

Racial Justice, Zoning, and Housing Laws - Personal Reflections, Recommendations, & Resources

A compilation of information, explanations, recommendations and resources by Shelley Hamilton (former Fairfax Planning Commissioner)

Did you know that many of the land use policies, practices and “dog whistle” phrases still in use today were developed as intentional strategies to perpetuate segregation?

I didn't, until I read Richard Rothstein's "The Color of Law" and spent many hours researching the history of land use and housing policies.

I now see how my actions, as a former Town Planning Commissioner, perpetuated segregation in our town, especially in the development of our Town's first approved General Plan. I, like so many of us, have spent far too many years blinded in a “white-out” storm of skin color privilege and unconscious bias.

I believe that when I make a mistake it's important for me to recognize what I've done, inquire into and interrupt the damage, and move to repair the situation by taking responsibility. This is what we teach our children in school through the work our educators are doing with [Epoch Education's RIR protocol](#), and it's what we can do as a town to address the mistakes that we've collectively made in setting out policies and practices that perpetuate institutional racism.

Talking about and accepting responsibility for perpetuating institutional racism is messy and uncomfortable. My amazing colleagues and the incredible community leaders at Marin Promise Partnership have helped me in untold ways to be able to name and move through the discomfort of addressing difficult antiracism issues. I thank them for this gift and support.

So, having recognized and accepted the role I have played in perpetuating institutional racism in our town's land use policies and practices, I offer the following to interrupt the status quo and move us toward repairing the future.

Below are two key areas of consideration. While they share an integrated historical context, I would suggest separating them into two different bodies of action. The first consideration, regarding the use of the term “Neighborhood Character” in our General Plan, is focused on shifting language but does not involve making any material changes to policies or practices. Planning Commission action to amend the descriptive text in the General Plan by replacing a few vague references to “character” with more specific terms like “design aesthetic” or “human scale development” that more accurately communicate the existing meaning should not be controversial or complicated.

The second consideration, regarding exclusionary zoning, is more difficult and will include material changes to the General Plan, the Housing Element and Town Code. This discussion makes sense to have during the next amendment to the Town's Housing Element.

1) Residual Racist Language - “Neighborhood/Community Character”

After racist land use practices were outlawed, new language was created as a way to perpetuate and maintain the segregated residential patterns that were intentionally and legally created through policies and practices such as redlining, racial covenants, and racial zoning laws. Current laws prohibit further discriminatory practices, but they do not dismantle the damage that has been done, and in many instances, they perpetuate it by maintaining the status quo.

Aside from legal provisions, many terms and concepts are used to support, perpetuate and preserve current segregated land use patterns. Vague and subjective phrases like “neighborhood character” were intentionally developed as subtle (or not so subtle once you learn about their origin) racist “dog whistle” terms to protect white, privileged, segregated, residential patterns like the ones you see across Marin. The vague and nonspecific nature of this term, opens up interpretation to unconscious bias and unintended impacts.

Who can argue against the warm fuzzy feeling we have toward our “small-town” “village-like” “unique” “only in Fairfax” vibe? I love Fairfax and the community of people that call it home. But, now that I know that “neighborhood character” was created by zoning rooted in racial segregation, I’m no longer comfortable using this term and believe that, as a vague, stand-a-lone phrase, it should be eliminated from our Town’s vocabulary and more specifically from our General Plan.

I challenge us to look deeply and specifically into what we love about Fairfax so that we can replace this vestige of institutional racism with more accurate and direct descriptions of what we love about the look and feel of our town, because it certainly is not its overwhelming whiteness. To embark on this task I have attached a spreadsheet of all of the instances in our General Plan where the word “character” has been used and have identified alternative text where appropriate. I have also attached a pdf version of the General Plan with these instances highlighted in the text.

2) Exclusionary Zoning

[Exclusionary zoning](#) is the use of [zoning](#) ordinances in a manner that excludes from certain zoning districts persons protected by law^[1] from discrimination.^[2] As of the 2010s, zoning ordinances were standard in almost all communities, and occasionally the ordinances produce exclusionary zones. Exclusionary zoning was introduced in the early 1900s, typically to prevent racial and ethnic minorities from moving into middle- and upper-class neighborhoods. Municipalities seek to use zoning to safeguard the health, property, and public welfare by controlling the design, location, use, or occupancy of all buildings and structures by the regulated and orderly development of land and land uses. This may limit the supply of available

housing units, such as by prohibiting [multi-family residential](#) dwellings or setting minimum lot size requirements, which may deter racial and [economic integration](#).

Contemporary discussions of “Exclusionary Zoning” tend to ignore the racial history of land use planning and only focus on the current “color blind” economic inequities that continue to be perpetuated. This is done under the premise that anti-discrimination laws have “leveled the playing field” and therefore racial bias is no longer a factor. However, once the suburban real estate boom locked BIPOC individuals out of home ownership, they were also excluded from the huge generational wealth transfer system that has funded everything from new waves of home ownership to college educations funded through lines of credit (based on home ownership equity). Rebalancing the racialized impact of economically excluding BIPOC families from homeownership, without intentional affirmative action to compensate for the damage already done, will take generations.

Also at issue is the government’s right to determine the “character of the community” by regulating who and how built infrastructure is used. Zoning laws in the [Belle Terre et al. v. Boras et al. 1974](#) extended building code regulations beyond just health, safety, and external “look & feel” to occupancy and the characteristics of the “inhabitants,” in essence defining such things as a “family” and arbitrating assumptions around how many people sleep in each bedroom, or how many cars are allowed per person.

“Implicit within the case's ruling is permission for exclusionary zoning regulations to attempt preservation of identity in the context of family compositions. Thus, given the previous Village of Euclid decision, municipalities were now granted the right to legislate both external property and internal inhabitant characteristics.”

Because housing is so tightly tied to education - through local property tax funding - exclusionary zoning not only excludes BIPOC families from wealth creation through home ownership, but also systematically disenfranchises equitable access to educational opportunities.

While CA has already become a majority-minority state, that does not necessarily mean integration is a forgone outcome, especially if our land use regulations continue to perpetuate segregation.

Here are some examples of zoning regulations that serve to exclude:

- Density - #units per acre or #people per unit is typically the most well known mechanism for limiting development and access to affordable housing options.
- Heavily restrictive building code regulations that essentially require most modifications to come before a planning commission for a “variance” serve as exclusionary deterrents by either adding excessive cost to a building project or by opening up an approval process to “social forces” that can pressure governmental agencies to maintain the “status - white

- quo.” These regulations include such things as: Minimum Lot size, Floor Area Ratios, Set backs, height limits, minimum street front, “major remodel”, etc.

- Conditional Use Permit requirements, even for projects that meet all building code standards, are often used instead of “over the counter” or “by right” permitting to add an additional layer of review that, as mentioned above, opens projects up to additional costs and greater levels of potential implicit bias subjectivity.

Other related concepts

- [Opportunity Hoarding](#) - the compounding effect of preserving and protecting privilege. For example, limiting access to housing has a compounding effect on limiting access to education/schools, healthy food (i.e. food deserts), and job related social networks.
- Affirmatively Furthering Fair Housing - Under the 1968 Fair Housing Act, the 2015 rule requires cities and towns that receive federal funding to examine local housing patterns for racial bias and design a plan to address any measurable bias. The Trump administration repealed much of this Obama Era provision but the Biden Administration is set to swing the pendulum back in the opposite direction with his new Infrastructure plan.
- Disparate Impact - policies and practices that have the effect of discriminating, even without the explicit intention to discriminate. The supreme court ruling on *Texas Department of Housing and Community Affairs v The Inclusive Communities Project* set the precedent that disparate impact alone, even without proven intent to discriminate, was enough to prove discrimination against the Fair Housing Act’s protected classes of race, color, national origin, religion, sex, familial status, or disability. Section 804(a) of the Fair Housing Act makes it unlawful “[t]o refuse to sell or rent..., or otherwise make unavailable or deny, any dwelling to any person because of race, color, national origin, religion, sex, familial status, or handicap.” “Under the disparate impact standard, courts assess discriminatory effect and whether an action perpetuates segregation, whether the discrimination is justified, and whether less discriminatory alternatives exist for the challenged practice.” [National Low Income Housing Coalition](#)
- De Facto Segregation - like disparate impact, De Facto Segregation is segregation in practice, or “in fact,” rather than officially sanctioned or codified by intentional laws or policies. Intentional legal segregation is considered de jure segregation and it's no longer legally or constitutionally allowed. However, segregation continues to exist because our laws and policies maintain and perpetuate the status quo of the existing segregation that was originally intentionally created by racist laws and policies. Richard Rothstein asserts that there is no such thing as De Facto, or unintentional segregation, because it all originated out of intentional segregation laws and policies that is now held in place by existing laws and policies that, while unintentional, still maintain the originally intended segregation.

Books

- The Color of Law, Richard Rothstein
- The Sum of Us: What Racism Costs Everyone and How We Can Prosper Together, Heather McGhee ([Check out this presentation on May 4th to learn more](#))

Articles, Websites, and Videos

- [How Discussions of 'Neighborhood Character' Reinforce Structural Racism](#)
- [Livable Cities](#)
- [Berkeley & Sacramento Inclusionary Zoning Initiatives](#)
- [Oakland Case Study and Policy Review](#)
- [Lincoln Institute of Land Policy Place Database](#)
- [Color of Law "Now This" Video Summary](#)
- [Segregated By Design](#) - 17min Film based on Color of Law
- [Richard Rothstein, "The Color Of Law" \(with Ta-Nehisi Coates\)](#)
- [ABC's discussion with "Color of Law" author Richard Rothstein](#)
- [The Century Foundation Report on Segregated Housing Policy](#)