904, 1907 (2010).

36 See Jack C. Harris, *Your Home as an Investment*, 1613 TIERRA GRANDE, Apr. 2003, at 2, available at <http://recenter.tamu.edu/pdf/1613.pdf>.

37 See FENNELL, *supra* note 31, at 13. Fennell explains that this problem exists because in the context of home ownership, individuals are both “market and political actors—consumers and voters.” *Id.* at 34.

38 See *id.* at 25 (“Buying a home means buying much more than a structure—it also means buying a set of near neighbors, a neighborhood living environment, a particular degree of proximity to points of interest . . . , a bundle of services and amenities provided by the local jurisdiction . . . , and a political and social address.”).

favor. One way residents achieve this end is by excluding lower-income residents.<sup>39</sup> Fewer low-income residents and more high-income residents means either lower tax rates producing the same revenue or identical tax rates producing greater revenue, which translates into better public goods, such as better public schools. Additionally, self-interested residents seek to avoid negative “participation effects.”<sup>40</sup>

Thus, lower-income residents are more costly to local governments and local residents. They cost local governments more money and they prevent local residents from receiving better public services and maximizing the value of their home. Self-interested localities have no incentive to compete for the poor. Nevertheless, the poor must reside *somewhere*. For the most part, that somewhere is the inner city, in inadequate housing, with weak school systems and high crime rates. Society will only correct these inequities when local governments possess the incentives to provide for lower-income residents.

## II. CHANGING PREFERENCES: THE PRIVATE MOVEMENT TOWARDS CITY LIVING

As explained in the earlier discussion of the Tiebout Hypothesis, consumers choose the locality in which to live based on their preferences for public goods. For many years, cities have been fighting a losing battle in the competition for “desirable residents”<sup>41</sup> because desirable residents often prefer the public goods available in suburbs to the ones available in cities.<sup>42</sup> Recently though, more desirable residents choose city localities over their suburban counterparts because of changing individual preferences that favor city living. If city governments ever wish to compete with suburban governments for desirable residents (and the corresponding higher tax revenue), they must take advantage of the unique opportunity presented by current societal preferences. This section briefly covers the history of and preference for suburban life, the reasons for growing interest in city life, and the necessity of city government action to capitalize on this change.

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39 The creation of certain zoning laws (e.g. prohibitions on multifamily housing), can effectively price lower-income residents out of the community due to an inability to afford a single-family home.

40 See Charles Clotfelter, *The Private Life of Public Economics*, 59 S. ECON. J. 582, 582–84 (1993).

41 “Desirable residents,” in the context of this Note, means residents who will own valuable property, pay higher taxes, and cost the locality less money.

42 See Clotfelter, *supra* note 40, at 580–83.

### A. *Traditional Preference for Suburbs*

Since the mid-1800s, suburbs have been a more desirable living location.<sup>43</sup> The prospect of a bigger, freestanding home with a yard became the dream of anyone who could afford it. As one author described it, “[a] separate house surrounded by a yard is the ideal kind of home.”<sup>44</sup> In the early 1900s, population numbers made the trend clear—wealthy, powerful, desirable citizens were calling the suburbs home.<sup>45</sup> The preference for and movement to the suburbs quickly grew into an unstoppable demographic phenomenon.<sup>46</sup> Starting in 1950 eighteen of the United States’ twenty-five largest cities suffered a net loss of population for three consecutive decades.<sup>47</sup> Meanwhile the suburban population more than doubled.<sup>48</sup> These demographic trends made the United States the first nation-state in the world to claim more suburban residents than urban ones.<sup>49</sup> Even before World War II, Seward Mott described the force of American suburbanization: “Decentralization is taking place. It is not a policy, it is a reality—and it is as impossible for us to change this trend as it is to change the desire of birds to migrate to a more suitable location.”<sup>50</sup>

The traditional preference to flee urban centers for suburban communities has historically placed city governments at a distinct disadvantage in competition for desirable residents under the Tiebout model. As Ralph Rossum noted, the preference for suburban life is a trend “that no amount of government interference can reverse.”<sup>51</sup> The continued dominance of the suburban lifestyle and inability of cities to attract desirable residents seem to support Rossum’s assertion—the government cannot change individual preferences, at least not enough to significantly affect choice of living decisions. However, if preferences were to change naturally, local city governments could certainly adjust policies to better capture new preferences.

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43 See generally KENNETH T. JACKSON, *CRABGRASS FRONTIER* (1985) (describing and analyzing the suburbanization of the United States).

44 *Id.* at 45 (quoting MARY LOCKWOOD MATTHEWS, *ELEMENTARY HOME ECONOMICS* (1931)).

45 *Id.* at 275. Newark, New Jersey provides an example of a statistical movement to the suburbs consistent with most American cities. *Id.* More than forty percent of all attorneys who practiced in Newark lived in the suburbs by 1925. *Id.* By 1965 that number grew to seventy-eight percent. *Id.*

46 *Id.* at 190.

47 *Id.* at 283.

48 *Id.*

49 *Id.* at 283–84.

50 *Id.* at 190 (quoting Seward H. Mott, *The Case for Fringe Locations*, V *PLANNERS JOURNAL* 36, 38 (March–June 1939)).

51 *Id.* at 190 (quoting Ralph A. Rossum, *MEMPHIS PRESS-SCIMITAR*, Jan. 6, 1977).

### B. *Changing Preferences*

For the reasons discussed above, the suburban lifestyle is still desired by many, but more and more frequently cities are becoming more popular places to live.<sup>52</sup> Increasingly, affluent individuals choose to live within the city boundaries as opposed to the nearby suburbs.<sup>53</sup> Often these individuals are young professionals who desire the social amenities only present downtown.<sup>54</sup> These individuals are willing to sacrifice a yard and larger living space for benefits of city living.<sup>55</sup> Others see the city as an economic opportunity. In light of the recession and increasing unemployment rates, finding a job is more difficult than ever. Dense cities often provide more job opportunities than their suburban counterparts.<sup>56</sup> By attracting more employees, cities also attract more residents looking for close proximity to their workplace. Accordingly, the current economic crisis is pulling more young adults looking for employment into the city.<sup>57</sup>

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52 See *Supply, Supply, Supply, Don't Forget Supply*, FREE EXCH. BLOG (Mar. 1, 2011, 4:20 PM), [http://www.economist.com/blogs/freeexchange/2011/03/migration\\_trends](http://www.economist.com/blogs/freeexchange/2011/03/migration_trends) (“[T]he data from the past decade are consistent with an increase in demand for city life relative to suburban life.”); *Infographic of the Day: Are U.S. Cities Like Detroit Really Dying?*, FAST CO. (Apr. 11, 2011), <http://www.fastcodesign.com/1663580/info-graphic-of-the-day-are-us-cities-like-detroit-really-dying> (showing small population growth in the city center of Detroit).

53 See Garnett, *supra* note 2 at 253; Haya El Nasser, *Young and Educated Show Preference for Urban Living*, USA TODAY, Apr. 1, 2011, at 1A; Hope Yen, *White Flight? Suburbs Lose Young Whites to Cities*, ASSOCIATED PRESS (May 10, 2012), [http://abclocal.go.com/wpvi/story?section=news/national\\_world&id=7432443](http://abclocal.go.com/wpvi/story?section=news/national_world&id=7432443).

54 The growing appeal of cities to young people led to “cool city” movements, which strive to attract “yuppies” and young professionals. See generally RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* (2002) (chronicling the growth of creativity centered jobs and the impact of such a workforce on the values and tastes of American society); Nicole Stelle Garnett, *Affordable Private Education and the Middle Class City*, 77 U. CHI. L. REV. 201, 207 (2010) (“[W]hile a handful of cities may ‘find their sustenance as amusement parks for adults,’ reliance on ‘the lure of coolness’ dooms most cities to failure.” (quoting Joel Kotkin, *infra*)); Joel Kotkin, *Uncool Cities*, PROSPECT MAG. (Oct. 22, 2005), <http://www.prospectmagazine.co.uk/2005/10/uncoolcities> (noting the difficulties and hazards of attempting to cultivate urban prosperity through a culture-based economy);

55 See S. Mitra Kalita & Robbie Whelan, *No McMansions for Millennials*, WALL ST. J. (Jan. 13, 2011, 12:19 PM), <http://blogs.wsj.com/developments/2011/01/13/nomcmansions-for-millennials/>.

56 See Carol Morello & Teresa Tomassoni, *Census: D.C. Area Gains Young Adults in Recession*, WASH. POST, (Oct. 27, 2011), [http://www.washingtonpost.com/local/census-dc-area-gains-young-adults-in-recession/2011/10/26/gIQA8gijKM\\_story.html?hpid=z2](http://www.washingtonpost.com/local/census-dc-area-gains-young-adults-in-recession/2011/10/26/gIQA8gijKM_story.html?hpid=z2) (citing job prospects as one reason that that young professionals are choosing to live in Washington, DC as opposed to the surrounding suburbs).

57 See *id.*

Many individuals also view the neglected city as an economic opportunity for profit. Low city real estate prices are enticing more buyers into purchasing city land for new building projects.<sup>58</sup> In short, cities currently provide unique social and economic opportunities—opportunities the suburbs cannot provide. Nevertheless, cities will neither continue to attract new residents nor retain existing residents unless they provide public services that rival their suburban counterparts.<sup>59</sup>

Additionally, as poverty begins to spread into the suburbs, so do the problems that accompany it. More increasingly pockets of poverty appear in the once-insulated affluent suburban communities,<sup>60</sup> and the corresponding social consequences<sup>61</sup> are not far behind.<sup>62</sup> In some cases the detrimental effects harm the suburbs more than the city. For example, as more low-income city residents moved to the suburbs violent crime greatly increased in once safe neighborhoods.<sup>63</sup> These changes in the suburbs narrow the gap between the desirability of a suburban neighborhood versus an urban one.

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58 See Marc Fisher, *Anacostia River: A Small-Time Real Estate Developer Has Big Dreams*, WASH. POST, (Sept. 29, 2011), [http://www.washingtonpost.com/lifestyle/magazine/a-small-time-real-estate-developer-has-big-dreams-for-land-along-the-anacostia-river/2011/07/12/gIQaimhR7K\\_story.html](http://www.washingtonpost.com/lifestyle/magazine/a-small-time-real-estate-developer-has-big-dreams-for-land-along-the-anacostia-river/2011/07/12/gIQaimhR7K_story.html); *The Parable of Detroit: So Cheap, There's Hope*, ECON., (Oct. 22, 2011), <http://www.economist.com/node/21533407>.

59 Most notoriously cities are known for high taxes, high crime, and poor public education—problems typically less present in neighboring suburban localities. For many young single professionals those issues are outweighed by the social and economic benefits of the city, but that changes as soon as they start families and being raising children. Then the pull to the suburbs becomes significantly stronger. See Garnett, *supra* note 54, at 207.

60 See Tavernise, *supra* note 14. The spread of poverty into the suburbs is not necessarily caused by the inner-city poor moving into suburban communities. But see Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 FORDHAM URB. L.J. 877 (2006) (arguing land and housing policies should be used to promote integration and inclusionary developments rather than contribute to racial segregation of the poor). The recession and mortgage crisis are transforming once middle-class residents into impoverished ones. In other words, the actual residents in the suburbs may not be changing much, but the financial situation of those residents is changing.

61 See *supra* notes 22–27 and accompanying text.

62 See Hanna Rosin, *American Murder Mystery*, ATLANTIC MONTHLY (July 15, 2008), <http://www.theatlantic.com/magazine/archive/2008/07/american-murder-mystery/306872/> (describing the negative criminal effects of integrating low-income residents into suburban localities in Memphis, Tennessee).

63 *Id.* (arguing that crime spread throughout the suburbs is harder to enforce because “routine policing is more difficult”).

### C. *The Need for Immediate Action*

Cities face the distinct disadvantage of housing poorer residents with less funding at their disposal for the provision of public goods.<sup>64</sup> That fact likely will never change, or at least not in the foreseeable future.<sup>65</sup> Consequently, cities must provide for many impoverished residents, at least on a basic level. That burden puts cities at a great disadvantage in the free market competition for desirable residents because they must overcome the negative perceptions and realities of poor residents on a smaller per capita budget.<sup>66</sup> This unfortunate situation makes the fact that cities find themselves in a new position to attract “desirable” residents even more significant. Adding wealthier residents to a locality adds tax revenue and helps provide for better public services. City localities with notoriously high tax rates can lower them. City localities with notoriously bad public schools will have more money to spend on education. City localities with notoriously high crime rates will have more money to spend on law enforcement. More money for public spending could come at no greater time. Government on all levels is facing budget cuts<sup>67</sup>—cuts that are reducing the ability of localities to provide for their residents. More importantly, though, a societal migration back to cities represents the opportunity to better provide for poorer residents and reduce urban sprawl.

However, young singles preferring city life is not an entirely new phenomenon. The city presents a social life unparalleled by subur-

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64 *But see supra* notes 52–53 and accompanying text.

65 Conceivably, if cities can attract enough more desirable residents the poor will be bought out and displaced to other localities within the region. Down the road the large shift of low-income residents into the suburbs matched by a shift of affluent into the cities would result in a return to square one—significant living disparities including provision of public goods. The existing danger is that, if possible, cities hold a great incentive to displace poor residents with new wealthier ones. Nevertheless, this likely will not occur because the poor in particular depend upon the convenient amenities and opportunities in a dense urban locality.

66 Of course, cities are capable of earning higher tax revenues than suburbs, but doing so means higher tax rates, which cannot be paid by the poor and deter those who can afford it from living within the city.

67 *See, e.g.*, Brian Haas, *HOPE VI Program to Renovate Housing Projects Faces Cuts*, USA TODAY (Oct. 4, 2011), <http://www.usatoday.com/news/nation/story/2011-10-03/renovations-projects-face-budget-cuts/50648146/1>; Frank Main & Fran Spielman, *Police Union Blasts Proposal to Cut \$190 Million from Force*, CHI. SUN-TIMES (Aug. 31, 2011), <http://www.suntimes.com/7387096-417/mayor-vows-police-budget-cuts-wont-impact-number-of-beat-cops.html>.

bia.<sup>68</sup> The recurring problem is that once young city dwellers marry and have children, they place a higher value on the public education and safety provided by the suburbs, causing them to abandon city life for the stability of suburban dwelling.<sup>69</sup> But Generation Y<sup>70</sup>—those born roughly between 1980–2000—is different. Generation Y prefers urban settings at an astonishingly high eighty-eight percent.<sup>71</sup> Generation Y also brings new traits not characteristic of past generations. Unlike previous generations, Generation Y is more frequently postponing marriage and family.<sup>72</sup> Such uniqueness gives cities a distinct chance at an extended time frame to develop typically short-term residents into long-term or permanent residents.

If city governments do not capitalize on modern preferences for city living, they may never again see the opportunity to compete with suburban localities for desirable residents. With the next generation may come a shift back to suburban preferences. Given the effects of the economic crisis and the urban decay in most U.S. cities, both city governments and city residents need cities to find a way to keep new desirable residents. Without immediate action, thriving American cities may forever be a thing of the past.

### III. THE PUBLIC TOOLBOX: GOVERNMENT OPTIONS FOR LOCAL REFORM

Struggling city localities must act now to capitalize on the new-found willingness of residents to live in cities instead of suburbs. Local city governments can help affect this change through three main areas of control: education, land use, and law enforcement. Education reform fails as a solution because high-income residents and politicians possess perverse incentives to separate from and exclude low-income residents in the interest of higher-quality educa-

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68 See JACKSON *supra* note 43, at 279 (“American cities boast of concert halls, opera houses, ballet companies, museums, and shopping streets as distinguished as any in the world.”).

69 See Timothy Egan, *Vibrant Cities Find One Thing Missing: Children*, N.Y. TIMES (March 24, 2005), [http://www.nytimes.com/2005/03/24/national/24childless.html?\\_r=0](http://www.nytimes.com/2005/03/24/national/24childless.html?_r=0); Joel Kotkin, *Why America’s Young and Restless Will Abandon Cities for Suburbs*, FORBES (July 20, 2011, 10:52 AM), <http://www.forbes.com/sites/joelkotkin/2011/07/20/why-americas-young-and-restless-will-abandon-cities-for-suburbs/> (concluding that “[c]ities may still appeal to the ‘young and restless,’ but they can’t hold millennials captive forever”).

70 See Kalita & Whelan, *supra* note 55. Surprisingly, Generation Y is actually larger than the baby boomers by roughly four million. *Id.*

71 See *id.*

72 *Id.*



tion. Similarly, land use reform is not the solution because local governments, private developers, and local residents have the incentive to attract primarily high-income residents that provide greater profit and tax revenue. Law enforcement reform provides the best option for city governments trying to compete with surrounding localities because all involved parties—local governments and all local residents—benefit from better law enforcement.

### A. Education

Education is one of the most important powers delegated by states to local governments, and providing adequate education is an essential task local governments must accomplish. All fifty state constitutions, in fact, contain some form of an “education clause.”<sup>73</sup> Despite the importance of education, strong school systems remain absent in many U.S. cities, especially when compared to the suburbs in the same metropolitan area. Numerous public choice scholars cite this dearth of adequate school options as the driving force behind affluent residents choosing to live in suburban communities with better schools.<sup>74</sup> A dysfunctional education system harms both local governments and local residents. As one scholar notes, “[I]f a community is experiencing a downturn, tax revenues will drop, which, in turn, will affect school finances. As a school district becomes less desirable, wealthier households will exercise their exit option, and a greater concentration of low-income households may result.”<sup>75</sup> Therefore the current economic crisis and the urban flight over the years only act to compound the educational disparity occurring in American cities.

Popular local education reforms include intradistrict public school choice, charter schools,<sup>76</sup> magnet schools,<sup>77</sup> voucher programs,<sup>78</sup> and tuition tax credits. These programs largely involve

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73 Aaron Jay Saiger, *School Choice and States' Duty to Support "Public" Schools*, 48 B.C. L. REV. 909, 909 (2007).

74 See, e.g., Nicole Stelle Garnett & Richard W. Garnett, *School Choice, The First Amendment, and Social Justice*, 4 TEX. REV. L. & POL. 301, 341–44 (2000) (describing the failures of government run schools).

75 See Howell-Moroney, *supra* note 5, at 101.

76 See *Charter School Enrollment*, NATIONAL CENTER FOR EDUCATION STATISTICS, [http://nces.ed.gov/programs/coe/indicator\\_cse.asp](http://nces.ed.gov/programs/coe/indicator_cse.asp) (last visited Nov. 6, 2012) (“From 1999–2000 to 2009–10, the number of students enrolled in public charter schools more than quadrupled from 0.3 million to 1.6 million students. In 2009–10, some 5 percent of all public schools were charter schools.”).

77 See MAGNET SCHOOLS OF AMERICA, [www.magnet.edu](http://www.magnet.edu) (last visited Nov. 6, 2012).

78 See Scott Elliott, *Ind. School Voucher Program Cheered, Criticized*, INDIANAPOLIS STAR (Aug. 28, 2011), [http://usatoday30.usatoday.com/news/education/2011-08-28-Indiana-school-vouchers\\_n.htm](http://usatoday30.usatoday.com/news/education/2011-08-28-Indiana-school-vouchers_n.htm) (describing the effect of Indiana legislation allowing

increasing parents' ability to choose a school for their children, not leaving them stuck with their assigned school district.<sup>79</sup> In 2007, 46% of students had some choice among public schools and 16% attended a public school other than their assigned one, a 5% increase over the previous 14 years.<sup>80</sup> Additionally, more students began attending private school or home school.<sup>81</sup> From the perspective of cities trying to attract residents, school choice benefits localities with poorer school districts because residents can live in the locality, using its public services except for education, while their children can attend a better school. School choice also helps reduce the economic disparities present in many urban schools. As Professor Richard Garnett puts it, "[school choice] is essential to achieving equality of opportunity for American children, rich or poor."<sup>82</sup>

Besides school choice programs, many other programs, especially federal programs, focus on improving the overall educational quality and test scores throughout the country.<sup>83</sup> However, to date, these programs have been largely unsuccessful.<sup>84</sup> Further, federal programs detract from the local autonomy of city governments and do not address the specialized needs of a specific municipality.

Successful education reforms benefit localities, and society as a whole, in numerous ways. On a macro level, better-educated students make more informed decisions, enhancing the value and effectiveness of a democratic government.<sup>85</sup> Also, a more educated society allows the United States to better compete in the global economy, which would be a vital injection of life into a struggling economy. More integrated education systems also help to reduce the concerns about the motivation of children to learn, a point that the Supreme Court origi-

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"low- and middle-income families to use public funds to help pay private school tuition").

79 See *Fast Facts*, NATIONAL CENTER FOR EDUCATION STATISTICS, <http://nces.ed.gov/fastfacts/display.asp?id=6> (last visited Nov. 6, 2012).

80 *Id.*

81 *Id.*

82 Richard W. Garnett, *The Justice of School Choice*, WKLY. STANDARD, Dec. 13, 1999, at 36.

83 Two examples are the now infamous programs implemented by President George W. Bush (No Child Left Behind) and President Barack Obama (Race to the Top).

84 See Lindsey Burke, *Reducing the Federal Footprint on Education and Empowering State and Local Leaders*, BACKGROUND, HERITAGE FOUNDATION, June 2, 2011, at 2–4, available at [http://thf\\_media.s3.amazonaws.com/2011/pdf/bg2565.pdf](http://thf_media.s3.amazonaws.com/2011/pdf/bg2565.pdf); Jenni White, *The Failure of Education 'Reform'*, AMERICAN THINKER (July 2, 2011), [http://www.americanthinker.com/2011/07/the\\_failure\\_of\\_education\\_reform.html](http://www.americanthinker.com/2011/07/the_failure_of_education_reform.html).

85 See *supra* note 26 and accompanying text.

nally expressed in *Brown v. Board of Education*.<sup>86</sup> The success of children largely depends upon the infrastructure around them.<sup>87</sup> Currently, the educational systems in many cities place inner-city children at overwhelming disadvantages for the rest of their lives. Integrated and improved inner-city schools increase their potential for success. Further, the integration of school-aged children may work to end the social stereotypes engraved in so many adults that often prevent voluntary integration and association.<sup>88</sup>

Society undoubtedly benefits from the provision of better education to all its members, but such a boost in education comes at a cost—a cost many are unwilling to pay. Programs that pull students out of public schools in favor of private or charter schools, such as vouchers, reduce already slim public school budgets.<sup>89</sup> Educational reform in cities also must overcome participation effect issues in many inner-city schools. Even with better school options, students still must attend and participate in the educational process. That task can be difficult when students return to crime-ridden public housing projects as soon as school dismisses.

Even if cities and their residents can overcome these obstacles, the problem remains that no incentive exists for wealthy residents to integrate schools or to fund the schooling of others outside of their school district. Suburban enclaves provide strong public schools partly because the participating parents and children care about education and possess the political and economic influence to demand

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86 347 U.S. 483, 494 (1954) (“A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.” (citation omitted)).

87 See Howell-Moroney, *supra* note 5, at 101 (“[L]iterature on urban inequality has shown repeatedly that opportunity structures create and determine future generations’ chances for success.”).

88 See generally Mark Peffley et al., *Racial Stereotypes and Whites’ Political Views of Blacks in the Context of Welfare and Crime*, 41 AM. J. POL. SCI. 30, 30 (1997) (finding that whites’ strongly negative perceptions of blacks in the areas of crime and welfare become more favorable “when confronted with individuating information that clearly contradicts their stereotype”); Lincoln Quillian & Devah Pager, *Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime*, 107 AM. J. SOC. 717, 717 (2001) (exploring how “stereotypes are influencing perceptions of neighborhood crime levels”).

89 See Elliott, *supra* note 78 (quoting Indiana Superintendent Eugene White, “It simply means we are going to have to cut our budget another \$3 million.”).

excellent local provision of education.<sup>90</sup> Currently, city public schools do not come close to competing with suburban public schools, largely because the financing through tax revenue does not exist. The motivation for self-interested city governments to provide strong public education lies in attracting wealthier residents to raise families in the city. But wealthy residents want strong schools, which are not necessarily socio-economically integrated ones. Therefore, the incentive for local city governments is not to provide educational opportunities to the low-income residents who most need the reform. For this reason, education reforms do not offer a reliable mechanism for achieving the goals of city governments and their current residents (respectively, greater tax revenue and more equal opportunities).

### B. *Land Use*

The bulk of city reform efforts originate from a locality's land-use authority. Through zoning laws localities largely regulate how parties can use, develop, or alter land within their jurisdictions. Reform through land use benefits cities by eliminating undesirable land uses (such as blighted property) and replacing them with desirable ones.<sup>91</sup> Two main land use problems currently exist in most cities. One is the lack of adequate affordable housing; the other is the presence of abandoned and blighted property. Frequently, undesirable blighted properties are also the best housing options for poorer residents. Therefore the redevelopment of abandoned or blighted property often requires the demolition of residential homes owned or rented by some of the city's poorest residents. As such, redevelopment plans also typically involve some provision of affordable housing, either on site or at a different site. Unquestionably, redevelopment can transform blighted and abandoned properties into more attractive and desirable areas. Putting aside the issues of funding and property transactions, the problem becomes placement of the (usually poor) residents displaced by redevelopment. Since most low-income residents cannot afford to move from the inner city, city governments remain responsible for the heavy public burdens of the poor even after redevelopment of a blighted area. Conceivably it even worsens

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90 This is not to say that low-income residents do not desire strong education. They often do, but they do not possess the money or the political influence to effectively reform weak inner-city schools.

91 *See, e.g.,* *Berman v. Parker*, 348 U.S. 26 (1954) (holding as constitutional the District of Columbia Redevelopment Act of 1945, which exercised the power of eminent domain to redevelop large areas of the city for the purpose of eliminating slums and substandard housing).

the problem by improving one neighborhood at the cost of creating a greater concentration of poverty in different ones. In other words, redevelopment on its own fails to address the problems of concentrated pockets of poverty within city boundaries. Therefore, only the land-use reforms that include or are coupled with a sufficient and effective supply of affordable housing hold the potential of being successful.

Attempts at resolving the affordable housing crisis over the years have been numerous and varied. The first public housing projects in the United States began in the 1930's,<sup>92</sup> but lost favor in U.S. housing policy later in the 20th century as public housing projects turned into slums and ghettos. The federal government responded by launching HOPE VI in 1992, designed to foster redevelopment of public housing projects into mixed-income communities.<sup>93</sup> HOPE VI subsidizes destruction of deteriorated public housing projects and construction of new mixed-income communities, which integrate low-income residents with middle class and upper class residents.<sup>94</sup> The federal government provides additional assistance to low-income residents through Section 8, which awards housing vouchers that subsidize monthly rent.<sup>95</sup> In some instances these programs produce success stories,<sup>96</sup> but in others they left residents no better off and wanting more.<sup>97</sup>

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92 See United States Housing Act of 1937 (Wagner-Steagall Housing Act), Pub. L. No. 75-412, 50 Stat. 888 (1937) (codified as amended at 42 U.S.C. §§ 1404a-1440); SOC. SEC. ADMIN., OFFICE OF RES., NO. 13-11758, SOCIAL SECURITY PROGRAMS IN THE UNITED STATES (July 1997), available at <http://www.ssa.gov/policy/docs/progdesc/sspus/sspus.pdf>.

93 See Susan J. Popkin et al., URB. INST., *A Decade of HOPE VI: Research Findings and Policy Challenges* 1, 1 (2004), available at [http://www.urban.org/UploadedPDF/411002\\_HOPEVI.pdf](http://www.urban.org/UploadedPDF/411002_HOPEVI.pdf).

94 See *About HOPE VI*, U.S. DEP'T OF HOUSING & URB. DEV., [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/programs/ph/hope6/about#1](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/hope6/about#1) (last visited Nov. 2, 2012); see also Ngai Pindell, *Is There Hope for HOPE VI?: Community Economic Development and Localism*, 35 CONN. L. REV. 385 (2003) (describing the HOPE VI program in detail and then evaluating its effectiveness and future).

95 See *Housing Choice Vouchers Fact Sheet*, U.S. DEP'T OF HOUSING & URB. DEV., [http://portal.hud.gov/hudportal/HUD?src=/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](http://portal.hud.gov/hudportal/HUD?src=/topics/housing_choice_voucher_program_section_8) (last visited Nov. 2, 2012).

96 See, e.g., Doug Dalena, "Home Sweet Home" Stamford's HOPE VI Program Working!, Stamford Advocate (Jan. 8, 2007), StamfordAdvocate.com.

97 See, e.g., Judy Keen, *Stake Claimed on Chicago Housing Project*, USA TODAY (Dec. 2, 2009), [http://www.usatoday.com/news/nation/2009-12-01-housing-Lathrop-chicago\\_N.htm](http://www.usatoday.com/news/nation/2009-12-01-housing-Lathrop-chicago_N.htm) (discussing the resistance of some to proposed change).

Mixed-income strategies—through either vouchers or new developments—produce some significant benefits. Namely, they integrate income levels in a way that allows lower-income residents to take advantage of some of the benefits typically only higher income residents enjoy.<sup>98</sup> New mixed-income developments also attract more desirable residents into the city by providing new living spaces for the upper and middle class.<sup>99</sup> On the other hand, mixed-income strategies also leave some problems unresolved. For one, they force integration when neither the poorer residents nor the wealthier ones may want it.<sup>100</sup> Mixed-income strategies that require redevelopment condemnations also leave many low-income residents no better off and add to their hardship by taking their homes and making them move. For spatial reasons alone, not all low-income residents can be housed in new mixed-income developments. Additionally, residents must meet strict screening requirements and deal with long waiting lists that often exclude many of them.<sup>101</sup> Finally, even when low-income residents can be accommodated, meeting the diverse needs of an entire spectrum of incomes often proves to be a difficult task.<sup>102</sup>

Regardless, with federal budget cuts looming, localities need to find their own mechanisms for dealing with the affordable housing crisis. However, without the federal money to fund redevelopment projects, local governments cannot incentivize private builders and developers to build properties that also accommodate low-income residents. More significantly, local land-use reforms face almost insurmountable incentive problems. Given the relatively low price of city land, private developers have an incentive to buy and develop city land.<sup>103</sup> However, most developers desire to build luxury condos rather than affordable housing units, or even rather than a mix of the two.<sup>104</sup> Further, local governments would rather encourage private development of luxury condos than public development of affordable housing.<sup>105</sup> Public housing costs the government money while luxury

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98 See Matthew Shiers Sternman, *Integrating the Suburbs: Harnessing the Benefits of Mixed-Income Housing in Westchester County and Other Low-Poverty Areas*, 44 COLUM. J.L. & SOC. PROBS. 1, 2–3 (2010).

99 See *id.* at 11.

100 Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 UCLA L. REV. 983, 1010 (2010).

101 See *id.* at 1003–04.

102 See *supra* Part I.B (discussing how income affects which public goods residents desire in their communities).

103 See *supra* note 58 and accompanying text.

104 See, e.g., Fisher, *supra* note 58.

105 See John J. Delaney, *Addressing the Workforce Housing Crisis in Maryland and Throughout the Nation: Do Land Use Regulations That Preclude Reasonable Housing Opportu-*

homes provide the greatest economic value to a local government. Mixed-income housing presents a nice compromise between the two, but private developers and local governments receive much more profit from expensive and luxurious homes. To add another layer of incentive issues, most individuals prefer to live with others in a similar income bracket, meaning most wealthy individuals do not want to share living spaces with low-income residents (and similarly most low-income residents do not care to live with wealthier residents).<sup>106</sup> Finally local land-use reforms must overcome a practical concern—zoning laws are difficult to change.<sup>107</sup> The legislative process allows the possibility of zoning reform, but political and economic influences put a heavy burden on the reform process.<sup>108</sup>

In conclusion, local city governments do not possess the tools or the incentives to effectively address concentrated pockets of poverty through land use reforms. Even with federal funding, land-use reforms tend only to move the problem instead of address it—leaving the perception of cities as centers of poverty and crime, unsafe to live in and incapable of competing with the public goods of the suburbs. Therefore, cities need to look at other areas within their local authority to transform their urban localities into more attractive options for metropolitan residents.

### C. Law Enforcement

Historically, cities made substantial efforts toward keeping their citizens safe.<sup>109</sup> In the localist view, if residents do not feel safe in a locality, they will move to another. However, unlike many ancient cities, the greatest threat to stability and safety often lie in the deviant behavior inside a city's borders. Crime within a locality significantly affects how citizens view the locality as a potential living space.<sup>110</sup>

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*nity Based Upon Income Violate the Individual Liberties Protected by State Constitutions?*, 33 U. BALT. L. REV. 153, 176 (2004) (describing a “lack of political will” and noting the “failure of the political process to adequately address, much less resolve, the problem over the last twenty-five years”).

106 See Briffault, *supra* note 20, at 1140–41. Economically, a decrease in property price should occur to reflect the “downside” of living among a variety of income levels, but such a price decrease further lowers the incentive of a developer to build a mixed-income development in the first place.

107 See Garnett, *supra* note 35, at 1913.

108 *Id.*

109 See NICOLE STELLE GARNETT, *ORDERING THE CITY* (2010); JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 30 (1961) (“The bedrock attribute of a successful city district is that a person must feel personally safe and secure on the street among . . . strangers.”).

110 See Garnett, *supra* note 2, at 265.

High crime rates will likely encourage residents to choose safer neighboring localities. Therefore a locality's ability to reduce crime or the perception of crime greatly affects residential decisions. Through effective law enforcement strategies, local governments can reduce crime and make their locality more attractive to "consumer voters."

Cities traditionally struggle much more with crime than suburbs.<sup>111</sup> Between the 1960's and 1980's crime rose significantly in big cities.<sup>112</sup> Undoubtedly, this partially contributed to the middle class flight from cities and continues to frighten many residents when considering the city as a home.<sup>113</sup> But in recent years, violent crime in the United States has decreased substantially, especially in cities.<sup>114</sup> Many believe this decline led to a greater demand for city life among the middle and upper classes.<sup>115</sup> Many attribute the decrease in crime specifically to aggressive local law enforcement strategies.<sup>116</sup> Numerous programs exist that attempt to achieve the goal of better law enforcement;<sup>117</sup> however, the order-maintenance agenda in particular influences local law enforcement reforms.<sup>118</sup>

The order-maintenance agenda calls for a reduction of disorder—vandalism, begging, broken windows. Disorder signals accept-

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111 See Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City*, 43 URB. STUD. 1275, 1287 (2006) ("While crime rose everywhere in the U.S., the increase was concentrated in the big, dense cities and, by 1970 there was a powerful positive relationship between crime and city population."). Many different factors help explain this correlation. Cities present proximity and cheap transportation. *Id.* Cities also provide more opportunities by sheer density and population size. That population size also complicates the crime-solving process by increasing the suspect pool. *Id.* at 1288. Finally, the social breakdown in cities allow criminals a greater opportunity of "escap[ing] community sanctions." *Id.*

112 See *id.* at 1287.

113 Edward L. Glaeser & Joshua D. Gottlieb, *Urban Resurgence and the Consumer City* 19 (Harv. Inst. Econ. Res., Discussion Paper No. 2109) ("[T]here has been a long-standing connection between urban size and crime and during much of the 20th century, the breakdown in urban law and order served to deter the resurgence of the largest cities."); see also Julie Berry Cullen & Steven D. Levitt, *Crime, Urban Flight, and the Consequences for Cities*, 81 REV. ECON. & STAT. 159, 159 (1999) (finding a causal relationship between increases in crime and decreases in population).

114 Glaeser & Gottlieb, *supra* note 113, at 20–21.

115 See, e.g., *id.* at 20–22.

116 See *id.* at 2.

117 These programs include drug court, specialized police units, and stricter criminal laws.

118 For the landmark paper on order maintenance theory, see George L. Kelling & James Q. Wilson, *Broken Windows*, ATLANTIC MAGAZINE, (Mar. 1982), available at <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/>. After the publication of their paper, municipalities and townships enacted tens of thousands of order-maintenance policies. GARNETT, *supra* note 109, at 16.



ance of disorderly or deviant behavior, or at least apathy towards it. Therefore, in disorderly neighborhoods the costs of partaking in deviant behavior are minimal.<sup>119</sup> Proponents of order-maintenance argue that perception of general disorder in a neighborhood also leads to more significant and more violent crimes.<sup>120</sup>

In response to rising crime rates and in accordance with the order-maintenance agenda, many local governments began cracking down on lesser crimes—misdemeanors—which tend to signal disorder. Many police officers also became more present and involved in local communities, meeting with members of the community and patrolling neighborhoods by foot instead of by car. The judicial system also contributes to effective order-maintenance reform by successfully prosecuting disorder-signaling misdemeanors.<sup>121</sup>

However, public policing is not the only way to reduce disorder—private policing also plays an important role. Citizens can and do take their own steps to police and protect their neighborhoods.<sup>122</sup> Citizens likely possess even a stronger ability to protect their community than local law enforcement.<sup>123</sup> But several difficulties arise with private policing. Because policing benefits everyone in the community, the private efforts of one individual cost much more than the individual's

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119 Kelling & Wilson *supra* note 118 (explaining the domino effect of disorder one unrepaired window can cause).

120 See WESLEY G. SKOGAN, *DISORDER AND DECLINE* (1990).

121 By prosecuting crimes such as vandalism or panhandling the judicial system deters similar behavior in the future. The judicial system can also be used more innovatively to reduce disorder in cities. In Philadelphia, “blight court” is being used to penalize owners of abandoned or rundown property in the city. The court fines neglectful owners and can even confiscate the property. See Miriam Hill, *Philadelphia Cracking Down on Owners of Rundown Properties*, PHILA. INQUIRER (Oct. 27, 2011), [http://articles.philly.com/2011-10-27/news/30328056\\_1\\_property-values-vacant-properties-land-bank](http://articles.philly.com/2011-10-27/news/30328056_1_property-values-vacant-properties-land-bank).

122 See, e.g., Chris L. Jenkins, *In Ward 7, Men's Morning Patrols Aimed at Giving Kids 'Safe Passage' to School*, WASH. POST. (Sept. 15, 2011), [http://www.washingtonpost.com/therootdc/in-ward-7-mens-morning-patrols-aimed-at-giving-kids-safe-passage-to-school/2011/09/15/gIQA18IfVK\\_story.html](http://www.washingtonpost.com/therootdc/in-ward-7-mens-morning-patrols-aimed-at-giving-kids-safe-passage-to-school/2011/09/15/gIQA18IfVK_story.html) (describing the efforts of a group of men providing a presence in their neighborhood every morning to help reduce turf wars and bullying involving school-aged kids).

123 See JACOBS, *supra* note 109, at 31–32 (“[T]he public peace—the sidewalk and street peace—of cities is not kept primarily by the police, necessary as police are. It is kept primarily by an intricate, almost unconscious, network of voluntary controls and standards among the people themselves, and enforced by the people themselves. . . . No amount of police can enforce civilization where the normal, casual enforcement of it has broken down.”).

personal benefit.<sup>124</sup> Therefore citizens have an incentive to free ride, allowing their neighbors to bear the costs of policing while everyone enjoys the benefits of a safer, more orderly community. Additionally, private policing measures cost much more than public ones.<sup>125</sup> Finally, private policing measures can themselves signal the presence of crime in a community.<sup>126</sup> Regardless of the costs of private policing, crime rates declined over the years as order maintenance became a more prevalent policing strategy.

Still, many skeptics question the efficacy of order-maintenance strategies. Critics of the order-maintenance agenda question whether cracking down on lesser crimes to restore order actually reduces more violent crime.<sup>127</sup> Ironically, Kelling and Wilson, the founders of the broken windows theory, discovered data in their own studies supporting the critics.<sup>128</sup> Yet, Kelling and Wilson still argued that order-maintenance policing benefited communities and made them safer. They concluded that citizens fear crime, but they also fear disorder and order-maintenance strategies greatly reduce disorder.<sup>129</sup> Others argue that order-maintenance policing reduces the perception of crime, a beneficial result regardless of the actual affect on crime.<sup>130</sup>

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124 See Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 YALE L.J. 1165, 1195 (1996) (describing public order as an almost pure public good).

125 See GARNETT, *supra* note 109, at 133 (estimating private individuals collectively spend between \$160 billion to \$300 billion annually on security measures—more than the total U.S. law-enforcement budget).

126 See Garnett, *supra* note 2, at 262. Measures like home alarms, street walks, and extra locks on doors may lead others to believe that crime is prevalent and that individuals within the community are fearful. *Id.* Under the same reasoning, a greater police presence also signals the prevalence of crime, yet few would argue that a lesser police presence would help reduce crime in a troubled neighborhood. For example, many expensive homes contain security systems, not because crime is prevalent in the community but to protect the home from outsiders. Consequently, private policing measures remain necessary to prevent individuals and communities from being victimized.

127 Some critics also raise issues over police corruption and civil rights violations in the enforcement of crimes targeted by the order-maintenance agenda. See GARNETT, *supra* note 109, at 3. For the purpose of this Note, it will be assumed that order-maintenance policing strategies can be implemented without police corruption.

128 Kelling & Wilson, *supra* note 118 (noting that foot-patrols failed to reduce crime rates).

129 *Id.* (distinguishing between a fear of violent people or criminals and a fear of “panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, [and] the mentally disturbed”); see also James Q. Wilson, *The Urban Unease: Community vs. City*, 12 PUB. INT. 25, 27 (1968) (discussing how many feel that the urban problem largely stems from “a sense of the failure of community”).

130 See, e.g., GARNETT, *supra* note 109.

This is an important distinction. If residents perceive a locality as safe, they will be more likely to choose to live in that locality. At the same time, a low-crime locality that for some reason or another seems unsafe will be an unattractive option for potential residents. Therefore, even if order-maintenance strategies do not actually reduce crime, they still may benefit a locality in attracting residents.

The advantages of law enforcement reform are significant. By better policing a locality, or even specific neighborhoods within a locality, the whole locality becomes safer for current residents and more alluring to potential residents. In other words, both residents of a locality and politicians in charge of making policy decisions benefit from law enforcement reforms that increase either the actual or perceived safety of the community. Residents will be in favor of better policing because it results in a greater personal sense of safety and increased home values. At the same time politicians and local governments have an incentive to adopt law enforcement reforms because of the potential of gaining more affluent residents who will provide greater tax revenue.

Furthermore, law enforcement reform can take place with little additional spending, a crucial advantage over land use and education reform, especially during a recession. Land use reform involves significant spending because most proposals require development or redevelopment of a structure or area and often first require demolition of an abandoned or blighted property. Even if the government can contract development costs to a private party, the costs remain significant and buyers with that kind of funding in a recession remain rare. Law enforcement reforms on the other hand can be accomplished with little or no additional spending through reassignment and reallocation<sup>131</sup> However, police departments across the country face budget cuts so they must not only avoid spending additional funds for policing, but also manage to police with fewer financial resources.<sup>132</sup> Cities must work to prevent or minimize these budget cuts because, ultimately, law enforcement reforms provide an effective mechanism for turning undesirable cities into alluring urban centers.

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131 Main & Spielman, *supra* note 67 (describing how 750 police officers in Chicago were reassigned from doing desk work to performing beat patrols). “It’s not about more police officers. It’s about putting more police officers on the street . . .” *Id.*

132 See, *Is the Economic Downturn Fundamentally Changing How We Police?*, POLICE EXEC. RESEARCH FORUM (December 2010), <http://members.policeforum.org/library/critical-issues-in-policing-series/Econdownturnaffectpolicing12.10.pdf> (providing viewpoints from different police departments about the budget cuts they face and how they are reforming their policies accordingly).

## IV. THE ECONOMIC SOLUTION: CRIME REDUCTION

Currently, an inefficiently high level of demand for suburban life, particularly suburban public goods, exists. Many reforms focus on increasing mobility and choice, but the better solution is to boost city public goods.<sup>133</sup> In most cases, however, cities lack the incentives and the funding to do so. Local reforms aimed at providing better amenities to lower-income residents almost always fail because little incentive exists for local politicians to implement policies that almost exclusively benefit the smallest contributors, both economically and politically. Residents with money and political influence hold the power and prefer policies and programs that benefit them.<sup>134</sup> If wealthier residents are going to commit more money to the government in the form of taxes, they want to see that money turned back around to their benefit. That political influence and incentive directly obstructs local education and land use reform efforts. Therefore the greater incentive lies in tending to the wealthy. Absent some selfless higher calling to provide for those less fortunate,<sup>135</sup> education reforms and land use reforms do not provide enough benefits to those in power to incentivize their actual implementation. However, political and economic incentives are better aligned in the context of law enforcement reforms.

Law enforcement reforms significantly benefit all members of a locality, including the local government itself. High crime rates produce the greatest spillover effects.<sup>136</sup> Most communities within a city locality likely suffer few direct ramifications from poor schools or a lack of affordable housing occurring in other neighborhoods. However, the density and public transportation in cities allow criminals to move freely and quickly to other neighborhoods within the city (and even to the suburbs). Therefore all surrounding residents should rationally desire better law enforcement within a metropolitan area.

In addition, city governments will benefit financially and politically from an actual or perceived decrease in crime and increase in

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133 Howell-Moroney, *supra* note 5, at 102.

134 See Garnett, *supra* note 35, at 1913 (“[P]olitical actors respond to many incentives other than economic ones, especially the demands of politically powerful constituents, especially homeowners who . . . tend to demand overprotection.”).

135 Many would argue that one responsibility of government is to protect the rights of the least fortunate, but since the political and economic incentives weigh so heavily against the moral obligation, this rarely happens in the context of competing local governments.

136 See Gerald E. Frug, *City Services*, 73 N.Y.U. L. REV. 23, 76 (1998) (“The fear of crime and of high-crime areas touches the lives of everyone in the metropolitan region.”).

personal safety. Accordingly, cities should pursue law enforcement policies that at a minimum reduce the perception of crime. By providing a sense of safety, cities will immediately appeal to more residents. Current trends already indicate the correlation between crime reduction and city populations.<sup>137</sup>

Cities should particularly focus on preventive based law enforcement. Much of law enforcement efforts concentrate on responding to crimes—an essential function—but preventing crime in the first place comforts residents much more than knowing law enforcement will respond quickly when they are victims. Many of the order-maintenance policing strategies attempt to prevent crime and those policies should be continued, but policy makers and law enforcement officials should not limit themselves to the prevention of misdemeanors that signal disorder. All crime signals disorder and danger. Therefore seeking to directly prevent violent crime, whether through stricter prosecution and punishment of crime or some other method, is recommended for creating a greater residential draw to cities.

One advantage of law enforcement reform is that it provides a wide variety of strategies for reform. Depending on the city, or even the specific neighborhood, the best strategies may vary. In one neighborhood, an increase in foot patrols may be best, while another may need stricter laws and enforcement of vagrancy. Some scholars even propose reducing crime through architecture and environmental design.<sup>138</sup> Also, in some neighborhoods informal enforcement may be most effective, but in others a formal police presence may be necessary. A focus on law enforcement reform gives each city the flexibility to choose which strategy or combination of strategies works best for it.

Nevertheless, education and land use remain important components in a successful locality. Without proper school systems and land use laws cities will struggle to compete with suburbs over the long run. The idea behind better law enforcement policing strategies is that by achieving the ancient city goal of safety, cities will be reinvigorated

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137 See Elizabeth Kneebone & Steven Raphael, *City and Suburban Crime Trends in Metropolitan America*, BROOKINGS INST. (May 2011), [http://www.brookings.edu/~media/research/files/papers/2011/5/26%20metropolitan%20crime%20kneebone%20raphael/0526\\_metropolitan\\_crime\\_kneebone\\_raphael](http://www.brookings.edu/~media/research/files/papers/2011/5/26%20metropolitan%20crime%20kneebone%20raphael/0526_metropolitan_crime_kneebone_raphael).

138 See, e.g., Neal Kumar Katayl, *Architecture as Crime Control*, 111 YALE L.J. 1039 (2002) (explaining how architecture can be used as a mechanism for reducing and preventing crime); Edward H. Ziegler, *American Cities, Urban Planning, and Place-Based Crime Prevention*, 39 URB. LAW. 859 (2007) (expounding upon the field of “Crime Prevention Through Environmental Design” (CPTED)).

economically by attracting wealthier, more affluent residents.<sup>139</sup> With more money in both the private and public sector of the locality, more funding can be spent on school reform and the redevelopment of abandoned or blighted property. Additionally, successful law enforcement reform strengthens the current land use and educational systems. For example, by cracking down on crime, cities will reduce the negative participation effects occurring in schools and reduce one of the major problems associated with concentrated pockets of poverty. Education and land-use reform must not be forgotten, but the primary focus must be given to using law enforcement reforms to reduce crime. Out of the three main policy areas local governments can control, only law enforcement provides the initial incentives to produce action.

### CONCLUSION

Urban reforms consistently focus on how cities can be improved to benefit residents, but city governments, as self-interested actors, wish to benefit themselves. Both residents and city governments may benefit by enticing more desirable residents to live in the city instead of the suburbs. In the competition for desirable residents, the order-maintenance agenda puts cities on the right track. However, much more must be done to narrow the gap between the desirability of suburbs and cities. Cities must pursue aggressive policing strategies and look outside the order-maintenance agenda at ways to *prevent* crime. Crime reduction has already contributed to greater societal preferences for city life, particularly with younger individuals. If cities can attract more desirable residents away from the suburbs, they will be rewarded with greater tax revenues to fund land use and education reforms. As more wealthy residents move into city localities, they will gain a greater stake in the quality of city as a whole. With an increase in the number of residents with a long-term interest in their communities, cities can gain vibrancy and prosperity for years to come.

For the first time in decades, cities are uniquely situated to effect change. Cheap land in cities and a growing preference for the vibrancy and diversity of city living give cities a competitive advantage over suburbs. Cities do not yet provide the quality public services that many suburbs do, but by attracting residents with the allure of safer cities, the funding through tax revenues will increase. People must recognize that these changes will not occur overnight and maybe not

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139 See Eric Tucker, *DC on Pace for Fewer Than 100 Homicides in 2012*, YAHOO! NEWS (Nov. 23, 2012), <http://news.yahoo.com/dc-pace-fewer-100-homicides-2012-094716815.html>.

even over the course of a few years. The current disparity and inequality that exist because of metropolitan fragmentation cannot be solved quickly or easily. It starts with making cities safe again. With time, the rest will follow.