

RESILIENT CITIES AND THE HOUSING TRUST

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I. INTRODUCTION

In the 1970's, cities across the United States faced new obstacles due to the deterioration of public infrastructure. Public housing projects that were built through federal housing initiatives were reaching the end of their lives after less than twenty years of being in service.¹ Part of the reason they deteriorated so quickly was that the quality of the materials used in construction was limited by federal financing structures,² as well as overall skepticism about the “worthiness” of public housing as a public priority, leading lawmakers to promote the idea that, while public housing should be adequate, it should not be extravagant.³ The canary in the coal mine was St. Louis's

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1. See EDWARD G. GOETZ, *NEW DEAL RUINS: RACE, ECONOMIC JUSTICE, AND PUBLIC HOUSING POLICY* 4 (2013); LAWRENCE J. VALE, *RECLAIMING PUBLIC HOUSING: A HALF CENTURY OF STRUGGLE IN THREE PUBLIC NEIGHBORHOODS* 1, 4 (2002) [hereinafter *RECLAIMING PUBLIC HOUSING*].

2. Financing of individual housing projects was largely based on a per unit financing model, where the total amount financed for a project was dependent on the individual number of affordable housing units the project would support. See SUSAN J. POPKIN ET AL., *THE HIDDEN WAR: CRIME AND THE TRAGEDY OF PUBLIC HOUSING IN CHICAGO 12-13* (2000) (noting that the per-unit remuneration for developing affordable housing led to the use of cheaper materials, the scaling back (or elimination), of public or communal spaces, and the shrinking of planned unit size to increase the quantity of units and maximize the available funding for developing the project).

3. See Rachel G. Bratt, *Public Housing: The Controversy and the Contribution*, in *CRITICAL PERSPECTIVES ON HOUSING* 346 (Rachel G. Bratt, Chester Hartman & Ann Meyerson eds., 1986) (observing that public housing was built under pressures to construct a “no-frills” housing with only “minimal accommodations”); Katherine G. Bristol, *The*

Pruitt Igoe Public Housing Complex, which was demolished a mere seventeen years after construction was finished.⁴ For federal actors, public housing was seen as a visible failure of state-led action, prompting a complete rethinking about how affordable housing should be delivered.⁵ In the years that followed, the federal government slowly withdrew from affordable housing provision, first by revesting local communities with control over the ordinary business of housing, and then by reducing the amount of money that federal agencies spent on public housing.⁶

As cities were vested with new responsibilities to address affordable housing shortfalls, they also found themselves facing new financial constraints.⁷ Changes in national monetary policy caused an unexpected shock to the capital markets on which cities

Pruitt-Igoe Myth, 44 J. ARCHITECTURAL EDUC. 163, 166 (1991); Joseph Heathcott, *The Strange Career of Public Housing*, 78 J. AM. PLAN. ASS'N 360, 363 (2012) (The U.S. Housing Act of 1937 was the first bill to provide for federally funded housing at the local level. The bill required numerous compromises to pass, including vesting control of housing decisions at the local level through state and city created local housing authorities. It also required a compromise authored by Senator Henry Byrd of Virginia that imposed “drastic costs ceilings on new projects that amounted to [a funding limit of] \$5,000 per [constructed] unit.”).

4. Marc L. Roark, *Under-Propertied Persons*, 27 CORNELL J. L. & PUB. POL’Y 1, 54 (2017) [hereinafter *Under-Propertied Persons*] (“the demolition of the Pruitt-Igoe towers marked a transition period in public housing in the American landscape—one that began to seriously question whether public housing (at least the way it was being carried out) was successful”).

5. *See id.* at 39.

6. RAQUEL ROLNIK, *URBAN WARFARE: HOUSING UNDER THE EMPIRE OF FINANCE* 49 (Felipe Hirschhorn trans., Verso 2019) (noting the growth of Section 8 to more than 2 million low income households, with far more on waiting lists each year) [hereinafter *URBAN WARFARE*]; JASON HACKWORTH, *THE NEOLIBERAL CITY: GOVERNANCE, IDEOLOGY, AND DEVELOPMENT IN AMERICAN URBANISM* 48 (2007) (describing the growth of Section Eight in the 1970’s as a direct response to the public housing’s perceived deficiencies) [hereinafter *THE NEOLIBERAL CITY*]; Jason Hackworth, *Destroyed by Hope: Public Housing, Neoliberalism, and Progressive Housing Activism in the US*, in *WHERE THE OTHER HALF LIVES: LOWER INCOME HOUSING IN A NEOLIBERAL WORLD* 237-38 (Sarah Glynn ed., 2009) [hereinafter *Destroyed by Hope*] (linking Section Eight housing with the growth in neoliberal state making).

7. *THE NEOLIBERAL CITY*, *supra* note 6, at 24 (noting that the withdrawal of federal support for public housing and urban development was accompanied by an increase in municipal debt as cities were still tasked with taking care of the aging and poorly built infrastructure); Erik Swyngedouw, *Neither Global nor Local: “Glocalization” and the Politics of Scale*, in *SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL* 142-43 (Kevin Cox ed., 1997).

were increasingly reliant for bond financing.⁸ The shortfall was most apparent in New York City: when the city faced near financial collapse, state officials put the city's finances into receivership with no clear lifeline from the federal government.⁹ The New York Daily News infamously communicated the federal response in a headline: "Ford to City: Drop Dead."¹⁰

For different reasons, St. Louis and New York City came to embody the threat that housing policy could significantly underline posed state legitimacy, with implications for the deployment of public resources towards housing for the next fifty years. The difficulties that cities faced in delivering affordable housing, while maintaining an aging infrastructure, facing growing housing need, and shrinking financial assets would also accentuate and define gaps in affordable housing provision, highlighted by specific challenges to housing affordability in high-cost cities like New York,¹¹ San Francisco,¹² Los Angeles,¹³ and Seattle.¹⁴ Moments of national crisis highlighted the extent of housing precariousness across the country, from the

8. See THE NEOLIBERAL CITY, *supra* note 6, at 24-25.

9. See WILLIAM SITES, REMAKING NEW YORK: PRIMITIVE GLOBALIZATION AND THE POLITICS OF URBAN COMMUNITY 37-38 (2003).

10. IRA M. MILLSTEIN, THE ACTIVIST DIRECTOR: LESSONS FROM THE BOARDROOM AND THE FUTURE OF THE CORPORATION 133, 141 (2017); JONATHAN SOFFER, ED KOCH AND THE REBUILDING OF NEW YORK CITY 105, 117 (2010).

11. See AMY STARECHESKI, OURS TO LOSE: WHEN SQUATTERS BECAME HOMEOWNERS IN NEW YORK CITY 16 (2016); SITES, *supra* note 9, at ix-x, xxii; Ginia Bellafante, *Gentrifying into the Shelters*, N.Y. TIMES (July 6, 2013), [<https://perma.cc/77XF-DZN4>]; Joseph Berger, *For Some Landlords, Real Money in the Homeless*, N.Y. TIMES (Feb. 8, 2013), [<https://perma.cc/HXN5-6A6U>]; Manny Fernandez, *New York Plans to Topple Public Housing Towers*, N.Y. TIMES (Feb. 5, 2010), [<https://perma.cc/W3M6-TVCS>].

12. See Megan Rose Dickey, *San Francisco Leaders Foresee Challenges Hitting Housing Goals*, AXIOS S.F., (Jan. 27, 2023), [<https://perma.cc/L3UP-K5S5>]; TERESA GOWAN, HOBOS, HUSTLERS, AND BACKSLIDERS: HOMELESS IN SAN FRANCISCO xx-xxii (2010); Darren Noy, *When Framing Fails: Ideas, Influence, and Resources in San Francisco's Homeless Policy Field*, 56 SOC. PROBS. 223, 223-24, 239 (2009).

13. See ANDREW DEENER, VENICE: A CONTESTED BOHEMIA IN LOS ANGELES xi, xii (2012); Marcus Baram, *Los Angeles Struggles with Homeless Crisis, Lack of Shelters*, HUFFINGTON POST (Feb. 16, 2012, 11:34 AM), [<https://perma.cc/JS8S-3G7H>]; Jill Cowan, *Homeless Populations Are Surging in Los Angeles. Here's Why.*, N.Y. TIMES, (June 5, 2019), [<https://perma.cc/33UZ-Y835>].

14. See Tony Sparks, *Citizens Without Property: Informality and Political Agency in a Seattle, Washington Homeless Encampment*, 49 ENV'T & PLAN. A 86, 86-103 (2017); *The Conundrum that Affordable Housing Poses for the Nation*, SEATTLE TIMES (Jan. 5, 2020, 12:56 AM), [<https://perma.cc/5RQ5-5G5C>]; Jason Buch, *For Seattle's Last Mobile Home Owners, the Clock Is Ticking*, N.Y. TIMES (July 21, 2019), [<https://perma.cc/RE85-AZAN>].

displacement of large populations in New Orleans following Hurricane Katrina;¹⁵ or rural to urban migration following economic decline in places like the rust belt;¹⁶ to immigration challenges in border communities;¹⁷ and, perhaps most notably, the 2008 foreclosure crisis.¹⁸ The withdrawal of federal and state funding, along with increased pressures on city infrastructure from growing demand, meant that cities regularly found themselves in weakened financial positions, at risk of tipping over into an affordable housing crisis should a natural disaster occur, a revenue stream be cut short, or other unexpected costs arise that the city did not have the flexibility to absorb.¹⁹

Over the last forty years, cities in the United States have turned increasingly to housing trust funds to address the conjoined problems of the withdrawal of federal resources dedicated to affordable housing provision,²⁰ and insufficient public housing infrastructure.²¹ This period revealed the inherent vulnerabilities that local state actors face in sustaining housing, as well as some distinctively local approaches to innovation that

15. See Narayan Sastry & Jesse Gregory, *The Location of Displaced New Orleans Residents in the Year After Hurricane Katrina*, 51 DEMOGRAPHY 753, 754, 757, 771 (2014); Barret Katuna, *Hurricane Katrina and the Right to Food and Shelter*, in HUMAN RIGHTS IN OUR OWN BACKYARD: INJUSTICE AND RESISTANCE IN THE UNITED STATES 68–70 (William T. Armaline, Davita Silfen Glasberg & Bandana Purkayastha eds., 2011); Malcolm Gladwell, *Starting Over: Many Katrina Victims Left New Orleans for Good. What Can We Learn from Them?*, NEW YORKER (Aug. 17, 2015), [<https://perma.cc/CRN2-338B>].

16. See Daniel Hartley, *Urban Decline in Rust-Belt Cities*, FED. RSRV. BANK OF CLEVELAND 1 (May 20, 2013), [<https://perma.cc/BTC4-LYCE>].

17. CHRISTOPHER MCDOWELL & GARETH MORRELL, DISPLACEMENT BEYOND CONFLICT: CHALLENGES FOR THE 21ST CENTURY 16-17, 27, 29, 33 (2010).

18. John V. Duca, *Subprime Mortgage Crisis*, FED. RSRV. HIST. (Nov. 22, 2013), [<https://perma.cc/B524-VKNJ>].

19. Michael Anderson, *State and Local Housing*, in NATIONAL LOW INCOME HOUSING COALITION, 2019 ADVOCATE'S GUIDE 5-34 (2019); Laura N. Coordes & Thom Reilly, *Predictors of Municipal Bankruptcies and State Intervention Programs: An Exploratory Study*, 105 KY. L.J. 493, 513-14 (2017) (noting the presence of triggering events along with financial mismanagement as potential factors shaping municipal bankruptcies).

20. See Peter Salisich, *State Housing Trust Funds*, in AMERICAN BAR ASS'N, A LEGAL GUIDE TO AFFORDABLE HOUSING DEV. §10.IV, 296-97 (2011) (noting the growth of housing trust funds out of federal withdrawal of resources to housing subsidy programs).

21. See RECLAIMING PUBLIC HOUSING, *supra* note 1, at 164; LAWRENCE J. VALE, PURGING THE POOREST: PUBLIC HOUSING AND THE DESIGN POLITICS OF TWICE-CLEARED COMMUNITIES 22-29 (2013) [hereinafter PURGING THE POOREST]; Marc L. Roark, *Human Impact Statements*, 54 WASHBURN L.J. 649, 650, 653-54 (2015) [hereinafter *Human Impact Statements*]; *Under-Propertied Persons*, *supra* note 4, at 44.

have shored up the political and economic resilience of local authorities in relation to affordable housing. Understanding local-scale innovation and its capacity to produce resilience for state actors is important because the vulnerabilities revealed by affordable housing challenges in the last forty years are not unique to any given city, and reach beyond housing, narrowly defined, to encompass a range of vulnerabilities facing local state actors. These include resource allocation and political legitimacy, the geographies of poverty, the ghettoization of cities, and the legal and political dynamics that shape the ability to respond to “on-the-ground” challenges across the multi-level state: between local, state, and federal government actors and agencies.²² As cities responded to affordable housing crises, they increasingly deployed private property tactics, using incentives built out from tax policy, zoning incentives, or subsidies to both fund and deliver affordable housing in the local context.²³

In this Article we focus on the emergence of the Housing Trust as a vehicle for shoring up political and economic resilience at the local scale, in a context of federal financial retrenchment and a political tide that had turned away from state-led housing provision. Housing Trusts are legislatively engineered funds that earmarked and protected resources dedicated to various forms of affordable housing delivery.²⁴ They emerged in the 1970’s as a vehicle to redirect city funds into affordable housing projects through dedicated revenue streams.²⁵ Campaigns through the 1980’s made the housing trust fund a go-to vehicle for local governments needing to address the affordable housing gap.²⁶

22. See Bruce Katz et al., *Rethinking Local Affordable Housing Strategies: Lessons from 70 Years of Policy and Practice*, BROOKINGS vi-xiv (Dec. 1, 2003), [<https://perma.cc/3H52-VXZ9>].

23. See *Opening Doors to Homes for All: The 2016 Housing Trust Fund Survey Report*, CTR. FOR CMTY. CHANGE 17 (2016), [<https://perma.cc/HP4T-JT9W>].

24. *Id.* at 1-3.

25. See *id.* at 2 (noting that trust funds emerged in the 1970’s in California and Maryland in smaller communities and continued through statewide campaigns to address affordable housing shortfalls).

26. See JAMES A. KUSHNER ET AL., *HOUSING AND COMMUNITY DEVELOPMENT: CASES AND MATERIALS* (4th ed. 2011) (noting that financial subsidies in housing can be subject to gaps where the cost of housing construction outpaces the availability or the sufficiency of housing subsidies); *Under-Propertied Persons*, *supra* note 4, at 6 n.20

Eventually, Housing Trusts became vehicles from which state and federal housing policy also funneled resources (and at times attracted resources), financing the way both cities and private actors would interact with affordable housing delivery.²⁷ Importantly, they emerged as a legitimate mechanism for state actors and agencies to address pressing problems that required public intervention because of their impact on local communities, notwithstanding prevailing political winds that characterized affordable housing as an illegitimate, unpopular, or wasteful use of public funding.²⁸

The neoliberal turn created stark contrasts between policy areas (for example, criminal justice, law and order, and control over immigration) in which state action was expanded and public funding increased; and policy areas (for example, affordable housing, healthcare, and education) in which the U.S. government looked to privatized markets to serve an active, self-responsible citizenry.²⁹ Both moves were reflected in the affordable housing context, as housing was re-positioned as a private responsibility, and affordable housing delivery was politically tainted by associations with poverty and crime.³⁰ The changing political landscape for state action was encapsulated by Ronald Reagan's famous depiction of the "welfare queen," a fictional "woman in Chicago" who was pilloried for purportedly drawing on public assistance making more than \$150,000 and paying no taxes.³¹ Reagan's "welfare queen" carried rhetorical force, reminding law makers of the risks and perils of government interference to

(utilizing the term "gap renter" to refer to individuals who may qualify financially for public housing assistance but are disqualified due to other criteria or availability).

27. See *Advocates' Guide 2017: A Primer on Federal Affordable Housing & Community Development Programs*, NAT'L LOW INCOME HOUS. COAL. 3-1, 3-2 (2017), [<https://perma.cc/PM5U-UZ5W>].

28. See *Addressing America's Housing Crisis: Three Local Policy Solutions to Promote Health and Equity in Housing*, CITY HEALTH 5-6, 8 (2023), [<https://perma.cc/84QR-4GC8>].

29. See *Clinton Proposes FY 1997 Housing Budget: Seeks Funds to Carry out Reinvention of HUD; Asks Congress to Restore Funds Cut Last Year*, U.S. Dep't of Hous. & Urban Dev. (Mar. 19, 1996), [<https://perma.cc/EE83-G28G>].

30. See Nena Perry-Brown, *How Public Housing was Destined to Fail*, GREATER GREATER WASH. (June 23, 2020), [<https://perma.cc/QZ7C-QWLL>].

31. See JOSH LEVIN, *THE QUEEN: THE FORGOTTEN LIFE BEHIND AN AMERICAN MYTH* 8-9 (2019).

provide welfare support, compared to market-led strategies to distribute public goods like food, clothing, and housing.³²

Reagan's cautionary warning against government involvement in the welfare state was also supported by perceptions that public housing and affordable housing attracted crime.³³ Like the myth of the "welfare queen," sites where public housing was located were rhetorically portrayed as places of crime, and the people who lived in these places were portrayed as deficient or immoral: as irresponsible or "failed citizens."³⁴ Gowan described how homeless people were subjected to the discourse of "sin-talk:" their housing conditions presented as a result of their own poor choices, rather than structural conditions.³⁵ Public housing residents had to deal with their own form of "sin-talk," a discourse that associated their housing circumstances with their own moral culpability.³⁶ In the United States, Clinton's approval of the Quality Housing and Work Responsibility Act of 1998 ("QHWRA") endorsed a moral frame for housing policy discourse, scaling up the concepts of dependency, individual responsibility, and the virtue of work.³⁷ One driver for the QHWRA was the perception that public housing had become "isolated islands of the poorest of the poor"³⁸ The moral mandates in the QHWRA sought to reduce concentrations of poverty by encouraging mixed-income rental communities.³⁹ The consequence, however, was that the further displacement of the poorest residents from public housing stock

32. *See id.* at 330-31.

33. *See* William Tucker, *The Source of America's Housing Problem: Look in Your Own Back Yard*, CATO INST. (Feb. 6, 1990), [<https://perma.cc/C7Q9-X83C>].

34. *See* Shawn Watson, *The Myth of Failure*, U.S. HIST. SCENE, [<https://perma.cc/XWR4-B2FH>] (last visited Oct. 16, 2023).

35. GOWAN, *supra* note 12, at 28-29.

36. *Id.*

37. For a similar analysis in Britain, *see* Anna Haworth & Tony Manzi, *Managing the 'Underclass': Interpreting Moral Discourse of Housing Management*, 36 URB. STUD. 153, 153 (1999).

38. *See* Michael A. Stegman, *The Fall and Rise of Public Housing*, REGULATION, Summer 2002, at 64, 69.

39. *See* Louise Hunt, Mary Schulhof & Stephen Holmquist, *Summary of Title V, Public Housing and Tenant-Based Assistance, of the Quality Housing and Work Responsibility Act of 1998*, U.S. DEP'T OF HOUS. & URBAN DEV. 2 (1998), [<https://perma.cc/G89Y-V53A>].

coincided with cities facing increased pressures on their affordable housing stock.⁴⁰

As the neoliberal wave of American politics eroded congressional commitment to public housing, the Housing Trust offered cities a politically palatable pathway for addressing—to some degree—the shortfalls created by spending and moral restrictions.⁴¹ Initially, this was by providing a protective shield around some resources dedicated to housing delivery, while limiting the moral exposure city officials might face from supporting a welfare project like housing.⁴² Protecting assets that could be deployed to deliver affordable housing was important in a context where cities were facing downsizing of the public housing infrastructure through financial retrenchment at the federal level.⁴³ The “trust” component of the Housing Trust ensured that, once a city dedicated financial resources to its affordable housing project, these resources could not be redirected to other purposes should the political winds change.⁴⁴ Similar tactics motivated the use of other legal devices, introduced in this period, that used the idea of the trust to safeguard assets for defined purposes. For example, community land trusts were created to hold interests in land for defined purposes linked to affordable and inclusive housing in cities.⁴⁵ In a similar vein, housing co-ops function like community land trusts

40. See Diane K. Levy, Jennifer Comey & Sandra Padilla, *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, URBAN INST. 3 (2006), [<https://perma.cc/SBN9-A9LZ>].

41. See George Monbiot, *Neoliberalism – The Ideology at the Root of All Our Problems*, GUARDIAN (Apr. 15, 2016, 7:00 AM), [<https://perma.cc/5LCJ-X4WA>].

42. See *Governor Hochul Signs Legislation Creating New York City Public Housing Trust Preservation Trust*, N.Y. STATE (June 16, 2022), [<https://perma.cc/RU3Q-47T8>].

43. Marvin Siflinger stated to the subcommittee on Housing, Banking, and Urban Affairs that “states simply do not have the resources and cannot be expected to be able to deal with both production of new housing and preservation of existing units.” *Declining Supply of Low and Moderate Income Rental Housing: Hearing Before the Subcomm. on Hous. and Urb. Affs. of the S. Comm. on Banking, Hous., and Urb. Affs.*, 100th Cong. 43 (1987) (statement of Marvin Siflinger, Exec. Dir. Mass. Hous. Fin. Agency). In his testimony, Mr. Siflinger advocated for increased private side rentals that would “cover reasonable operating costs . . .” *Id.* at 44.

44. See CONG. RSCH. SERV., RL34591, OVERVIEW OF FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY 19-20 (2019) [hereinafter FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY].

45. Julie Gilgoff, *Local Responses to Today’s Housing Crisis: Permanently Affordable Housing Models*, 20 CUNY L. REV. 587, 600-01 (2017).

inasmuch as they provide a vehicle for holding interests in land for a common purpose, with owners purchasing shares that enable them to build equity in a defined way that stands apart from the general housing market.⁴⁶ And while there is no explicit legislation imposing fiduciary duties on managers of co-ops, some commentators have suggested that these systems of common ownership implicitly create a fiduciary obligation (like the fiduciary duty owed by trustees) to promote the best interests of the beneficiaries of the common ownership regime.⁴⁷

The increasing use of these legal structures from the 1970's can be understood as a response, by cities, to the adverse impacts of a changing housing market context for the low-income population and the manifest impacts of affordable housing shortfall for state actors and agencies at the local level.⁴⁸ While community land trusts and housing co-ops provided alternative forms of land and housing ownership geared to common purposes, housing trust funds enabled state actors and agencies to set aside, and safeguard, sources of revenue to deliver affordable housing in the face of political pressure and budgetary threats.⁴⁹ All three devices emerged in a period in which the precarity of low-income housing, both for owners and renters, posed challenges both for individuals and for cities. National narratives that promoted home ownership, residualized renting, and marginalized public housing shaped the spheres of legitimacy for state investment of public funding.⁵⁰ This reduced the frame of viable options available to the state for solving housing problems.

46. See Gregory J. Gamalski, *A Menagerie of Real Estate Interests: Housing Cooperatives, Chapter 455 Summer Resort Associations, and Less Frequently Seen Home Owner Entities*, 40 MICH. REAL PROP. REV. 24, 24-25 (2013) (“Housing cooperatives are user-owned, user-occupied, and user-benefited home ownership regimes. There is no profit motive, in the strictest sense, in the operation of a housing cooperative.”).

47. See Anna di Robilant, *The Virtues of Common Ownership*, 91 B.U. L. REV. 1359, 1368 (2011).

48. For example, Amy Starecheski demonstrates how one compromise with squatters in the lower east side neighborhood of New York City was to create a housing co-operative that allowed the residents to afford access to a building they had invested in, despite the rising market value that had occurred in the region. See STARECHESKI, *supra* note 11, at 10, 159.

49. See FEDERAL HOUSING ASSISTANCE PROGRAMS AND POLICY, *supra* note 44, at 26-27.

50. See *id.* at 9.

When housing was framed as an ownership problem, state action to facilitate, support, and intervene in the housing market was deemed legitimate.⁵¹ This reflected the construction of owners as active citizens and worthy recipients of government assistance. At the same time, the portrayal of public housing projects as places where criminal enterprises thrived validated overt state action, in the exercise of its legitimate public powers, to repurpose these neighborhoods towards private housing provision.⁵²

The recalibration of legitimate state action in housing provision produced new risks for low-income populations—from the pressures on entrepreneurial cities to deliver regeneration projects that pushed low-income people away from economic opportunity,⁵³ to the depletion of their security of their tenure,⁵⁴ and the state's ambivalence or inability to enforce housing code provisions that provide safe and sanitary places for people to live.⁵⁵ While national-level narratives externalized these problems to imagined autonomous individuals, cities had no choice but to internalize, and attempt to address, the material effects of affordable housing crises on-the-ground. Housing trust funds offered a mechanism for cities to navigate between politically legitimate action and vital services to address pressing needs, including maintenance of older properties that are tenant occupied, rental assistance to avoid evictions, or even affording individuals subsidized capacities to purchase a home.⁵⁶

51. See Alven Lam, *Government Intervention in Housing Finance Markets – An International Overview* 20 (working paper 2011) [<https://perma.cc/H27M-38WQ>].

52. *Under-Propertied Persons*, *supra* note 4, at 43.

53. See Matthew Yglesias, *Everything You Need to Know About the Affordable Housing Debate*, VOX (May 11, 2015, 11:43 AM), [<https://perma.cc/ZGN7-DE89>].

54. The eviction process which is laden with its own set of costs and burdens that unduly impact impoverished persons. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 91 (2012); Matthew Desmond, *Forced Out*, NEW YORKER (Jan. 31, 2016), [<https://perma.cc/B8RX-Y75Q>]; *Human Impact Statements*, *supra* note 21, at 650.

55. See Timothy M. Mulvaney & Joseph William Singer, *Move along to Where? Property in Service of Democracy (A Tribute to André van der Walt)*, in TRANSFORMATIVE PROPERTY LAW: A FETSCHRIFT IN HONOUR OF AJ VAN DER WALT 12-13 (G. Müller, B. Slade, R. Brits & J. van Wyk eds., 2018); *Human Impact Statements*, *supra* note 21, at 650.

56. See *Housing Trust Funds*, CNTY. HEALTH RANKINGS & ROADMAPS, [<https://perma.cc/M8S9-VXVS>] (last visited Oct. 16, 2023).

In *Squatting and the State: Resilient Property in an Age of Crisis*,⁵⁷ we developed “Resilient Property Theory” (“RPT”) as a new approach for understanding and addressing complex property problems.⁵⁸ RPT reaches beyond entrenched analytical tropes based on dysfunctional housing market dynamics to seek out tools and strategies that actors (including the state) can deploy to solve property problems.⁵⁹ The putatively rivalrous nature of property debates, and the political and ideological implications of property outcomes tend to reinforce binary lenses, with problems articulated as conflicts between owners and non-owners; neighbors and outsiders; or the state versus a property owner. Yet, the reality of complex property problems like affordable housing is that they cut across multidimensional, contested, and interlocking challenges, which cannot be grasped or tackled through narrowing lenses.

The practice of constructing dichotomies or binaries to narrow the frames through which complex property problems are understood is itself a function of ideologically driven analyses or arguments which, rather than starting from the problem and working towards solutions, are framed by the dominant political or ideological worldview. In the context of affordable housing, the dominant ideological frame that has shaped policy and resource allocation in the United States since the 1970’s has been neoliberalism, which seeks to position private power, embodied in “the market,” as the source of individual freedom and wealth maximization.⁶⁰ This aspect of neoliberalism evolved from the rootstock of classical *laissez-faire* economic liberalism, which was embedded in the foundational property norms of liberal states and liberal property theory.⁶¹ However, as liberal states have scaled up, scaled down, and scaled back,⁶² the exercise of public

57. LORNA FOX O’MAHONY & MARC L. ROARK, SQUATTING AND THE STATE: RESILIENT PROPERTY IN AN AGE OF CRISIS 8-9 (2022) [hereinafter SQUATTING AND THE STATE].

58. *Id.* at 12.

59. *Id.* at 8.

60. Monbiot, *supra* note 41.

61. Nicola Smith, *Neoliberalism*, BRITANNICA (Oct. 8, 2023), [<https://perma.cc/SC63-FX4A>].

62. DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 22-23, 87-120 (2007).

power has been characterized as “oppressive, inefficient, and [to] be restrained and limited at all costs” *except* in matters deemed to fall within the scope of state action: for example, law-and-order or security.⁶³ Indeed, the paradox of neoliberalism for private property theorists is that while its dominant narrative is one of state withdrawal (or forbearance/restraint), in fact, the power exercised by the state in the *defense* of private property rights has expanded—albeit in ways that are designated or deemed to be “outside” the realm of “private” property law.⁶⁴ In *Squatting and the State*, we demonstrated how the criminalization of squatting epitomizes this process. Narratives of law-and-order⁶⁵ and securitization⁶⁶ have been invoked to re-frame homeless squatting on empty land as a “public” law matter—prompting or justifying states to use the machinery of criminalization to protect private property rights.

This Article extends the approach we adopted in *Squatting and the State* by focusing on the development of Housing Trusts in local municipalities.⁶⁷ This Article reveals how cities, states, and federal actors should respond to threats to the financial viability of affordable housing, and their own financial precarity, by deploying the Housing Trust. Part II proceeds by outlining the resilient property method, including its applications of vulnerability theory, to open up new avenues for property scholarship capable of transcending binary frames (conservative/progressive, public/private, state/market).⁶⁸ Part III explains three threats (legitimacy gaps, resource gaps, and

63. Paul O’Connell, *The Death of Socio-Economic Rights*, 74 MOD. L. REV. 532, 535 (2011).

64. SQUATTING AND THE STATE, *supra* note 57, at 5.

65. David O’Mahony & Lorna Fox O’Mahony, *Crime as Property: A Restorative Perspective on the the ‘Ownership’ of Unlawful Occupation*, in MORAL RHETORIC AND THE CRIMINALISATION OF SQUATTING: VULNERABLE DEMONS? 38, 57 (Lorna Fox O’Mahony et al. eds., 2015).

66. MARY MANJIKIAN, SECURITIZATION OF PROPERTY SQUATTING IN EUROPE 31 (2013).

67. We do not focus on other forms of the housing trust, such as those created by state legislatures or even the national housing trust. While these housing trusts serve important functions in the affordable housing ecosphere, our concern lies with how cities used the housing trust to respond to federal withdrawal of public housing support starting in the 1970’s and through the 1980’s and 1990’s.

68. See *infra* Part II.

competency gaps) that cities experienced as a result of affordable housing crises and reflects on how the emergence and adoption of housing trust funds both revealed and mitigated the vulnerabilities that city-authorities faced in this period.⁶⁹ Finally, Part IV considers the implications of our analysis for the role of Housing Trusts in addressing current housing affordability crises.⁷⁰

II. RESILIENT PROPERTY METHODOLOGY: SEEKING RESILIENCE

Property problems are often characterized as either purely private disputes, (i.e., landlord versus tenant, private owner versus private owner(s); or private owner versus intruder) or public intrusions on private interests (i.e., zoning regulations limiting a private owner’s use of property; criminal acts that interfere with individuals use of property; or the exercise of eminent domain to compel the taking of property from a private actor).⁷¹ The construction of dichotomies or binaries (e.g., private law/public law, property/sovereignty) is itself a function of the neoliberal worldview, which seeks to position private power, embodied in “the market,” as the source of “individual freedom and wealth maximisation”⁷² They were embedded in the approaches and methodologies of liberal property theory and scholarship from the late nineteenth century and through much of the twentieth century’s “ownership society” period.⁷³ These shifts presumptively reoriented property rhetorically above the state, setting the stage for a shift in how the state allocated resources for broad-scale social problems, like housing.

In this period, the positioning of property law in the private realm related primarily to the interpersonal aspects of property transactions. For much of the twentieth century, transactional

69. *See infra* Part III.

70. *See infra* Part IV.

71. Roger Pilon, *Property Rights and the Constitution*, CATO HANDBOOK FOR POLICYMAKERS 173, 176 (8th ed.), [<https://perma.cc/Z5QJ-R6P4>].

72. O’Connell, *supra* note 63, at 535.

73. Raquel Rolnik, *Late Neoliberalism: The Financialization of Homeownership and Housing Rights*, 37 INT. J. URB. & REG’L RSCH. 1058, 1059 (2013) [hereinafter *Late Neoliberalism*].

private property law interacted with active liberal states performing two key roles in housing delivery: as public sector housing providers, allocating housing to households based on need;⁷⁴ and as funders of housing construction through public capital allocations.⁷⁵ In the 1930's, the U.S. government instituted several housing reforms designed to shore up American housing conditions against the financial collapse of the Great Depression. The Federal Housing Act of 1934 created the Federal Housing Administration (“FHA”) to register and insure mortgages, giving creditors security in the event of a default.⁷⁶ In 1938, the U.S. government created the Federal National Mortgage Association (“Fannie Mae”) to buy mortgages from creditors and therefore increase their liquidity to create more new mortgages.⁷⁷ The Wagner-Steagall Housing Act in 1937 was the first broad-scale affordable housing intervention by the federal government, to enable the construction of publicly owned housing to be let to low-income tenants at below market rates.⁷⁸

These measures emerged out of the Great Depression—the United States’ first major financial crisis of the twentieth century.⁷⁹ State investments in private homeownership and public housing were complimentary strategies to reduce housing precarity in financially uncertain times.⁸⁰ These commitments

74. *Id.*

75. URBAN WARFARE, *supra* note 6, at 24. Rolnik described the transformation of governments in the wake of financial crisis since the 1970's from housing providers to housing “facilitators”, whose mission was to make way for and support the expansion of private markets.” *Id.* In this period, the World Bank was instrumental in encouraging states “to adopt policies that enable housing markets to work . . . and [to] avoid distorting [them].” *Id.* According to Rolnik, the role of the states henceforth became to “create the conditions, institutions and regulatory models that would promote housing financial systems capable of enabling home purchase.” *Id.*

76. *Id.* at 40.

77. Fannie Mae was a government sponsored enterprise, designed to facilitate lenders reinvesting their assets into more lending, therefore increasing the number of lenders in the mortgage market. *Fannie Mae and Freddie Mac*, FED. HOUS. FIN. AGENCY, [https://perma.cc/G4HJ-VUGL] (last visited Oct. 16, 2023).

78. Richard M. Flanagan, *The Housing Act of 1954: The Sea Change in National Urban Policy*, 33 Urb. Affairs Rev. 265, 265-66 (1997); Tad Dehaven, *Department of Housing Development Timeline*, DOWNSIZING THE FED. GOV'T, [https://perma.cc/3X5A-YR3K] (last visited Oct. 16, 2023).

79. Gary Richardson, *The Great Depression*, FED. RSRV. HIST. (Nov. 22, 2013), [https://perma.cc/J2MH-4RJ3].

80. *See* URBAN WARFARE, *supra* note 6, at 40.

were sustained through the 1940's, in a dual-mode strategy: Congress often included provisions relating to Fannie Mae, providing financing for homeownership, while, in parallel, making provisions to fund public housing.⁸¹ These dual commitments were decoupled in 1954, when Congress passed the Charter Act alongside the 1954 Housing Act.⁸² The Charter Act designated Fannie Mae as a quasi-private entity; it became a wholly privatized operation in 1968, when the federal government sold its shares in Fannie Mae to relieve the federal debt that Fannie Mae had incurred.⁸³ Fannie Mae became a publicly traded company, subject and accountable to private shareholders, rather than the public interest.⁸⁴ U.S. housing policy was bifurcated into public and private, paving the way for the eventual rollback of public housing provision as a priority for federal housing investment.

By the 1970's the federal government was getting out of the business of public housing provision and moving into housing finance. The planned expansion of the homeownership sector, aimed to draw in low-income borrowers, was poised to create a new wave of housing opportunities.⁸⁵ The state was further

81. For example, the 1949 Housing Act which authorized Title I funds for slum clearance and the development of large-scale public housing also included provisions to increase authorized limits for the FHA mortgage insurance. Adam Hayes, *National Housing Act: Overview, Impact, Criticisms*, INVESTOPEDIA (June 30, 2022), [https://perma.cc/JA9N-XHUQ].

82. After 1954, federal support for public housing becomes bifurcated from general support measures regarding housing. See *Major Legislation on Housing and Urban Development Enacted Since 1932*, U.S. DEP'T HOUS. & URB. DEV. 3 [https://perma.cc/PN2N-QWVD] (last visited Oct. 16, 2023). After 1954, Federal Public Housing was increasingly integrated under desegregation orders. Richard Rothstein, *We Can End Racial Segregation in America*, JACOBIN (July 22, 2019), [https://perma.cc/A9UT-74WU]. While the shift in public housing from a largely working class white population to a largely African American (and extremely financially poor population) during this time has been noted in several places, what also happened was the bifurcation of public housing provision into other areas—namely elder housing became a primary category for federal housing provisions. DeHaven, *supra* note 78.

83. Kate Pickert, *A Brief History of Fannie Mae and Freddie Mac*, TIME (July 14, 2008), [perma.cc/Z4Z8-M42R].

84. *Id.*

85. For a wide-ranging collection of essays advancing the wealth-creating opportunities of asset ownership for poorer Americans, see *ASSETS FOR THE POOR: THE BENEFITS OF SPREADING ASSET OWNERSHIP* xi (Thomas M. Shapiro & Edward N. Wolff eds., 2001); Emergency Home Finance Act of 1970, Pub. L. No. 91-351, 84 Stat. 450 (codified as amended at 12 U.S.C. §§ 1452-1459).

distanced from the provision of housing when, in 1970, the federal government authorized the creation of the Federal Loan Mortgage Corporation (“Freddie Mac”), a second government-sponsored enterprise designed to further grow the secondary market for mortgages, increase lending in the homeownership sector and create competition for Fannie Mae.⁸⁶ As liberalism evolved towards neoliberalism, and states scaled up, scaled down, and scaled back,⁸⁷ the exercise of public power was increasingly characterized as “oppressive, inefficient and [to] be restrained and limited at all costs” *except* in matters deemed to fall within the scope of state action: for example, state enforcement of anti-trespass laws typically falls into the category of preserving private power, even though it’s the public power of the state that is deployed to carry out such action.⁸⁸ Indeed, the paradox of neoliberalism for private property theorists is that, while its dominant narrative is one of state withdrawal (or forbearance/restraint), in fact, the power exercised by the state in the *defense* of private property rights has expanded—albeit in ways that are designated or deemed to be “outside” the realm of “private” property law.⁸⁹

Reductionist binary frames and methodologies elide the complexities of the state’s own stake in property and housing in ways that translate and make visible the “official,” “relevant,” or legible aspects of the problem, while concealing (or, in John Law’s terms, “othering”) aspects of the problem that sit outside the official or dominant paradigm.⁹⁰ As well as raising justice concerns, the effects of framing can practically hinder attempts to resolve complex or wicked problems. When conflicting ideas are located within distinct and competing frames, there is a risk that problem solving collapses into rhetorical deadlock, with analyses

86. See *A Brief History of the Housing Government Sponsored Enterprise*, FED. HOUS. FIN. AGENCY OFF. OF INSPECTOR GEN. 1, 3 [<https://perma.cc/2WXP-WWZZ>] (last visited Oct. 16, 2023).

87. HARVEY, *supra* note 62, at 22, 87-120.

88. *Id.* at 21; O’Connell, *supra* note 63, at 535.

89. SQUATTING AND THE STATE, *supra* note 57, at 5.

90. See Marc Roark, *On Proper[ty] Apologies and Resilience Gaps*, 11 J. OF RACE, GENDER, & ETHNICITY 135, 152 (2022); JOHN LAW, *AFTER METHOD: MESS IN SOCIAL SCIENCE RESEARCH* 147 (2004).

and proposals advanced from distinct (and sometimes polarized) positions which “mostly talk past each other”⁹¹ This creates a barrier to problem-solving; and when problems seem like “lost causes”, it inhibits collective action. This dilemma was articulated by Thomas Ross in his essay, *The Rhetoric of Poverty: Their Immortality, Our Helplessness*, when he observed that “poverty” is typically characterized, by courts, as an unsolvable problem “of daunting complexity that is virtually beyond solution.”⁹² By constructing poverty as a complex and daunting problem—a “wicked problem”—the danger is that stakeholders (in Ross’s analysis, judges) abdicate responsibility to seek out solutions, because they deem themselves helpless to act:

We assume that the eradication of poverty, even if possible in theory, would require the radical transformation of our society. The causes of poverty, we assume, are a product of a complex set of factors tied to politics, culture, history, psychology, and philosophy. Thus, only in a radically different world might poverty cease to exist. And, whatever the extent of the powers of the Court, radically remaking the world is not one of them.⁹³

This rhetoric of helplessness underpins an official narrative that “[h]ard choices, suffering, even ‘Kafkaesque’ results are simply unavoidable.”⁹⁴

Private property is frequently imbricated in wicked social problems. However, property theories tend to frame property problems through normative frames that are rooted in, and driven by, justifying the institution of private property and so defending property’s power.⁹⁵ However, as we have indicated, the issues at stake for individuals and for cities in affordable housing crises reach beyond the putatively apolitical transactional business of

91. Steven L. Winter, *The Next Century of Legal Thought?*, 22 CARDOZO L. REV. 747,748 (2001) (“the related instrumentalism and consequentialism of the realists can be seen (in sometimes extreme form) in the political polarization of the academy—where there is a fairly distinct right and left that mostly talk past each other . . .”).

92. Thomas Ross, *The Rhetoric of Poverty: Their Immortality, Our Helplessness*, 79 GEO. L. J. 1499, 1499 (1991).

93. *Id.* at 1501.

94. *Id.* at 1499.

95. SQUATTING AND THE STATE, *supra* note 57, at 212.

creating and enforcing claims.⁹⁶ “Property (both the physical asset of the land itself and competing claims to use, exploit, and occupy land)” has been invoked to attach idealized-citizen identities to interests that remain fixed in place—both physically and legally.⁹⁷ The values and narratives wrapped up in property law often become embedded in our understandings of who we are. Property becomes a time capsule of legacies, memorializing identities and reinforcing the biases that shape our understandings of who we are and what we ought to do.

Rittel (the design theorist who coined the term “wicked problem”) observed that traditional, linear problem solving techniques are ill-suited to solving wicked problems.⁹⁸ Rittel identified four key phases in linear problem solving processes: gather data, analyze data, formulate solution, and implement solution.⁹⁹ This echoes the conventional phases of legal analysis and problem solving taught in many law schools: identify the relevant facts, identify the issues, identify the law, and apply the law.¹⁰⁰ This approach requires *ab initio* decisions to be taken about questions such as “what facts are relevant?” It provides a structuring method that may work well when problems are simple or “tame”—when the major stakeholders are agreed about the problem definition and analytical/policy frame.¹⁰¹ However, when stakeholders disagree about the definition, delineation, and interpretation of the problem, linear problem solving does not produce effective or lasting solutions.

Complex social problems demand analytical methods that are designed to accommodate multiple alternative perspectives,

96. MIGUEL A. MARTÍNEZ, *SQUATTERS IN THE CAPITALIST CITY: HOUSING, JUSTICE, AND URBAN POLITICS*, 13 (Ray Forrest ed., 2020) (noting that exploring socio-spatial relations dictates critical perspectives that implicate cross-disciplinary tools).

97. *SQUATTING AND THE STATE*, *supra* note 57, at 212.

98. See Horst W.J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 *POL’Y SCIENCES* 155, 161 (1973).

99. *Id.* at 162.

100. Kelly Burton, “Think Like a Lawyer”: Using a Legal Reasoning Grid and Criterion Referenced Assessment Rubric on IRAC, *J. LEARNING DESIGN*, 2017, at 57, 60.

101. Although, it should be noted, that most contemporary policy challenges are “wicked” with some (for example climate change) described as “super wicked” on the grounds that along with other aggravating factors, time is running out. See Kelly Levin et al., *Overcoming the Tragedy of Super Wicked Problems: Constraining our Future Selves to Ameliorate Global Climate Change*, 45 *POL’Y SCIENCES* 123, 124 (2012).

rather than prescribing single solutions.¹⁰² In order to overcome the limitations of linear problem-solving, Rittel created an alternative problem-solving method which he described as the “Issue-Based Information Structure” (“IBIS”).¹⁰³ The IBIS system was designed to provide a structured method for managing rational dialogue amongst diverse stakeholders in cases when linear problem solving does not work—when the problem is “wicked.”¹⁰⁴ The aim of IBIS was to deploy structuring methods that—rather than reducing the problem space to manageable but partial frames—are capable of representing the “total problem space.”¹⁰⁵ This approach requires that we resist the narrowing effects of normative frames, seeking instead to identify and delineate the whole problem. Working across the problem space, wicked problem-solving follows iterative steps or phases—cycles of analysis and synthesis¹⁰⁶—to develop an “inference model” that allows stakeholders to better understand the problem space and the possible consequences of alternative decisions or actions. Because the “art of dealing with wicked problems is the art of not [seeking prematurely to determine] which type of solution to apply,”¹⁰⁷ wicked problem-solving methods require that we “remain in the mess”—keeping options open long enough to explore as many relationships in the problem topology as possible, before synthesizing, understanding, and starting to formulate solutions.

Resilient Property Theory (“RPT”) offers a new approach and methodology to tackle property law’s wicked problems by offering structuring methods for understanding state responses to property problems. While other “private” property theories tend

102. Jonathan Rosenhead, *What’s the Problem? An Introduction to Problem Structuring Method*, 26 INTERFACES 117, 119 (1996).

103. Chanpory Rith & Hugh Dubberly, *Why Horst W.J. Rittel Matters*, DESIGN ISSUES, Winter 2007, at 72-73.

104. Jeff Coklin, *Wicked Problems and Fragmentation*, PA. STATE UNIV. 7 (2001) [<https://perma.cc/FMU6-38MK>].

105. Tom Ritchey, *Wicked Problems: Modelling Social Messes with Morphological Analysis*, 2 ACTA MORPHOLOGICA GENERALIS 5 (2013) [<https://perma.cc/XJ2X-CYJD>].

106. Tom Ritchey, *Analysis and Synthesis: On Scientific Method-Based on a Study by Bernhard Reimann*, SWEDISH MORPHOLOGICAL SOC’Y 6 (1996) [<https://perma.cc/XRK8-CUHM>].

107. Ritchey, *supra* note 105, at 4.

to “look away” from the state as a primary actor in property problems, or to characterize the state as a neutral arbiter of competing claims, RPT demonstrates how states’ own vulnerabilities frame their responses to property problems, as state actors and agencies seek to accumulate and preserve their own resilience, at the same time as allocating resilience to other stakeholders. This need is foregrounded when states act to shore up their authority and legitimacy in the face of conflict or crises. Crucially, this insight helps us to recognize that states—particularly in periods of property crises—are not neutral arbiters between competing claims. It repositions the (multi-level) state as a central institution for property theory, reminding us that when states act on behalf of individuals (e.g., owners, squatters, market actors, community members) and institutions (e.g., markets, the institution of private property, society), they do so against the backdrop of their own “self-regarding” need for resilience. As nation-states navigate new landscapes of statehood and sovereignty, against the backdrops of globalization,¹⁰⁸ political polarization, and partisan antagonism,¹⁰⁹ it is vital that property scholarship incorporate a realistic model of the vulnerable, resilience-seeking, multi-level state, if it is to contribute to progress in tackling the pressing property problems of our time. RPT focuses attention on the implications of the state’s own resilience needs as a vulnerable social institution and on the impact of state resilience (or state fragility) for state responses to property problems.

The financial securitization of housing in the last forty years has revealed how matrices of collective interests in housing shape the mechanisms that facilitate housing, and the rights and interests of landlords and tenants, lenders and borrowers, owners, neighbors, home-seekers, and the state itself. By restricting access to lending in certain neighborhoods, practices of red-lining

108. *See generally*, ULRICH BECK, POWER IN THE GLOBAL AGE: A NEW GLOBAL POLITICAL ECONOMY 125-65 (Kathleen Cross trans., 2005) (describing distinctive strategies employed by states to preserve power, including economic strategies, preventative strategies, and globalization strategies among other).

109. *Political Polarization in the American Public*, PEW RESEARCH CENTER 6-7 (June 12, 2014), [<https://perma.cc/MGU8-YCMH>].

raised the cost of homeownership for low-income borrowers.¹¹⁰ Neighborhoods may enforce covenants that restrict whether property may be “rented” by an owner, on the assumption that rental properties decrease neighborhood value or attract tenants that do not “fit” the neighborhood culture.¹¹¹ Landlords who let affordable housing also have a stake in how affordable housing challenges are addressed. Affordable housing policies have implications for the profit they receive in rental income, the security of their property assets, and their relationships with neighboring owners. Landlords profit from housing flows from two sources: equity in the value of the property and monthly rental returns for leasing the property.¹¹² Property owners who privilege monthly rental returns as a primary source for value are incentivized to spend less on maintaining the property.¹¹³ Matthew Desmond’s seminal book, *Evicted*, revealed the malpractices of landlords seeking to avoid property maintenance costs in the face of habitability standards that harm renters as a strategy to preserve monthly value.¹¹⁴ This sector can be described as “gap-rental housing:” the market is dependent on the lack of other affordable housing options.¹¹⁵ Section 8 landlords often rely on monthly rentals, though they are incentivized to maintain basic standards by the Section 8 criteria.¹¹⁶ One irony of Section 8 housing is that while residents are portrayed as unworthy recipients of state housing vouchers, landlords who receive up to 125% of market value are rarely

110. Erik J. Martin, *What is Redlining? A Look at the History of Racism in American Real Estate*, BANKRATE (Aug. 4, 2023), [https://perma.cc/KZ5L-J844].

111. See Andrea J. Boyack, *American Dream in Flux: The Endangered Right to Lease a Home*, 49 REAL PROP. TR. & EST. L.J. 203, 230 (2014) (observing that courts typically uphold these agreements under a theory of freedom of contract principles, rather than viewing them as restraints on alienation).

112. See Jayne Thompson, *How do Landlords Make Money?*, WEEKAND (Nov. 30, 2013, 11:31 AM), [https://perma.cc/5B4R-TCGU].

113. *Under-Propertied Persons*, *supra* note 4, at 16-17.

114. See generally MATTHEW DESMOND, *EVICTED!* (2012).

115. *Under-Propertied Persons*, *supra* note 4, at 31; *The Gap: A Shortage of Affordable Homes*, NAT’L LOW INCOME COAL. 3-7 (Mar. 2023), [https://perma.cc/K4LG-UDBV].

116. *Section 8 Inspections: The Rules and Requirements Landlords Need to Know*, JANOVER (Feb. 24, 2023), [https://perma.cc/65B5-2PYM].

portrayed as recipients of government handouts.¹¹⁷ Through the national narrative lens, owner/landlords are rhetorically defined as performing a laudable public service, while Section 8 renters are characterized as morally deficient because they need housing assistance.¹¹⁸

The effects of neoliberalism on property/state relations reach across four key areas.¹¹⁹ First, the retrenchment of the state's financial backing of housing programs has increased individuals' reliance on private capital to underwrite construction and development to meet housing market needs.¹²⁰ The heightened alignment between state interests and private capital in the housing sphere is signalled through the increased use of incentives and subsidies, which are granted to landlords and developers to encourage the investment of private capital in the housing market.¹²¹ Second, some states adopted public private

117. See Shawn Watson, *supra* note 34; GOWAN, *supra* note 12, at 28.

118. GOWAN, *supra* note 12, at 28.

119. Footnotes 119-125 and accompanying text are partially excerpted from SQUATTING AND THE STATE, *supra* note 57, at 167-69. Quotations are omitted for readability.

120. SQUATTING AND THE STATE, *supra* note 57, at 167.

121. For a description of how financialization has impacted housing policies in rental housing, publicly supported housing, and housing ownership across a plurality of western states, see Manuel B. Aalbers, *Financial Geography II: Financial Geographies of Housing and Real Estate*, 43 PROGRESS IN HUM. GEOGRAPHY 376, 376-79 (2018) (contextualizing the role of financialization across many sectors of housing). Financialization involves the creation of products for access to capital based on more than just the base value of the asset secured. See Rachel Weber, *Selling City Futures: The Financialization of Urban Redevelopment Policy*, 86 ECON. GEOGRAPHY 251, 258 (2010). Weber explains how developers and city governments coordinated to financialize public assets towards public housing delivery:

[A] developer who wants to undertake a project in a designated TIF district will apply for funding from the local government or redevelopment agency. If the city is supportive of the project, it will grant a portion of the project's development costs as a "TIF allocation," a commitment of future property taxes generated within the district. However, developers require the funds to start construction immediately, so municipalities fund projects upfront by pledging future property tax revenues as security for current borrowing. To pay for these development expenditures, municipalities often float revenue bonds, which are secured by a dedicated stream of property taxes generated by and around the new development instead of by the sponsoring government's full faith and credit. These bonds are sold through negotiated sales and allow municipalities to avoid state imposed constitutional and statutory debt limitations and voter referenda. In this way, cities obtain capital by turning the rights to their own heterogeneous property tax base into standardized tradable

partnership models of service delivery, exporting the risks and responsibilities for maintaining infrastructure to private markets.¹²² Third, and related to the transfer of risk from the state to the private market, global financial markets have subsumed the erstwhile public function of facilitating housing delivery, including providing globalized private capital backing for what were traditionally “state-backed” housing programs.¹²³ Finally,

assets – often without the knowledge of the individual property owners paying their tax bills. *Id.*

Teresa and Fields have highlighted how financialization has impacted American housing markets, emphasizing the role of global capital in shaping the view of housing as investment. Benjamin F. Teresa, *Managing Fictitious Capital: The Legal Geography of Investment and Political Struggle in Rental Housing in New York City*, 48 ENV'T & PLAN. A 465, 466-67 (2016) (calling this form of financialization the pursuit of “fictitious capital”); Desiree Fields, *Contesting the Financialization of Urban Space: Community Organizations and the Struggle to Preserve Affordable Rental Housing in New York City*, 37 J. URB. AFF. 144, 144-59 (2014) (describing the challenges for urban community groups in affordable housing as urban land and housing have become central sites for global capital flows). Likewise, Stuart Lowe has described the process of global capital’s infusion into housing as a “financialization of the everyday” leaking from commercial markets, to the residential home market, to the welfare system. See Stuart Lowe, *Housing and Mortgage Markets in the Everyday: How Globalization Came Home*, in SOCIAL POLICY IN AN ERA OF COMPETITION: FROM GLOBAL TO LOCAL PERSPECTIVES 69, 70-72 (D. Horsfall & J. Hudson eds., 2017).

122. RORY HEARNE, PUBLIC PRIVATE PARTNERSHIPS IN IRELAND: FAILED EXPERIMENT OR THE WAY FORWARD FOR THE STATE? 161 (2011) (noting that the driving market principle validating PPPs was the transfer of risk to the private sector); RORY HEARNE, ORIGINS, DEVELOPMENT, AND OUTCOMES OF PUBLIC PRIVATE PARTNERSHIPS IN IRELAND: THE CASE OF PPPs IN SOCIAL HOUSING REGENERATION 24 (2018) (noting that Irish officials believed that private financial markets could oversee the quality of construction better than public bodies because each had a financial incentive to deliver a project on terms). PPPs typically follow one of three models for implementation relating to risk and responsibility: Design, Build, and Finance (DBF); Design, Build, Finance, and Maintain (DBFM); and Design, Build, Finance, Maintain, and Operate (DBFMO). *Id.* at 11; Dominique Custos & John Reitz, *Public Private Partnerships*, 58 AM. J. COMP. L. 555, 555 (2010) (observing the development of PPPs in the American Housing context). Housing delivery became a paradigmatic example of the development and entrenchment of the private sphere into the delivery of public goods. Jason Hackworth observed that Public Private Partnerships have been naturalized under neoliberalism in the USA as has Raquel Rolnik shown in the developing world. THE NEOLIBERAL CITY, *supra* note 6, at 26; URBAN WARFARE, *supra* note 6. Amy Starecheski described the conflict between squatters in New York’s lower east side as a showdown, “putting public private partnerships on trial.” STARECHESKI, *supra* note 11, at 96.

123. For example, in the United States, tax credits granted through private developers were deployed to leverage global capital resources into U.S. housing initiatives backed by HUD, and supported by local, state, and federal sponsored programs. See HACKWORTH, *supra* note 6, at 52 (noting that cities restructuring housing following retrenchment has increased the city’s exposure to “global institutions and forces – [namely] – the real estate market most abstractly, bond-rating agencies and banks more concretely”); Fields, *supra*

at the local level, the scaling-back of national or state-level resources dedicated to municipal programs (like housing), caused a fundamental shift in the state's relationship to land ownership as a public resource.¹²⁴ This has been accelerated through the period of "austerity" that followed the Great Recession from 2008, as housing and local government bore the brunt of public sector cuts.¹²⁵

The degree to which state actors and agencies perceive their role in the housing market, between facilitating private individuals to self-provide and delivering a public service, shapes their responses to the pressures of affordable housing need. Much of the public apparatus for building affordable housing has positioned the state as an instigator of tax credit financing for private developers in exchange for allocating units in developments as affordable housing.¹²⁶ In this sense, affordable housing is rooted in both the public and the private realm, as it relates both to the ability of the state to allocate resources through tax credits and to incentivize private owners to participate in these initiatives.¹²⁷

When states allocate resources to support individuals in accessing housing (for example, subsidies or direct provision of public housing), in a context of rhetorical narratives that characterize individuals as responsible for their own impecunity, through laziness, poor choices, or other failures of responsible citizenship, they risk criticism over how the state spends public resources, excessive taxation, or characterizations of state action as encouraging dependency and irresponsible citizenship. Yet, this is not a simple policy calculation for (local) state actors and

note 121, at 14 (describing the challenges for urban community groups in affordable housing as urban land and housing have become central sites for global capital flows").

124. See, e.g., Norman Ginsburg, *The Privatization of Council Housing*, 25 CRITICAL SOC. POL'Y 115, 115 (2005); Stephen B. Kinnaird, *Public Housing: Abandon HOPE, but Not Privatization*, 103 YALE L.J. 961 (1994); Michelle Norris & Rory Hearne, *Privatizing Public Housing Redevelopment: Grassroots Resistance, Co-operation and Devastation in Three Dublin Neighbourhoods*, J. CITIES, Sept. 2016, at 40; Ray Forrest & Alan Murie, *From Privatization to Commodification: Tenure Conversion and New Zones of Transition in the City*, 19 INTL. J. URB. & REG'L RSCH. 407, 407 (1995).

125. See URBAN WARFARE, *supra* note 6, at 118.

126. Fields, *supra* note 121, at 146.

127. *Id.*

agencies to make. Narrative frameworks invoking state withdrawal from housing provision are countered by the interlocking nature of the state's own stake in housing delivery and other challenges that state actors are both responsible for, and which produce costs for the state, especially at the local level.¹²⁸ For example, public health outcomes are dependent on the quality and permanence of housing.¹²⁹ Educational outcomes and economic outcomes also have been directly tied to where a person lives.¹³⁰ Ameliorating the consequences of housing precarity may produce cost offsets, while providing greater stability for participants in those programs.¹³¹ For example, studies have shown that states may spend more money policing and regulating homelessness due to a lack of affordable housing; spend more money on healthcare costs; and on education costs.¹³²

State responses to affordable housing challenges have direct implications for people, individually and collectively, for economic and social institutions, for narrative discourse,¹³³ and

128. In 1965 editorial on Health and Housing, one author noted that, "20 per cent of the average American city's residential area is slums, yet 33 per cent of the total population live[s] [there], 35 per cent of the city's fires occur [there], 50 per cent of the disease occurs [there], 45 per cent of the major crimes occur [there], 60 per cent of the tuberculosis cases originate [there], 55 per cent of juvenile delinquency occurs [there], 50 per cent of arrests are made [there]; they cost the taxpayer 45 per cent of all city service expenditure." *Health and Housing*, 3 MED. CARE 3, 3 (1965).

129. James Kreiger & Donna L. Higgin, *Housing and Health: Time Again for Public Health Action*, 92 AM. J. PUB. HEALTH 758, 758-59 (2002).

130. *Under-Propertied Persons*, *supra* note 4, at 16-17.

131. See Angela Ly & Eric Latimer, *Housing First Impact on Costs and Associated Cost Offsets: A Review of the Literature*, 60 CANADIAN J. PSYCHIATRY 475, 475 (2015).

132. See, e.g., Gregory A. Shinn, *The Cost of Long-Term Homelessness in Central Florida*, RETHINK HOMELESSNESS 13 (2014), [<https://perma.cc/5TW3-YJAS>] (finding that providing safe, affordable housing to homeless individuals costs the city on average \$21,014 per person less than policing and regulating homelessness).

133. Rob Atkinson, *Narratives of Policy: The Construction of Urban Problems and Urban Policy in the Official Discourse of British Government 1968-1998*, 20 CRITICAL SOC. POL'Y 211, 214 (2000) (describing the process whereby "aspects of reality" that are "rarely self-evidently problems as such" are assembled through a process of narrative discourse and "articulated as an object amenable to diagnosis and treatment . . ."). As Basolo explained: "The complexity of city policy making and the realities of limited resources often require elected officials to make a choice in their support for different types of policies." Victoria Basolo, *City Spending on Economic Development Versus Affordable Housing: Does Inter-City Competition or Local Politics Drive Decisions*, 22 J. URB. AFFS. 317, 322 (2000).

also for the state itself.¹³⁴ The real time effects play out in markets and on social relations that crystallize around private property, including the way neighbors perceive their entitlements and the obligations they owe each other.¹³⁵ States' responses to property problems in moments of crises bring the normative landscapes of private property into sharper relief, revealing the roles that the state—across its multiple levels—performs in shoring up the resilience of private property rights of owners, investors, citizens, cities, neighborhoods, markets, and others. Finally, state responses to affordable housing enable us better to understand how complex, multi-level state actions shore up both individual and aggregated interests, and the resilience of the state itself.

As the federal government took a step back in providing resources for public housing, and cities turned to private landlords and developers to fill the affordable housing gap, the active role of the state receded from view, at the federal level at least. At the same time, local or city-level state actors continued to face conflicting pressures to respond to housing need. On the one hand, affordable housing is rooted in the growing costs of housing, primarily in urban areas, due in part to cities' rent-seeking in exchange for higher tax revenue.¹³⁶ It implicates city budgets which primarily rely on the property tax system and state and federal allocations to solve local problems (at least problems that require expenditures). Solutions to affordable housing needs often require cities to allocate either physical resources (land or buildings) or financial resources (vouchers or other housing allowances).¹³⁷ Individuals in cities who believe they are paying too much in taxes to support affordable housing goals may find state or federal officials receptive to calls to limit the city's ability to collect more tax revenue by framing the question as a conflict between property rights of owners and public revenue spending

134. Erikson argued that neoliberal states use their "public" powers—for example, criminalization—to shore up their legitimacy in the face of political, economic, and ideological uncertainty. RICHARD ERIKSON, *CRIME IN AN INSECURE WORLD* 30 (2007).

135. See Lorna Fox O'Mahony and Marc L. Roark, *Property as an Asset of Resilience: Rethinking Ownership, Communities, and Exclusion Through the Register of Resilience*, 36 *INT'L J. SEMIOTICS L.* 1477, 1506 (2023) [hereinafter *Property as an Asset of Resilience*].

136. Kinnaird, *supra* note 124, at 984.

137. *Id.*

by cities. However, unlike the federal government, which governs from a distance and is better equipped to look away from the material realities of local housing crises, city officials live and work in the places that carry the costs of affordable housing shortfalls.

When cities invest public funds in projects or initiatives, scrutiny of public spending includes questions about the source of the revenue that is being spent: did the money come from taxes collected on property owners, from sales taxes, or from bonds issued by the city? What is the relative worth of the spending: is the city spending revenue on this project to the neglect of others? How does the city choose what projects to spend money on? And how responsive should the city be to affordable housing needs? What are the long-term effects of this spending: does the spending inure to the benefit of the city? Is the spending going to harm the city over the long-term? Often these questions are asked in isolation of each other, as political talking points, or to critique policy choices, putting political pressure on state actors and agencies.

RPT recognizes that, in examining the implications of state responses to complex property problems, it is important to focus *both* on the state's role in allocation of the resources of resilience to competing stakeholders (for example, those seeking housing, tax-payers, owners, neighbors, landlords, lenders, and healthcare, labor market and financial institutions) and on the state's own self-regarding resilience needs.¹³⁸ Just as "the state" is not a single actor but a composite apparatus of actors, agencies and institutions, scaled across multiple levels (global, federal, state/regional, city/local), the assets of resilience that states deploy to maintain their own resilience (for example, maintaining political legitimacy and achieving economic accumulation) are

138. Marc L. Roark & Lorna Fox O'Mahony, *Real Property Transactions in the Network Society: Platform Real Estate, Housing Hactivism, and the Re-scaling of Public and Private Power*, J. CONSUMER POL'Y (2023) [<https://perma.cc/3EE7-ED96>] (observing the challenges of local state actors and agencies as policies developed at national or regional level are deployed) [hereinafter *Real Property Transactions in the Network Society*]; see also Marc L. Roark & Lorna Fox O'Mahony, *Scaling Property Law*, in BRAM AKKERMANS, RESEARCH AGENDA IN PROPERTY (forthcoming 2023) (on file with the author) [hereinafter *Scaling Property Law*].

scaled across different loci of state authority and power. Differently situated state actors and agencies with different powers to act have different stores of hierarchical resilience;¹³⁹ and can access different types of resources with which to address problems (e.g., the size of a tax base, or the physical resources that the state can control within its hierarchical power-base).¹⁴⁰ Finally, states validate or challenge their deployment of these assets of resilience in a context of ideological constraints.¹⁴¹

The operation of these scales of resilience in the context of the Housing Trust can be illustrated using the example of preemption. Since 2010, several state legislatures have passed laws that prevent local municipalities within their jurisdiction from addressing affordable housing problems, including prohibitions on imposing fees that raise revenue for many housing trusts.¹⁴² As local cities attempted to navigate affordable housing challenges, these preemptive actions implicate all three types of scale.¹⁴³ First, states that pass preemption measures exercise their hierarchical power to prevent local municipalities from exercising powers that would normally be available at the local level. The effect of preemption is to limit the resources that cities can access to respond to affordable housing need. And preemptive legislation is typically validated on rhetorical or ideological arguments about the legitimacy of public spending on affordable housing initiatives.¹⁴⁴ For state legislators, particularly those who

139. In Chapter 9 of *Squatting and the State*, we highlight tensions that emerged between multiple levels of two federal systems in responding to housing challenges—Barcelona, Spain and New York, United States—In both systems, local actors responded to local housing challenges that were shaped by legal powers to act or not act at the local level. See SQUATTING AND THE STATE, *supra* note 57, at 339-79.

140. See *Scaling Property Law*, *supra* note 138; Marc L. Roark, *Scaling Commercial Law in Indian Country*, 8 TEX. A&M L. REV. 89, 117 (2019) (describing how tribal relationships to resources are scaled across geographies in the United States).

141. SQUATTING AND THE STATE, *supra* note 57, at 360.

142. See Solomon Greene, Kriti Ramakrishnan & Jorge Morales-Burnett, *State Preemption of Local Housing Protections: Lessons from the Pandemic*, URB.INST. 1-2 (2020), [<https://perma.cc/8ZNB-XAWN>].

143. Thirty-three State legislatures in the United States have passed laws that restrict some form of affordable housing action by cities. The majority of these laws are directed at inclusionary zoning requirements and rent regulations. See *id.*

144. See Christopher B. Goodman & Megan E. Hatch, *State Preemption and Affordable Housing Policy*, 60 URB. STUD. 1048, 1049 (2023) (noting that evidence suggests that affordable housing preemption is driven by legislative ideologies and professional

govern at a distance from urban communities facing severe housing challenges, the pressures produced by acute housing need may be framed differently compared to the on-the-ground realities that city officials are confronted with. In Part III we examine how these pressures created a “double lock” threat for cities, between acute on-the-ground material needs linked to affordable housing shortfall and related economic, social, education, and health costs on the one hand, and the diminishing scope for legitimate state action to respond to these on the other.¹⁴⁵ In Part IV we reflect on the use of the Housing Trust as a mechanism adopted by cities to unlock this conundrum, while maintaining their own resilience.¹⁴⁶

III. THE DOUBLE-LOCK THREAT OF AFFORDABLE HOUSING FOR CITIES

“Affordable housing” refers to the ability of individuals in particular geographies to maintain adequate housing, within the constraints of their resources, without leaving them unable to meet other essential needs. The Department of Housing and Urban Development (“HUD”) defines affordable housing as that which a “household can afford spending no more than 30% of their income.”¹⁴⁷ This definition is geographically based: the definition of what is affordable in Omaha varies greatly from what is affordable in New York City or Los Angeles. Since the 1930’s, the United States has employed means-testing to determine what constitutes affordable housing and who qualifies for housing assistance.¹⁴⁸ For example, HUD defines low-income persons as those that make less than 80% of the median family income for a particular region and defines extremely low-income

relationships over concrete problem solving, and that more conservative legislatures are more likely to use preemptive measures to prevent liberal leaning cities from addressing problems that might make them more powerful against state interests).

145. See *infra* Part III.

146. See *infra* Part IV.

147. See *Barriers to Affordable Housing*, U.S. DEP’T OF HOUS. AND URB. DEV., [<https://perma.cc/G8FR-BXK6>] (last visited Oct. 17, 2023).

148. Lauren Elizabeth Morrow Everett & Marta Petteni, *History of Housing Policy in the United States*, HOMELESSNESS RSCH. & ACTION COLLABORATIVE (2019), [<https://perma.cc/56NK-HYSS>].

persons as those whose incomes do not exceed 30% of the median family income.¹⁴⁹ These definitions are also geographically-variable, as different locations will have different median, low-income, and extremely low-income points. Based on these calculations, HUD determines the general definition of “affordable housing” as housing that costs less than 24% of the area median income.¹⁵⁰

Because housing is fixed in place, and markets and wage considerations dictate access, advocates have suggested an alternative affordability metric based on the housing wage gap.¹⁵¹ The housing wage gap is based on what a person would need to earn through full-time work to afford a two-bedroom rental based on the HUD standard for an affordable home.¹⁵² The housing wage metric does not take into account actual wages but is based on the cost of housing, defining housing affordability by the market conditions in which housing is found.¹⁵³ The following figure illustrates market conditions in which housing is found.¹⁵⁴

Figure 1

State	Avg. (Annual) Income	(Annual) Income Required for 2 BR	Current Min. Wage	Avg. Monthly Wage for Renters	Avg. Monthly Cost for 2 BR	Avg. Monthly Cost for 1 BR
AL	\$66,123	\$32,110	\$7.25	\$496	\$803	\$665
AK	\$92,899	\$52,147	\$10.19	\$697	\$1,304	\$1,005
AZ	\$72,954	\$43,892	\$12.00	\$547	\$1,097	\$882
AR	\$61,408	\$29,514	\$10.00	\$461	\$738	\$593
CA	\$90,909	\$76,879	\$13.00	\$682	\$1,922	\$1,522

149. See *Methodology for Determining Section 8 Income Limits: Overview of HUD Section 8 Income Limits*, U.S. DEP’T OF HOUS. AND URB. DEV. 1 (2021), [https://perma.cc/D6XS-35K9].

150. Yglesias, *supra* note 53.

151. *NLIHC Releases Out of Reach 2023: The High Cost of Housing*, NAT’L LOW INCOME HOUS. COAL., (June 14, 2023), [perma.cc/7TM3-9P3Q].

152. Yglesias, *supra* note 53.

153. *NLIHC Releases Out of Reach 2023: The High Cost of Housing*, *supra* note 151.

154. *Out of Reach: The High Cost of Living*, NAT’L LOW INCOME HOUS. COAL. 18-274 (2020), [https://perma.cc/G5PE-BJGV].

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CO	\$91,959	\$55,016	\$12.00	\$690	\$1,375	\$1,103
CT	\$101,816	\$54,956	\$11.00	\$764	\$1,374	\$1,109
DE	\$86,342	\$45,669	\$9.25	\$648	\$1,142	\$940
FL	\$68,669	\$50,807	\$8.56	\$515	\$1,270	\$1,027
GA	\$72,224	\$39,758	\$7.25	\$542	\$994	\$858
HI	\$97,168	\$80,613	\$10.10	\$729	\$2,015	\$1,541
ID	\$68,372	\$34,511	\$7.25	\$513	\$863	\$680
IL	\$85,252	\$44,310	\$10.00	\$639	\$1,108	\$934
IN	\$72,950	\$33,940	\$7.25	\$547	\$848	\$685
IA	\$79,229	\$32,151	\$7.25	\$594	\$847	\$632
KS	\$74,642	\$34,185	\$7.25	\$560	\$855	\$675
KY	\$66,539	\$31,183	\$7.25	\$499	\$780	\$620
LA	\$64,793	\$36,356	\$7.25	\$486	\$909	\$756
ME	\$76,811	\$41,156	\$12.00	\$576	\$1,029	\$813
MD	\$109,357	\$58,866	\$11.00	\$820	\$1,459	\$1,223
MA	\$105,892	\$73,890	\$12.57	\$794	\$1,847	\$1,498
MI	\$74,703	\$36,227	\$9.65	\$560	\$906	\$717
MN	\$92,812	\$42,705	\$10.00	\$696	\$1,068	\$847
MS	\$57,678	\$30,977	\$7.25	\$433	\$774	\$641
MO	\$73,483	\$33,424	\$9.45	\$551	\$836	\$662
MT	\$73,104	\$35,112	\$8.65	\$548	\$878	\$684
NE	\$78,740	\$33,838	\$9.00	\$591	\$846	\$668
NV	\$72,497	\$42,592	\$9.00	\$544	\$1,065	\$858
NH	\$94,756	\$48,726	\$7.25	\$711	\$1,218	\$948
NJ	\$102,843	\$61,762	\$11.00	\$771	\$1,544	\$1,263
NM	\$62,865	\$34,047	\$9.00	\$471	\$851	\$696
NY	\$87,886	\$67,653	\$11.80	\$659	\$1,691	\$1,457
NC	\$71,385	\$36,751	\$7.25	\$535	\$919	\$773
ND	\$88,698	\$33,647	\$7.25	\$665	\$841	\$666
OH	\$74,544	\$33,267	\$8.70	\$559	\$832	\$656
OK	\$66,385	\$33,132	\$7.25	\$498	\$828	\$653
OR	\$78,661	\$50,687	\$12.00	\$590	\$1,267	\$1,046
PA	\$82,696	\$39,992	\$7.25	\$620	\$1,000	\$811
RI	\$87,969	\$44,023	\$10.50	\$660	\$1,101	\$911

SC	\$67,964	\$35,984	\$7.25	\$510	\$900	\$771
SD	\$76,055	\$31,701	\$9.30	\$570	\$793	\$621
TN	\$67,463	\$35,550	\$7.25	\$506	\$889	\$734
TX	\$75,592	\$43,478	\$7.25	\$567	\$1,087	\$892
UT	\$82,685	\$41,251	\$7.25	\$620	\$1,031	\$845
VT	\$78,736	\$48,597	\$10.96	\$591	\$1,215	\$969
VA	\$93,280	\$49,167	\$7.25	\$700	\$1,229	\$1,052
WA	\$93,484	\$63,352	\$13.50	\$701	\$1,584	\$1,286
WV	\$61,519	\$31,135	\$8.75	\$461	\$778	\$640
WI	\$80,442	\$35,913	\$7.25	\$603	\$898	\$721
WY	\$80,329	\$35,663	\$7.25	\$602	\$892	\$719
DC	\$126,000	\$68,280	\$15.00	\$945	\$1,707	\$1,500
PR	\$25,255	\$19,473	\$7.25	\$189	\$487	\$419

Affordable housing is a public problem, requiring state-backed coordination and allocations of public resources,¹⁵⁵ mediated through the institutions of private property law, including housing markets, mortgage law, and landlord and tenant law.¹⁵⁶ RPT offers a realistic, grounded approach for analyzing and addressing the challenges that cities face in navigating challenges such as ageing infrastructure and absolute shortfalls in affordable housing provision, in a context where cities were both disempowered and politically discouraged from investing public funds to support marginalized low-income households.¹⁵⁷ Affordable housing is a pressing issue for cities and local governments for several reasons. First, the “regulation of housing is a basic function of local government.”¹⁵⁸ Housing is a primary concern for cities, not only because they maintain and deliver

155. URBAN WARFARE, *supra* note 6 (noting that the “public or semi-public nature of housing institutions and financial policies defines [the housing sector as one of high political relevance]”).

156. *Human Impact Statements*, *supra* note 21, at 653; Andrea J. Boyack, *Responsible Devolution of Affordable Housing*, 46 *FORDHAM URB. L.J.* 1183, 1232 (2019); JOSEPH WILLIAM SINGER, *THE EDGES OF THE FIELD: LESSONS ON THE OBLIGATIONS OF OWNERSHIP* 18-38 (2000); Donald Saelinger, *Nowhere to Go: The Impacts of City Ordinances Criminalizing Homelessness*, 13 *GEO. J. ON POVERTY L. & POL’Y* 545, 549 (2006).

157. *SQUATTING AND THE STATE*, *supra* note 57, at 12.

158. NEIL KRAUS, *MAJORITARIAN CITIES* 132 (2013).

state-owned housing stock (usually public housing and scattered site housing), but because the city's jurisdiction to regulate land has a direct impact on the delivery of housing.¹⁵⁹ This gives cities a Janus-like view in which at the same time active efforts are directed towards housing affordability through rent control and subsidies, the city continues to enforce and pass land use controls that raise the ultimate cost of housing.¹⁶⁰ Studies also show that lower income communities place a higher strain on public budgets relating to basic services (not including the provision of public housing)—including police and fire protection.¹⁶¹ The cost of policing criminal activity, the impact that schools in low-income areas have on students income trajectory,¹⁶² and the public health costs associated with poverty in low-income regions indicate that affordable stable housing is a lynch-pin issue not only for the resilience of individuals, but for the resilience of cities. Shortfalls in affordable housing can drastically increase costs and visible pressures that cities feel (such as blight, criminal activity, and poverty), while providing affordable housing resources that can offset those issues.

Cities' revenue budgets are funded through two main routes: city-level taxes and borrowing to either offset budget shortfalls, build and repair infrastructure, or attract business.¹⁶³ Borrowing to cover budget shortfalls is typically short term and is directly related to the anticipated collection of tax revenue.¹⁶⁴ Longer term debt for infrastructure projects usually derives from general obligation bonds and revenue bonds issued for a specific purpose by the city. Lastly, cities can use tax credit financing as a means to attract businesses to the city.¹⁶⁵ Because cities are dependent on their ability to borrow funds, either for budget shortfalls or building projects, their rating with municipal bond rating agencies

159. Nestor M. Davidson, *Affordable Housing Law and Policy in an Era of Big*, 44 *FORDHAM URB. L.J.* 277, 278 (2017).

160. Gabriel Metcalf, *Sand Castles Before the Tide? Affordable Housing in Expensive Cities*, *J. ECON. PERSPS.*, Winter 2018, at 59, 61.

161. Kraus, *supra* note 158, at 133.

162. Gladwell, *supra* note 15.

163. *THE NEOLIBERAL CITY*, *supra* note 6, at 20.

164. *Id.*

165. *Id.*

shapes city decision making. For example, in the 1970's, when New York City was on the cusp of bankruptcy, their banks and rating agencies were the first to require draconian cuts to social services and personnel as a condition of lending the city money to close its budget gap, before the New York Financial Control Board did the same a few years later.¹⁶⁶

Because of reductions in federal funding earmarked or eligible for affordable housing, the pressure on city finances intensified. This became clear in places like Chicago, where accounts of the withdrawal of staff from public housing projects became evident. Chicago's public housing residents reflected on the challenges of growing up in public housing:

When I was little, we would go down to the front office and the next day that problem would be solved. But around the time I turned ten or eleven, the office was still open, but it definitely wasn't staffed like it was before. It was only maybe two or three people in there and they were responsible for maintaining the entire complex. I remember my mother going to that office a lot. The staff would say, "Oh yeah, we'll put the request in, we'll put the request in," and nothing would happen. My mother—she tried not to get frustrated in front of us, but we could tell that she was pretty upset.¹⁶⁷

In a detailed analysis of New York's Housing Authority mid-century success, Nicholas Bloom observed that one of the reasons for the resilience of New York's public housing provision was its maintenance staff, who regularly and professionally attended to the needs of housing complex residents, and who viewed low-income housing not as poor places to live, but as places where poor people live.¹⁶⁸ Nevertheless, by the 1980's, the New York City Housing Authority, like others around the country, experienced significant cuts to staff due to federal withdrawal of funding from social housing projects.¹⁶⁹ As a

166. Kim Phillips-Fein, *The Legacy of the 1970s Fiscal Crisis*, NATION (Apr. 16, 2013), [<https://perma.cc/Y624-2BSX>].

167. See HIGH RISE STORIES: VOICES FROM CHICAGO PUBLIC HOUSING 157 (Audrey Petty ed., 2013) [hereinafter HIGH RISE STORIES].

168. Nicholas Dagen Bloom, *High-Rise Public Housing is Unmanageable*, in PUBLIC HOUSING MYTHS 91, 96 (Nicholas Dagen Bloom, Fritz Umbach, & Lawrence J. Vale eds., 1 ed. 2015).

169. *Id.*

result, maintenance issues were delayed or not performed at all.¹⁷⁰ As one resident reported to Bloom, “sometimes you can ‘do more with less,’ but sometimes ‘less is less.’”¹⁷¹

Deteriorating conditions with fewer staff for maintenance also led to more physical deterioration. These deteriorating conditions created hazards for residents in these places. Again, from Audrey Petty’s collection of stories from Chicago’s public housing developments:

One time, when I was very young, this girl, my older sister’s friend, was playing around in the front of the building and the gate actually fell on her. It was a really big, wrought iron fence gate and it fell on her. And it messed her leg up. It’s still messed up to this day. She broke her leg, and afterwards it was just a back and forth argument with the management office to try and get who was responsible for the accident. Management staff would say, “Well, she shouldn’t have been playing on the gate.” But the gate was broke. It had been leaning for months, maybe more, and nobody ever came to fix it. We always complained about it, and nobody ever did anything. It took the gate falling on a child and her breaking her leg for building management to actually do something. They fixed it a couple of days after the accident. And it was a really big deal in that neighborhood, because we always, always, always told them to fix that gate, and they just wouldn’t do it.¹⁷²

A combination of low-grade materials, plus few resources for maintenance and the intensification of living conditions led to infrastructure that was increasingly cheaper to tear down, than repair and maintain.¹⁷³ The liabilities that developed in the city’s public housing stock also influenced other decisions about how the city approached the need to generate revenue. As the business

170. Richard C. Gentry, *How HOPE VI Has Helped Reshape Public Housing*, in FROM DESPAIR TO HOPE 205–226 (Henry G. Cisneros & Lora Engdahl eds., 2009); Bloom, *supra* note 168.

171. Bloom, *supra* note 168, at 107.

172. HIGH RISE STORIES, *supra* note 167, at 158.

173. Michael H. Schill, *Distressed Public Housing: Where Do We Go from Here?*, 60 U. CHI. L. REV. 497, 503-04 (1993).

model for cities to finance basic operations changed, so did the city's concept of its role in delivering affordable housing.¹⁷⁴

During the post-war period, U.S. cities' capacities to address affordable housing and budget shortfalls were shaped in part by the framing of property resources. During the 1950's and 1960's, city-owned land was a public asset that could be put to use to solve public problems, so long as the city could access other cash resources to make those projects viable.¹⁷⁵ The 1949 Housing Act provided cities with financial resources and capabilities to improve inadequate housing in low-income areas.¹⁷⁶ It enabled new public housing infrastructure to be built on city land with federal dollars to house the poorest citizens. While those resources were curtailed even at their inception, the infusion of federal cash enabled cities to leverage land to construct large scale public housing complexes.¹⁷⁷ But, as the deterioration of public housing stock in the 1970's and 1980's coincided with the withdrawal of federal funding for affordable housing investment, cities lacked the cash resources to renew those spaces.¹⁷⁸ At the same time, the city increasingly viewed its land assets as leverage for increasing tax revenue—either by encouraging developers to create multi-use developments that lured in sales and use tax revenue; or by attracting residents who had money to spend on mixed-income housing (with tax revenues flowing on the back end).¹⁷⁹ Public real estate transitioned from direct physical use as public housing to become a public asset that could be economically leveraged to capitalize on greater revenues.¹⁸⁰

The federal government was instrumental in shaping the programs that would ultimately serve to reshape public housing and public housing delivery. One program in particular—HOPE VI—paved the way for cities to demolish public housing properties that were no longer viable for service and then

174. Samir D. Parikh & Zhaochen He, *Failing Cities and the Red Queen Phenomenon*, 58 B.C. L. REV. 600, 605 (2017).

175. Schill, *supra* note 173, at 505.

176. *Id.* at 500.

177. *Id.*

178. *Id.* at 505-06.

179. *Id.* at 524-25.

180. Schill, *supra* note 173, at 504.

repurpose those properties for mixed-income redevelopment.¹⁸¹ To do so, cities adopted mixed-finance development where private developers received some form of tax credit (usually LIHTC) to build properties that would attract both market-rate renters and low-income vulnerable populations.¹⁸² Notably, federal auditors in 2002 discovered evidence that grants were being awarded on the ability of the area to generate revenue for the city, rather than the actual state of the housing to be demolished.¹⁸³ Following the neoliberal turn, state agencies were no longer viewed as pivotal actors in the delivery of housing services but rather faced a wave of challenges and criticisms of their competency in the political discourse. Visible failures in public housing in St. Louis and Chicago fostered a narrative that the state was less well-equipped to handle social problems compared to self-responsible individuals transacting in the private market.¹⁸⁴ Publicly supported housing programs were turned over to private investors, reinforcing the view that the state's role was to manage resources for property owners, not manage property.¹⁸⁵

In the United States, neoliberal distrust of the state emerged in two distinctive contexts: in the tendency to favor single family ownership as the principal model for housing delivery programs; and in the creation by the state of private markets for public housing provision.¹⁸⁶ Both traditional Section 8 voucher programs and the creation of tax-credit financing for public housing projects (such as through HOPE VI programs and RAD Redevelopment Programs) were based on the state encouraging private ownership to solve public problems by either subsidizing the owners of properties, or by providing cheap access to capital

181. Gentry, *supra* note 170, at 216.

182. *Id.* at 207.

183. See GOETZ, *supra* note 1, at 162.

184. *Id.* at 34-35.

185. *Id.* at 9. Goetz observed that: "Neoliberal policy prescriptions are based on the belief that the market is a better way to provide for the social welfare of the population than are redistributive government programs, which, according to the neoliberal model, are antagonistic to growth and prosperity." *Id.*

186. SONIA A. HIRT, ZONED IN THE USA.: THE ORIGINS AND IMPLICATIONS OF AMERICAN LAND-USE REGULATION 18 (2014).

to construct more housing.¹⁸⁷ In this way, neoliberalism provided a meta-narrative that elided complex practices of scaling, scale jumping, and hybridity amongst different levels of state governance.¹⁸⁸ Nowhere was that more clear than in the way the city viewed its responsibilities in relation to affordable housing, and in how it managed the financial obligations upon which the fulfilment of these responsibilities depended.¹⁸⁹ This had implications across different levels of the state, as they leveraged their respective capacities and exercised their capabilities as defined by their governing structure within the multi-level state.¹⁹⁰ In Part IV, we look to the Housing Trust for an illustration of these dynamic interactions.¹⁹¹

IV. HOW CITIES BROKERED THE DOUBLE-LOCK AND SHORED UP THEIR RESILIENCE USING HOUSING TRUST FUNDS

In the current landscape of affordable housing provision, the federal government continues to be the primary source of revenue for provision of affordable housing programs, although federal funds have been redirected away from state and local access and are now primarily directed towards benefitting private owners

187. Goetz, *supra* note 1, at 19.

188. *See generally* Starecheski, *supra* note 11, at 24.

189. THE NEOLIBERAL CITY, *supra* note 6, at 9 (“Neoliberalism, simply defined, is an ideological rejection of egalitarian liberalism in general and the Keynesian welfare state in particular, combined with a selective return to the ideas of classical liberalism, most strongly articulated by Hayek (1944; 1960) and Friedman (1984; 1962).”).

190. David A. McDonald, *Defend, Militate, and Alternate: Public Options in a Privitised World*, in POLARIZING DEVELOPMENT: ALTERNATIVES TO NEOLIBERALISM AND THE CRISIS 119, 128 (Lucia Pradella & Thoma Marois eds., 2015) (“Scale is another factor to keep in mind. There are successful alternatives at local, regional, national and even transnational levels; from water provision systems in small rural areas that service several hundred people, to national health systems that service millions. The scale of a public service is not, *a priori*, a determinant of its success. Being large can be beneficial in some ways (economies of scale, national standards) but detrimental in others (public participation, cultural appropriateness). Ditto for being small, where we must be particularly watchful of the sometimes blind celebration of ‘community involvement’, and the fetishization of the local, often resulting in extra work for women and girls, and creating low-quality service standards for the poor. Small might be beautiful at times, and large might be efficient at others, but there is nothing axiomatic about size or scale when it comes to alternatives to privatization.”).

191. *See infra* Part IV.

(landlords and developers).¹⁹² The local-state's role in administering these funds has become a technical one of ensuring that those who apply for funds (whether landlords or tenants) qualify under the various federal rules that may apply.¹⁹³ Local officials on the ground often lack the discretion to direct funds to meet localized housing delivery needs.¹⁹⁴ The local state acts under a constrained competency to remit in relation to federal resources and lacks the financial capability to direct alternative funds towards projects that better serve the community's need.

A. How Cities Fund Affordable Housing¹⁹⁵

Housing trusts emerged as a way for cities to earmark funds to address affordable housing challenges that federal subsidies to landlords and developers did not address.¹⁹⁶ Often the sources of these earmarked funds reveal the pressures that city-level state actors and agencies are responding to. In some instances, the sources of the earmarked funds signal to practices that require parties most directly responsible for the loss of affordable housing to internalize the costs the city incurs from these losses: for example, when cities require developers to pay impact fees, or when the city charges a transient or visitor tax on outsiders coming into the city.¹⁹⁷

In some instances, cities recognize that the rising cost of housing is a function of market changes that cannot be attributed to any single party or class of actors.¹⁹⁸ Some cities responding in this context have adopted finance tools for housing trust funds that reflect those market increases—such as tax increment financing.¹⁹⁹ And in other cases, cities recognize that the loss of affordable housing resulted from other conditions that cannot be

192. THE NEOLIBERAL CITY, *supra* note 6, at 48.

193. *Id.* at 49.

194. *Id.* at 59.

195. Text accompanying footnotes 196-201 are partially excerpted from *Hierarchy, Resources, and Resilience*, in LAW, VULNERABILITY, AND THE RESPONSIVE STATE (Martha Albertson Fineman & Laura Spitz eds., 2024). Quotations omitted for readability.

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

attributed to a specific process or a specific party or class of parties.²⁰⁰ In these cases, cities have either make specific budget allocations for housing trust funds or have directed “overages” from city budgets to provide a revenue base.²⁰¹

The context of these city decisions for how to fund distressed former housing is tied not only to the need of the city to provide affordable housing, but also to the city’s need to use its physical land resources for budgetary increases.²⁰² Affordable housing is often located in communities where cities see opportunities for new development that can spur greater tax revenue either through property taxes or local sales taxes.²⁰³ In the late 1970’s, Harvey Molotch observed that the primary economic and political animation for U.S. cities was “growth.”²⁰⁴ When cities decide to redevelop areas that have been deemed economically distressed or blighted, this is usually communicated using “values-making rhetoric”: language and images directed to the community promise the potential of economic growth and prosperity as a cure for a sick community.²⁰⁵ Positive “development” words like “order” and “growth” are contrasted with negative diagnostic language of “crime,” “blight,” and “poverty.”²⁰⁶ Defining growth

200. See, e.g., Ingrid Ellen, Erin Graves, Katherine O’Regan & Jenny Schuetz, *Strategies for Increasing Affordable Housing amid the COVID-19 Economic Crisis*, BROOKINGS (June 8, 2020), [<https://perma.cc/9JYG-7KA8>] [hereinafter *Strategies for Increasing Affordable Housing*].

201. See *infra* text accompanying notes 235-39; *infra* text accompanying notes 261-64.

202. *Strategies for Increasing Affordable Housing*, *supra* note 200.

203. See, e.g., Kalimah Redd Knight, *The Lack of Affordable Housing is Getting Worse*, TUFTSNOW (June 2, 2020) [<https://perma.cc/MYH6-FTHZ>].

204. Molotch’s original work appeared in an American Journal of Sociology in 1976, looking at the role of ownership and city governance. Molotch argued that where individuals own property, its symbiotic relationship to other properties means that the owner will financially profit where there is growth. This led Molotch to conclude that the “city” has primarily become focused on enhancing individual ownership values over other values of the city. Notably, Molotch wrote, “The city is, for those who count, a growth machine.” Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 AM. J. SOCIO. 309, 310 (1976) [hereinafter *The City as a Growth Machine*]; JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 32 (1987). Like cities, public housing authorities in recent years have become more interested in preserving land values than in their social obligation to poor tenants. I have written in places that the Housing Authority has surrendered its role as a social welfare agency, and made land management its priority. See *Under-Propertied Persons*, *supra* note 4, at 48-49.

205. See *Under-Propertied Persons*, *supra* note 4, at 9.

206. See *id.*

in terms of population increase, intensified land use patterns of industry, commerce, retail, and increased levels of financial activity enabled growth rhetoric to spur city action, with limited benefits for the poorest regions of the city or its poorest residents.²⁰⁷ Molotch argued that city growth decisions rarely benefit everyone in the city; instead, they benefit an elite few, whose ownership stake in the development places them in the core of the growth machine.²⁰⁸

The theory of the “urban growth machine” challenged basic assumptions of urban growth decision-making’s reach and has also been used to explain how growth-focused decision-making is often deleterious for low-income populations even though the target sites for the growth machine are spaces where public housing is located, where affordable housing options were viable, or where homeless persons lived.²⁰⁹ Affordable housing programs rarely are located in areas where economic opportunities exist for the housing residents.²¹⁰ This is because the value of the land around economic growth areas often is too high for affordable housing programs developed by private stakeholders.²¹¹ The promotion of the urban growth machine to create zones of greater taxation encourages land to be put to its “highest best use” a concept that focuses on economic increase, rather than social utility.²¹² Similarly, access to affordable food sources are often limited in affordable housing communities. Several recent studies have pointed to the lack of food resources in the poorest neighborhoods—a fact that remains unchanged when public housing units are demolished and rebuilt in the same locations.²¹³

207. See *The City as a Growth Machine*, *supra* note 204, at 310.

208. *Id.* at 320.

209. *Human Impact Statements*, *supra* note 21, at 654, 658.

210. See, e.g., Yglesias, *supra* note 53.

211. See, e.g., Knight, *supra* note 203.

212. *Human Impact Statements*, *supra* note 21, at 670.

213. Deja Hendrickson, Chery Smith & Nicole Eikenberry, *Fruit and Vegetable Access in Four Low-Income Food Deserts Communities in Minnesota*, 23 AGRIC. & HUM. VALUES 371, 378 (2006) (noting that food access was more expensive in low-income urban areas than other city spaces); Michele ver Ploeg et al., *Access To Affordable and Nutritious Food: Measuring and Understanding Food Deserts and Their Consequences*, U.S. DEP’T OF AGRIC. iv, 18-30 (2009), (noting the connection between neighbourhood economics and food deserts in urban communities).

Cities understand that, while gentrification supports the city or state's economic growth resilience needs, it simultaneously depletes the city's resilience with respect to affordable housing provisions. This has led cities to create mechanisms that require developers to internalize the downside costs of economic growth for affordable housing as part of their cost of doing business.²¹⁴ Recognizing that by allowing developers and property owners to leverage economic prosperity by locating their projects within the city's growth opportunity zones (which often lie in spaces where affordable housing is situated) some cities have imposed exactions and taxes to recover costs against the adverse effects of city growth for affordable housing.²¹⁵ Some of these exactions go to fund housing and economic development programs that, in the wake of a federal withdrawal of funding for affordable housing, were left unfunded as cities redirected budgets to cover those shortfalls.²¹⁶ These projects may target public housing developments that are either out of service, or that are in distress.²¹⁷ Some cities have bargained with developers to transfer the land interests in former public housing sites to private developers in exchange for the provision of some affordable housing elsewhere.²¹⁸ Still, affordable housing is rarely replaced on a one-to-one basis—leaving a gap in housing provision through these developments.

1. Budgeting Models Hypothecated to Affordable Housing Harms

Exactions is a “term used [by cities] to describe certain conditions that are attached to land-use permits issued at the government’s discretion”²¹⁹ They force property owners and developers to internalize the economic burdens of the

214. See *infra* notes 219-20 and accompanying text.

215. Gus Bauman & William H. Ethier, *Development Exactions and Impact Fees: A Survey of American Practices*, 50 L. & CONTEMP. PROBS. 51, 56 (1987).

216. *Id.* at 51.

217. See, e.g., *How States Can Direct Economic Development to Places and People in Need*, PEW (Feb. 2, 2021), [<https://perma.cc/5RDV-235E>].

218. *Human Impact Statements*, *supra* note 21, at 668-69.

219. Timothy M. Mulvaney, *Legislative Exactions and Progressive Property*, 40 HARV. ENVTL. L. REV. 137, 137 (2016).

development, including the “expected infrastructural, environmental, and social harms” that may result from either the reduction in resources or the displacement of individuals.²²⁰ When these costs are related to affordable housing challenges, some cities have directed those fees into local housing trust funds.²²¹ In this context, these fees are generally associated with two types of costs that impact affordable housing—the physical reduction in affordable housing units by developers (direct costs) and the contribution of market conditions that will have the effect of reducing affordable housing options (indirect costs).²²² The following table illustrates how cities employ these two types of costs.

Figure 2

City	Revenue of Direct/ Indirect HTF	Direct	Indirect
Anaheim, CA	Transient Occupancy Tax		1
Berkeley, CA	Residential Impact Fees; Developer Impact Fees	1	1
Campbell, CA	Inclusionary In-Lieu Fees		1
Citrus Heights, CA	Developer Impact Fees, Inclusionary In-Lieu Fees	1	1
Cupertino, CA	Developer Impact Fees	1	
Elk Grove, CA	Developer Impact Fees	1	

220. *Id.*

221. See Michael Anderson, *State and Local Housing Trust Funds*, NAT’L LOW INCOME HOUS. COAL. 40 (2022), [<https://perma.cc/3JP2-4Q6K>].

222. See, e.g., Jennifer S. Evans-Cowley & Larry L. Lawhon, *The Effects of Impact Fees on the Price of Housing and Land: A Literature Review*, 17 J. PLAN. LIT. 351, 352 (2003).

Emeryville, CA	Developer Impact Fees, In-Lieu Fees	1	1
Freemont, CA	Developer Impact Fees		1
Livermore, CA	Inclusionary In-Lieu Fees	1	
Long Beach CA	Transient Occupancy Tax		1
Los Angeles, CA	Linkage Fee		1
Mammoth Lakes, CA	Transient Occupancy Tax		1
Menlo Park, CA	Developer Impact Fees		1
Oakland, CA	Developer Impact Fees, Housing Impact Fees, Transient Occupancy Tax on Short Term Rentals	1	1
Oxnard, CA	Developer Impact Fees		1
Palo Alto, CA	Developer Impact Fees		1
Pasadena, CA	Developer Impact Fees		1
Petaluma, CA	Developer Impact Fees, Inclusionary In-Lieu Fees		1
Redwood, CA	Developer Impact Fees		1
San Diego, CA	Developer Impact Fees		1
San Francisco, CA	Transient Occupancy Tax, Developer Impact Fees, Inclusionary In-Lieu Fees	1	1

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San Jose, CA	Inclusionary In-Lieu Fees	1	
Santa Cruz, CA	Inclusionary In-Lieu Fees	1	
Santa Monica, CA	Developer Impact Fees, Inclusionary In-Lieu Fees	1	1
Santa Rosa, CA	Inclusionary In-Lieu Fees	1	
Sunnyvale, CA			
West Hollywood, CA	Developer Impact Fees		1
Boulder, CO	Commercial Linkage Impact Fee		1
Denver, CO	Development Impact Fees		1
Longmont, CO	Inclusionary In-Lieu Fees		1
Fairfield, CT	Inclusionary Zoning Fees		1
Key West, FL	In-Lieu Fees		1
Arlington Heights Village, IL	Inclusionary In-Lieu Fees	1	
Chicago, IL	Surcharge on Short Term Rentals	1	
Evanston, IL	Inclusionary In-Lieu Fees	1	
St. Charles, IL	Inclusionary In-Lieu fees	1	
Portland, ME	Inclusionary In-Lieu Fees	1	
Boston, MA	Developer Impact Fees		1
Cambridge, MA	Developer Impact Fees		

Somerville, MA	Developer Impact Fees, Inclusionary In-Lieu Fees	1	1
New Jersey (2967 Communities)	Developer Fees		1
Yonkers, NY	Inclusionary Zoning Fees	1	
Portland, OR	Short Term Rental Tax	1	
Nashville, TN	Airbnb Tax		
Austin, TX	Inclusionary Zoning In-Lieu Fees	1	
Burlington, VT	Developer Fees, Condominium Conversion Fees, Housing Replacement Fees, Inclusionary In-Lieu Fees	1	1
Seattle, WA	Linkage Fee		1

Some fees associated with development and the loss of affordable housing are direct—or when a developer physically removes housing that has traditionally served low-income population needs. These take the form of residential impact fees where physical housing assets are demolished or are taken out of the affordable housing market according to a planned development approved through the city’s permit development process.²²³ Likewise, cities may impose on developers the obligation to either provide a certain number of affordable housing units or to pay an in-lieu fee, to account for the cost burden created by the lack of affordable housing.²²⁴ Both the residential impact fee and the in-lieu fee are funding sources that

223. *Id.* at 357.

224. *See, e.g.,* Cal. Bldg. Indus. Ass’n v. City of San Jose, 351 P.3d 974, 979 (Cal. 2016).

attempt to internalize the direct costs that arise when affordable housing is removed from the housing market.

But the removal of affordable housing also has indirect costs. Cities often charge developer fees and linkage fees to address the impact costs on communities that development may have.²²⁵ Some of these costs are costs related to the transformation of local markets and resources by the removal of affordable housing. Thus, developer fees are fees charged at the beginning of a project to offset potential burdens created by the development.²²⁶ Developer fees arise in a variety of contexts, such as in school development fees.²²⁷ Some cities have directed these fees to housing trusts to offset the impacts that development has on affordable housing.²²⁸ Likewise, linkage fees are fees that are related to additional cost burdens that occur as developments change communities.²²⁹ While developer fees are generally imposed universally, linkage fees are often specifically provided in certain distressed communities particularly vulnerable to housing loss.²³⁰

Besides exactions, cities also maintain the power to tax uses, activities, and businesses that have an impact on affordable housing delivery.²³¹ Some of the most scrutinized activities in the last five years has been the growth of the short-term rental market through Airbnb, which has had the effect of removing housing from the market in popular cities.²³² To either curb the loss of

225. See Will Kenton, *Impact Fee: Meaning, Overview, Examples in Real Estate Investing*, INVESTOPEDIA (May 20, 2022), [https://perma.cc/UH3D-6QJD].

226. See, e.g., *Impact Fee Handbook*, DEV. PLAN. & FIN. GRP., INC. 6 (2016), [https://perma.cc/E5JW-Q5X3].

227. *2020 Annual Report: Developer Fees*, CAL. SCH. BDS. ASS'N (2020), [https://perma.cc/EAG7-S3EY]; *Developer Fees Definition*, L. INSIDER, [https://perma.cc/WGZ9-RSAQ] (last visited Oct. 17, 2023).

228. S. Mark White, *Using Fees and Taxes to Promote Affordable Housing*, LAND USE L. & ZONING DIG., Sept. 1991, at 3 (1991).

229. *Id.*

230. See William W. Merrill III & Robert K. Lincoln, *The Missing Link: Legal Issues and Implementation Strategies for Affordable Housing Linkage Fees and Fair Share Regulations*, 22 Stetson L. Rev. 469, 471-74 (1993); *Developer Fees*, EdSource, [https://perma.cc/V34N-X2D5] (last visited Oct. 17, 2023).

231. Jenna Chandler, *Los Angeles Is a Big Step Closer to Regulating Airbnb*, CURBED L.A. (June 23, 2016), [https://perma.cc/SU4N-PTZ6].

232. Jesse Feith, *Montreal Condo Complex Hires Private Investigator to Catch Illegal Airbnb Rentals*, Montreal Gazette (Aug. 5, 2019), [https://perma.cc/6WQG-

housing or alternatively locate a revenue source to offset that burden, cities have taxed properties where the owner does not simultaneously occupy the property let out for short-term rentals.²³³

Some cities have allocated funds directly to housing trusts, which can reveal different ways affordable housing interacts with legitimacy of institutions and actors. For example, in Atlanta, the mayor recently budgeted for \$8 million to be injected into the city's affordable housing trust fund, sparking debate amongst members of the city council for how much should be included.²³⁴ One council member proposed legislation that would increase the amount to \$11.5 million or an increase of \$3.5 million from the mayor's proposed budget.²³⁵ In doing so, he argued that the legislation that created the Housing Trust called for an annual investment of 1.5% of the city's general fund to the Housing Trust.²³⁶ The mayor's office argued that it did not have to meet the 1.5% goal due to inflation.²³⁷ Similarly, in Philadelphia, legislation was proposed in 2021 to earmark 0.05% of the total general budget funds to the city's housing trust fund, while the mayor's office opposed any such limitations on the general budget.²³⁸ The political theater in budget disputes between council members and mayors can reveal the scaled power of homeowners city-wide over those that would be consumers of affordable housing provisions. While city council members represent segments of the city, the mayor is elected city-wide. Mariana Valverde's observation that city leaders rarely are the sources of information that voters need to be fully informed on

JC73]; Chandler, *supra* note 231; Carolyn Said, *SF Fines Airbnb Landlords \$2.25 Million for Illegal Rentals*, S.F. Chron. (Nov. 5, 2018, 7:23 PM), [https://perma.cc/KNP7-P34C].

233. Dre Bradley, *Kansas City, Missouri, City Council Passes Two Short-term Rental Ordinances*, KSHB (May 4, 2023, 6:23 PM), [https://perma.cc/R4SH-ADTK].

234. Sean Keenan, *Mayor Wants \$8M for Housing in FY24—But Council Says That's Not Enough*, ATLANTA CIVIC CIRCLE (June 28, 2023), [https://perma.cc/43NK-E34H].

235. *Id.*

236. *Id.*

237. *Id.*

238. Taylor Allen, *Council Pushes to Make Funding the Housing Trust Fund Mandatory, Despite Kenney Opposition*, WHYY (June 17, 2021), [https://perma.cc/WP54-2CAB].

issues reflects the way city leaders themselves internalize threats to governing legitimacy that shape city decision making.²³⁹

In other cities, the choice to fund a Housing Trust has been handed directly over to the voters through the referendum process.²⁴⁰ These voter-based measures have had mixed results in the area of Housing Trusts. In Charlotte, North Carolina; Brevard County, Florida; Miami, Florida; Asheville, North Carolina; and Baltimore, Maryland voters approved multi-million dollar housing trust allocations directed at affordable housing.²⁴¹ However, in places like Cincinnati, Ohio and Charleston, South Carolina, referendum measures to fund a housing trust failed.²⁴² While these cities have their own contexts that make affordable housing delivery more or less challenging, each operate under the same financial limitations vis-à-vis the federal government and the challenges brought by its shift away from conventional public housing. Whatever the outcome of the referendum process, the use of the referendum suggests an uneasiness by political leaders to tie their fates to making budget allocations to the housing trust without some buy-in from local residents. The ways cities seek to inoculate their budgets from affordable housing provision reflects the tensions that have arisen when cities have attempted to bring housing trusts into a conventional budgeting model.

239. MARIANA VALVERDE, *EVERYDAY LAW ON THE STREET: CITY GOVERNANCE IN AN AGE OF DIVERSITY* (John M. Conley & Lynn Mather eds., 2012) (observing that politicians “[o]n the one hand . . . do want to engage with their constituents . . . and, depending on their politics, they want to either validate or critique prejudices against newcomers”).

240. Kynala Phillips, *Affordable Housing is on the Ballot in Kansas City. What to Know About the Bond Question*, KAN. CITY STAR (Nov. 4, 2022, 6:00 AM), [<https://perma.cc/22HL-7TGF>].

241. Estephany Escobar, *Charlotte Voters Approve \$50 Million Affordable Housing Bond*, KANSAS CITY STAR (Nov. 18, 2022, 5:45 AM), [<https://perma.cc/9GHS-CXEG>]; Christie Zizo, *Brevard County Voters OK School, Environment Taxes, Charter Amendments*, CLICK ORLANDO (Nov. 8, 2022, 9:33 PM), [<https://perma.cc/K95K-9EP6>]; Andrew Jones, *As \$70M Buncombe Bond Referendum Gets Green Light From Voters, How Much Will You Pay?*, ASHEVILLE CITIZEN TIMES (Nov. 9, 2022, 12:29 AM), [<https://perma.cc/2YGD-VP7S>]; *Affordable Housing Trust Fund - AHTF*, BALT. CITY DEP’T OF HOUS. & CMTY. DEV., [<https://perma.cc/4BUA-MY3R>] (last visited Nov. 2, 2023).

242. Lucy May, *Issue 3: Cincinnati Voters Reject \$50 Million Annual Affordable Housing Proposal*, WCPO CINCINNATI (May 5, 2023, 5:56 AM), [<https://perma.cc/8FGJ-84MZ>]; Schuyler Kropf, *Charleston County Affordable Housing Referendum Fails*, POST & COURIER (Nov. 19, 2020), [<https://perma.cc/G54Z-2TK6>].

2. Non-Hypothecated Budgeting Models

Some cities allocate revenues for affordable housing in a way that falls outside of the general budget process. These allocations are built on two related rationales. First, in a period where the state is withdrawing from the provision of social programs like housing, earmarking funds outside of the budget process provides political cover in an era where housing programs are under siege.²⁴³ The ability to fund affordable housing programs without impacting other areas of city government is certainly a lesson learned from New York's near municipal bankruptcy, as the looming city debt resulted in basic city services like fire, police, and sanitation service withdrawal from whole sections of the city.²⁴⁴ Additionally, allocating specific revenue to affordable housing projects reduces the likelihood that advocates have to petition and plead for funding, competing with other city priorities in the budget process. Cities have used two basic types of tools to allocate funding outside of direct city budgets for housing trusts: tax increment financing models and budget overage allocations.²⁴⁵

One model for allocating money outside of the regular budget cycle is tax increment financing. Tax increment financing takes advantage of future rising real estate values to allocate the increases in tax collections for specific purposes.²⁴⁶ Tax increment financing is typically project-based, where the municipality uses the anticipated increase in tax revenue as an "advance" for developments that fill the city's housing needs.²⁴⁷ Indeed, tax increment financing is not without controversy, as

243. *Housing Trust Funds*, LOC. HOUS. SOLS., [https://perma.cc/5CV5-6DW7] (last visited Oct. 17, 2023).

244. See MILLSTEIN, *supra* note 10, at 146-47; Michael Beyea Reagan, *A Crisis without Keynes: The 1975 New York City Fiscal Crisis Revisited*, GOTHAM CTR. FOR N.Y. CITY HIST. (Aug. 12, 2021), [https://perma.cc/WT3T-8Z8S].

245. CTR. FOR CMTY. CHANGE, *supra* note 23, at 17, 24; see also Katy Heins, *After Turbulent Night in Evansville, Affordable Housing Fund Gets Full Funding*, HOUS. TR. FUND PROJECT (Fall 2018), [https://perma.cc/7EVL-6RFH].

246. Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, 77 U. CHI. L. REV. 65, 67 (2010).

247. *Tax Increment Financing (TIF)*, METRO. COUNCIL, [https://perma.cc/4ZA4-898N] (last visited Oct. 17, 2023); accord WEST'S TAX LAW DICTIONARY § T625 (2023).

some perceive it as a way of avoiding bringing taxation requests to the voters.²⁴⁸ In the late 2000's, it was described as the "most widely used local government program for financing economic development in the United States."²⁴⁹

However, the use of tax increment financing gives municipalities more control over properties that are allocated for affordable housing delivery. For example, in 2008, the City of Portland facilitated the transfer of eleven apartment complexes where affordable housing was subsidized.²⁵⁰ At the time, the federal contracts for the privately run buildings were due to expire, and the owners sought to sell the properties.²⁵¹ The risk was that these properties would be converted into market rate rentals, effectively displacing the people from 717 units.²⁵² The city effectively became a matchmaker bringing together private investors (\$110 million), federal funding (\$120 million) and city funding through tax increment finance models (\$22 million) to leverage the assets for the right buyer to acquire the apartment buildings.²⁵³ By leveraging \$22 million in tax increment financing, the City of Portland was able to extend the required affordability period for the property beyond the thirty years mandated by LIHTCs to sixty years.²⁵⁴

Richard Briffault identifies several reasons why Tax Increment Financing became such a go-to tool for municipalities in the 1990's and 2000's.²⁵⁵ First, like in the Portland example above, tax increment financing offers municipalities more control over their resources and how property allocations can serve city purposes instead of relying solely on federal resource allocations

248. Joseph F. Luther, *Tax Increment Financing: Municipalities Avoiding Voter Accountability*, 1987 DETROIT COLL. L. REV. 89, 90, 102 (1987).

249. Briffault, *supra* note 246, at 65.

250. Lauren Loney & Heather Way, *Strategies and Tools for Preserving Low Income Housing Tax Credit Properties*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 255, 275 (2019).

251. *11 x 13 Preservation Campaign*, PORTLAND HOUS. BUREAU 1 (Aug. 2013), [<https://perma.cc/4T7Z-TUQN>].

252. *Id.* at 1-2.

253. *Id.* at 1.

254. *Id.* at 1; Loney & Way, *supra* note 250, at 258, 275; *What Happens to LIHTC Properties After Affordability Requirements Expire?*, U.S. Dep't of Hous. & Urb. Dev.'s Off. of Pol'y Dev. & Rsch., [<https://perma.cc/PNL3-P7KN>] (last visited Oct. 17, 2023).

255. See Briffault, *supra* note 246, at 65-74.

alone or the political process that budgeting allows.²⁵⁶ Second, Briffault recognizes the fiscalization of local development processes as a driving animus for city resource allocation. Jason Hackworth's *The Neoliberal City: Governance, Ideology and Development in American Urbanism* and John Logan and Harvey Molotch's *Urban Fortunes: The Political Economy of Place* both offer clear examples of how American municipalities shifted in the 1980's away from seeing resources as primarily designed to deliver services, and towards seeing them as revenue generators to cover short-falls driven by heightened need for services.²⁵⁷ In the housing sector, this meant converting municipally owned properties from publicly owned housing providers, to privately owned tax generators that fulfilled a public purpose, for a period anyway. Third, Briffault describes how the implementation of tax increment finance essentially plays off the "fragmentation of local government," making regions competitive spaces where cities bid for private investment against one another rather than cooperate to solve collective problems.²⁵⁸ Linking the role of fiscalization with fragmentation, Briffault observes that tax increment financing reinforces the city as an entrepreneur itself, implementing "market-oriented" programs designed to attract investment by private actors.²⁵⁹ The emergence of the new "entrepreneurial city" is a direct response to the reshuffling of resources that the political economy of the city and the scaled competencies of the state reinforced. Housing is just one area where this became visible.²⁶⁰

A second set of tools that cities have used to fund housing trust programs outside of general budget programs are overage allocations. Overage allocations occur when cities unexpectedly spend less money in a particular area, or obtain an unexpected windfall by collecting additional lease revenue, or selling

256. *Id.* at 84, 86-87.

257. THE NEOLIBERAL CITY, *supra* note 6, at 40-41, 53-60; LOGAN & MOLOTCH, *supra* note 204, at 112-113.

258. *See* Briffault, *supra* note 246, at 67, 88-90.

259. *Id.* at 91-93.

260. *Id.* at 87-88.

municipal property it had not planned to sell.²⁶¹ Some of these programs are narrowly tailored. For example, in Los Angeles, overages received in the budget allocated for municipal utility services go to funds to provide services for the homeless.²⁶² Others are broader, giving the city the discretion to direct funds into a general housing fund, rather than specifically allocated.²⁶³

In other instances, one-time budget overages have been used as the seed money to create a housing trust fund. For example, in 2022, the City of Santa Barbara used a portion of a \$14.6 million budget overage as seed money to leverage matching funds from community sources dedicated to affordable housing delivery.²⁶⁴ Likewise, in Lexington, Kentucky, \$3 million was allocated from a \$10 million surplus to address affordable housing needs, and, in Baltimore, Maryland, \$2 million was allocated from a \$19 million surplus to address inclusionary housing needs.²⁶⁵

B. How Housing Trusts Allocate Funds to Affordable Housing

The mechanisms cities use to fund the housing trust reveal the threats the city is responding to in the face of affordable housing challenges. These threats may arise because of unregulated uses (such as short-term rentals or unrestrained development) or from political legitimacy threats to the budgeting process. In the same way, the choices cities make about what types of affordable housing issues housing trust funds can be allocated to also reveals which housing issues cities believe to be

261. See Alexandria Twin, *Windfall Profits: What Is It, How It Works, Examples*, INVESTOPEEDIA (Dec. 19, 2022), [https://perma.cc/2V8J-ALZJ].

262. See Governor Newsom Announces \$1 Billion in Homelessness Funding, Launches State's Largest Mobilization of Small Homes, OFF. OF GOVERNOR GAVIN NEWSOM (Mar. 16, 2023), [https://perma.cc/U6D9-ASLU].

263. See Ed Lazere, *Let's Put DC's Surplus to Work Helping DC Residents*, D.C. FISCAL POL'Y INST. (Feb. 20, 2020), [https://perma.cc/8DZK-4F8Q].

264. See Nick Welsh, *Santa Barbara City Council Sets Aside \$3.6 Million for Affordable Housing Trust Fund*, SANTA BARBARA INDEP. (Dec. 07, 2022, 2:56 PM), [https://perma.cc/59DH-KCYT].

265. See Beth Musgrave, *Lexington's Plan for \$10 Million Surplus: Affordable Housing Trust, Homeless Initiatives*, LEXINGTON HERALD LEADER (Nov. 12, 2015, 3:59 PM), [https://perma.cc/4DHB-3NJJ]; John Fritze, *City Has Big Plans for Budget Surplus*, BALTIMORE SUN (May 22, 2007, 12:00 AM), [https://perma.cc/S867-CTHH].

most important and provides visible aesthetic signals that the state is actively working to address affordable housing issues.²⁶⁶ Programs that are less visible or that engender less political support are often lower on the list of services provided.²⁶⁷

A recent survey of city housing trust funds categorized the types of activities that housing trusts funds across the nation and the number of housing trusts that provide funding for those services.²⁶⁸

Figure 3

AFFORDABLE HOUSING SUPPORT	AMOUNT
New Construction	42
Preservation/ Rehabilitation of Existing Multi-Family Housing	40
Acquisition	38
Housing of those with Special Needs	38
Housing for the Elderly	35
Permanent Homeless Housing	33
Preservation/ Rehabilitation of Existing Single-Family Housing	34
Transit Oriented Housing	33
Vacant/Abandoned Properties	19
Transitional Housing	30
Match for State or Federal Funds	22
Predevelopment Activities	20
Down Payment Assistance	19
Emergency Repairs	19
Housing for Ex-Offenders	23
Energy Efficiency Improvements in Existing Housing	19
Community Land Trusts	10

266. See Justin de Benedictis-Kessner, Daniel Jones & Christopher Warshaw, *How Partisanship in Cities Influences Housing Policy*, AM. J. OF POL. SCI. (conditionally accepted Feb. 11, 2023).

267. *Id.*

268. CTR. FOR CMTY. CHANGE, *supra* note 23, at 10-11.

Foreclosure Prevention	13
Tenant Based Rental Assistance	18
Housing Education and Counseling	13
Land Banking Activities	6
Homeless Services	18
Operating and Maintenance Costs	11
Emergency Rental Assistance	11
Project Based Rental Assistance	7
Supportive Services	6

Some housing funding programs fall into “low cost categories” inasmuch as the city expends little legitimacy in carrying out those programs.²⁶⁹ Programs around elder housing, for example, are rarely criticized as examples of “government bloat.”²⁷⁰ One researcher observed that the new politics of the welfare state implicitly accounts for elder voters as a significant voting block in democratic countries, making it less likely that programs that assist the elderly deplete the city authority’s resilience.²⁷¹

Other programs reflect the tension between visible government action and invisible action. The aesthetics of government action, made visible on the landscape of the city, manifest as signals of the legitimacy or illegitimacy of the underpinning action.²⁷² Thus, when the fabric of public housing projects are in visible disrepair, these signals can be exploited to undermine investment decisions to improve housing quality for the benefit of residents and to further marginalize the

269. See *What are the Downsides?*, INCLUSIONARY HOUS., [https://perma.cc/FDM8-RJ9S] (last visited Oct. 17, 2023).

270. See HUD, *Housing for Seniors: Challenges and Solutions*, HUD EVIDENCE MATTERS (Summer 2017), [https://perma.cc/7GGM-BMZ9].

271. See Paul Pierson, *The New Politics of the Welfare State*, 48 *WORLD POL.* 143, 169 (1996).

272. See *Late Neoliberalism*, *supra* note 73, at 1059-64; GARY ISEMINGER, *THE AESTHETIC FUNCTION OF ART* 31-32 (2004) (describing communication that is outward facing – or made “with the aim and effect that someone appreciates it.”) Iseminger suggests that three elements are necessary when detailing aesthetic communication: A maker/designer, an object to be appreciated, and an appreciator. *Id.*

beneficiaries of affordable housing programs.²⁷³ Conversely, when cities invest public resources to improve the external aesthetics in neighborhoods or public spaces, this can accrue greater legitimacy for the state actors.²⁷⁴ When cities opted to utilize housing trust funds to support affordable housing, programs that enhanced the external aesthetics of developments were more common than initiatives that prioritized the availability, quality, and livability of affordable housing for the benefit of residents.²⁷⁵

Programs that were less visible, such as supportive services, rental assistance, operational costs of the housing program in general, and homeless services struggled to secure public investment, even under the auspices of the Housing Trust vehicle.²⁷⁶ Yet, these programs were essential to sustaining the integrity of existing affordable housing stock, by addressing maintenance needs before these become critical. For example, while rental assistance is serviced less often in housing trusts than new construction, the ability to maintain people in housing and avoid evictions is one of the most important tools a city can implement to avoid high numbers of homeless in their city.²⁷⁷ Recent innovations by HUD have encouraged cities to draw on new data pools to identify potentially at risk tenants before they face eviction proceedings—as an attempt to turn off the tap of homelessness before it becomes too big to address.²⁷⁸ Similarly,

273. See LANCE FREEMAN, *THERE GOES THE HOOD: VIEWS OF GENTRIFICATION FROM THE GROUND UP*, 125-132 (2006) (connecting gentrification with better services in Harlem, NY); GOETZ, *supra* note 1, at 156 (noting the “design objective [of supplanting old public housing] is to produce a completely different image of the space—to change its social meaning and to eliminate the stigma attached to it”).

274. LOGAN & MOLOTCH, *supra* note 204, at 61-62 (describing the buy in of growth through institutional signaling).

275. See Alireza Moghayedi et al., *A Critical Success Factor Framework for Implementing Sustainable Innovative and Affordable Housing: A Systematic Review and Bibliometric Analysis*, BUILDINGS, July 23, 2021, at 1-3.

276. See Editorial: *Skid Row Housing Trust’s Downfall is a Teachable Moment for L.A., Not a Reason to Give Up*, L.A. TIMES (Feb. 12, 2023, 5:00 AM), [<https://perma.cc/WV8P-29UC>].

277. See Emily Peiffer, *Why We Need to Stop Evictions Before They Happen*, URB. INST. (July 25, 2018), [<https://perma.cc/M3J3-TRNQ>].

278. See *After Halting Rapid Rise in Homelessness, Biden-Harris Administration Announces Plan to Reduce Homelessness 25% by 2025*, U.S. DEP’T OF HEALTH & HUM.

programs that serve marginalized populations are less likely to be funded—including those that provide housing for former prisoners, reflecting the moral rhetoric that associates being unhoused with deviant behavior.²⁷⁹

V. CONCLUSIONS: RESILIENCE GAPS AND RESPONSIBILITY

In 2023, there are more than six hundred local housing trust funds, forty-nine state housing trust funds, and a federal housing trust fund that all work to afford resources directed to low-income housing.²⁸⁰ In one sense, the Housing Trust stands in stark relief to the neoliberal politics in which it was created. If the ideological politics of neoliberalism aimed to reform government to shore up the resilience of property owners in the face of perceived government overreach through an encroaching welfare state, the housing trust reveals the pragmatic politics of local municipalities' endeavors to govern effectively and to solve local problems. To that end, the growth of the Housing Trust over the past forty years suggests that the experiment was a successful one—where the material realities of housing need were able to be mobilized (even in a limited way) to shore up housing provision in the face of growing need. In that sense, the Housing Trust represents what Foucault's described as the development of "new arts of government" to tackle the challenges of our time.²⁸¹ While it is not clear that the Housing Trust has enabled an adequate response to these challenges, it reflects to some degree the effects of material local challenges in driving innovation and adaptation.

SERVS. (Dec. 19, 2022), [<https://perma.cc/294M-32TW>] (including new initiatives to specifically keep people housed).

279. GOWAN, *supra* note 12, at 28.

280. *See Housing Trust Funds, supra* note 56.

281. *See* James Ferguson, *Uses of Neoliberalism*, 41 *ANTIPODE* 166, 166 (2010).