



■ EXCLUSIONARY ZONING SERIES

# History of Exclusion in America's Housing Policies



While the concept of zoning can be traced back centuries, contemporary zoning and planning's roots emerge as a tool of racial, then socio-economic exclusion. The concepts of fiscal zoning and the planning tools of unit and lot size, excessive setbacks, parking requirements, aesthetic mandates, etc. are born from exclusionary policies. These regulatory tools support fiscal zoning and can be traced back to the 1920s, emerging as policies in response to race-based zoning codes being declared unconstitutional by the courts.

## EXPLICIT RACIAL SEGREGATION

1910 marked the beginning of the Great Migration, when African Americans left the South seeking better opportunities, safety, and tolerance in northern and western areas of the country. With 6 million Americans relocating between 1910 and 1970, this movement represents one of the largest migrations of Americans in the history of the country.

One year after the beginning of the Great Migration, Baltimore, Maryland, became the first city to enact an ordinance restricting access to housing based on a person's race. The ordinance read, in part:

*"... preserving peace, preventing conflict and ill feeling between the white and colored races in Baltimore city, and promoting the general welfare of the city by providing, so far as practicable, for the use of separate blocks by white and colored people for residences, churches, and schools."*

Other communities followed suit. One such city was Louisville, Kentucky, where in 1915 William Warley, a Black attorney, agreed to purchase land owned by Charles Buchanan, a white man, with the direct intent of building a home on this lot. At the time, Louisville's planning ordinance forbade Black residents

from living on a block where the majority of residents were white. The offer by Warley acknowledged the ordinance, and although Buchanan accepted the offer, the transaction did not occur. Buchanan filed suit.

In 1917, the U.S. Supreme Court unanimously ruled that laws and ordinances cannot restrict access to property based on race without due process. The decision was limited in its scope and reflects the attitudes of race relations in early 20th Century America.

The *Buchanan v. Warley* opinion calls racial segregation "desirable" and integral to the "preservation of the public peace." It then goes on to state this "cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." Institutional exclusion and government sponsorship were not covered in this opinion.

## SOCIOECONOMIC EXCLUSION

With race-based zoning laws declared unconstitutional, policymakers, property owners and institutions looked toward other tools to achieve the same means without violating the precedent set by *Buchanan v. Warley*.

One such avenue was through the Federal Government where the United States Department of Commerce Secretary and future president, Herbert Hoover, sought to develop a common framework for housing in America by developing a uniform building code and standard zoning code. The result of this effort was what the American Planning Association calls the "basic foundation for planning and zoning" in the United States.

The first, the Standard State Zoning Enabling Act (SZEA), was issued in 1922, published in 1924, and updated in 1926. SZEA



■ EXCLUSIONARY ZONING SERIES

# History of Exclusion in America's Housing Policies

was the basis for how many states structured their planning and zoning laws. The theory of fiscal zoning, "the practice of using local land-use regulation to preserve and possibly enhance the local property tax base," is established in SZEA.

The second, Standard City Planning Enabling Act (SCPEA), was released in 1927 and is the framework for municipal planning ordinances adopted across the United States.

Zoning laws were not without controversy. In 1922, the Village Council of Euclid, Ohio, a Cincinnati suburb, established a comprehensive zoning plan. This plan outlines land use in each of the six zones established by the council, as well as places limits on lot sizes, land use, and building height. Ambler Realty Company, which owned 68 acres of land in Euclid, sued the village alleging that the establishment of zoning controls reduced the land value.

In 1926, the U.S. Supreme Court established that municipalities have the authority to adopt and enforce a comprehensive zoning plan. To this day, *Village of Euclid v. Ambler Realty Co.* remains the legal precedent upholding zoning's exclusionary framework.

## RISE OF INSTITUTIONAL EXCLUSION

Planning and zoning were not the only avenues for exclusion, with private and governmental institutions adopting exclusionary policies.

A direct response to *Buchanan v. Warley* was the establishment of racially restrictive covenants recorded on a home's title or deed which prevented members of certain races and religions from owning or occupying a specific property. In 1926, the U.S. Supreme Court took up restrictive racial covenants in *Corrigan v. Buckley*, 271 U.S. 323. The Court unanimously found that restrictive racial covenants were private contracts and therefore exempt from *Buchanan v. Warley*. Following the *Corrigan v. Buckley* decision, the use of racially restrictive covenants grew, with courts unable to enforce the terms of private contracts.

Lending, through the practice known as redlining, also saw a rise in institutional exclusion. In 1933, the Home Owners' Loan Corporation was established and initiated mapping programs to assess the creditworthiness of neighborhoods for mortgage lending purposes. These maps categorized neighborhoods into four color-coded groups based on perceived risk, with

red indicating the highest risk. Factors contributing to this classification included race, ethnicity, socioeconomic status, and housing conditions. Neighborhoods with significant Black, Hispanic, or immigrant populations were often marked as red and deemed ineligible for loans, leading to systemic disinvestment and economic decline. Redlining perpetuated racial segregation, wealth disparities, and limited access to homeownership and financial opportunities for minority communities.

The Federal Housing Administration, formed in 1934, supported redlining by withholding loans for white residents living in Black neighborhoods. In 1938, Congress established the Federal National Mortgage Association (Fannie Mae) to assist in the proliferation of low-cost home loans. Access to Fannie Mae loans for Black Americans was significantly restricted.

## THE POST-WAR BOOM AND THE CIVIL RIGHTS MOVEMENT

The demand for new housing, fueled by underproduction in the war years and the post-war economic and baby booms, sees suburban growth explode. New, modest starter homes were central to this expansion. The Great Migration continues, with Black Americans migrating to both Western and Northern States.

### 1948: STATE ENFORCEMENT OF RACIALLY RESTRICTIVE COVENANTS ENDS

In 1945, the Shelleys, a Black American family, purchased a home in St. Louis, Missouri. Unbeknownst to them, the home had a racially restrictive covenant preventing members of certain races from occupying the home. Louis Kraemer, a resident of the neighborhood living 10 blocks away, sued to prevent the Shelleys from occupying the home.

The case found its way to the U.S. Supreme Court along with a companion case from Michigan, *McGhee v. Sipes*. Although considered together, the case is known today as *Shelley v. Kraemer*. Future Supreme Court Justice Thurgood Marshall served on the legal team for the Shelleys.

In a 6-0 decision - Justices Jackson, Reed, and Rutledge recused themselves - the court declared racially restrictive





■ EXCLUSIONARY ZONING SERIES

# History of Exclusion in America's Housing Policies

housing covenants were unenforceable, putting an end to government support of this exclusionary policy. Although it overturned *Corrigan v. Buckley*, the Court did fall short of taking complete action on this exclusionary policy.

## 1968: FAIR HOUSING ACT

Denial of access to housing based on a person's race and color, as well as national origin, gender, religion, familial status, and disability, became illegal when the Fair Housing Act was passed in 1968. The practices of redlining and racially restrictive housing covenants are illegal as they would violate the Fair Housing Act.

## SOCIOECONOMIC EXCLUSION VIA DESIGNER COMMUNITIES

Despite originating in the 1920s, the post-Fair Housing Act era sees fiscal zoning taking a more pronounced role in planning. Slowly, the starter home and smaller modest homes are replaced by large-lot, large-home subdivisions, reflecting both the emergence of the Baby Boomers and their economic power and the desire to create designer communities through fiscal and policy means.

This period sees the average size of the home in the United States grow 35% from 1960 to 1980 and another 30% between 1980 to 2000. The shift from grid-layout communities to subdivisions with winding streets contained within collector roads begins.

## FISCAL ZONING

Fiscal zoning, which was an underlying part of the SZEA, took on greater prominence in planning theories in the latter half of the 20th century. Fiscal zoning, or fiscal impact zoning, assesses how proposed developments or changes in land use may impact public tax revenues and expenditures, taking into account factors such as property tax revenues, infrastructure costs, and demands for public services like schools, transportation, and emergency services. The primary goal of fiscal zoning is to guide land use policies and decisions in a manner that promotes sustainable development, efficient allocation of resources, and the long-term fiscal health of the community.

Under fiscal zoning, local governments use land-use policies and other regulatory powers to increase home prices and maximize future tax revenue, minimize future expenditures, and seek to recapture the perceived "impact" new development has as development occurs.

The goal of this policy is to use zoning controls such as housing type, unit size, density, lot size, setbacks, fees and dedications, and other land use policies. While intended to only capture the impact at the time of development, it has grown to include the long-term implications of a given development in a community.

Under the evolved view of fiscal zoning, a large lot, single-family community is considered to have less of an "impact" on the community as a lower population places fewer needs and these larger lot homes provide a similar tax base as those with greater density. These residents also are likelier to be more affluent as these homes will be more expensive.

## AVERAGE HOME SIZE

The average new home size grew as fiscal zoning rose to prominence in the United States:

- **1920:** 1,048 sq. ft.
- **1930:** 1,129 sq. ft.
- **1940:** 1,177 sq. ft.
- **1950:** 983 sq. ft.
- **1960:** 1,289 sq. ft.
- **1970:** 1,500 sq. ft.
- **1980:** 1,740 sq. ft.
- **1990:** 2,080 sq. ft.
- **2000:** 2,266 sq. ft.
- **2010:** 2,392 sq. ft.

Source: 24/7 Wall St.





■ EXCLUSIONARY ZONING SERIES

# History of Exclusion in America's Housing Policies

## DOWNZONING

Growing suburban communities were not the only places immune from fiscal zoning and policies designed to achieve socioeconomic segregation. In established communities, downzoning took hold, seeking to prevent the redevelopment of predominantly white affluent areas into higher-density neighborhoods. Often, mixed-used and smaller-lot homes that already existed in these neighborhoods were no longer allowed to be built.

## REFORM MOVEMENT

More than 100 years after the SZEA, many planning and zoning powers that were the “basic foundation for planning and zoning” remain in place – policies with a direct tie to achieving racial segregation through socioeconomic means:

*“Zoning to exclude minorities, whether racial or economic, can be done in various ways. The most common are ordinances designed to ‘maintain the character of a neighborhood.’ Typical devices used are minimum lot-size requirements, minimum building-size requirements, frontage requirements, exclusion of mobile homes, bedroom restrictions, land improvement requirements such as sewage plants, minimum floor space requirements, living density requirements, prohibition of multiple-family dwellings, and various provisions in building codes.”*

Frank Aloii and Arthur Goldberg “Racial and Economic Exclusionary Zoning: The Beginning of the End?”, January 1971. Emphasis Added

Fueled by the rising housing crisis caused by underproduction since the Great Recession, policymakers have now begun to examine the explosion in new housing costs and the barriers to housing production. As the role of zoning in America's housing crisis falls under review, the history of these policies and the impact on socioeconomic segregation to this day becomes a central point of discussion in the efforts to solving the housing crisis in the United States.

## TIMELINE

**1911:** Baltimore, Maryland, is the first U.S. city that enacted an explicit racial segregation zoning policy at the same time as the Great Migration began. Other communities followed suit.

**1917:** The U.S. Supreme Court released its opinion in *Buchanan v. Warley* declaring race-based segregation in zoning unconstitutional. Post-Buchanan, racially restrictive covenants replaced race-based zoning, which escaped the scope of Buchanan.

**1922:** The United States Department of Commerce pushed socioeconomic segregation-based zoning codes called the Standard State Zoning Enabling Act, a workaround to *Buchanan v. Warley*. The document was revised and reissued in 1924 and 1926.

**1926:** Two cases at the U.S. Supreme Court impact the direction of planning, zoning, and segregation:

- *Euclid v. Ambler Realty Co.*: Upheld that zoning in its then- and current form (socioeconomic exclusion) was an appropriate police power of local governments.
- *Corrigan v. Buckley*: Upheld racial covenants as constitutional as they are private contracts.

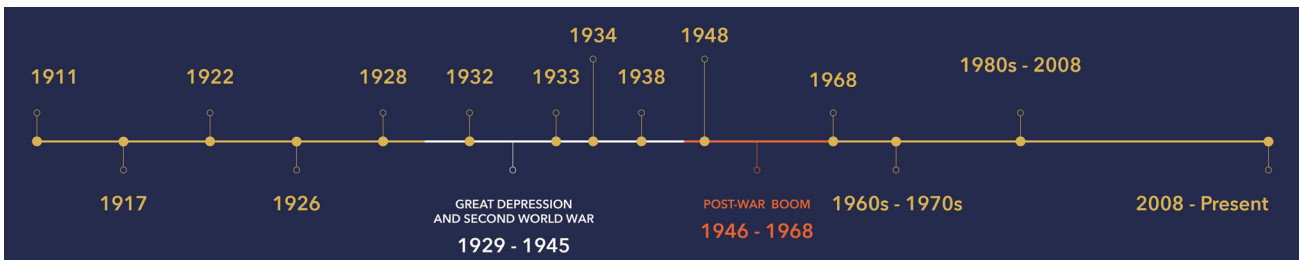
In response to these legal precedents, adoption of zoning based on socioeconomic continues and racially restrictive covenants proliferate in real estate transactions.

**1928:** The Standard City Planning Enabling Act was published.

**Great Depression and Second World War:** Housing production slowed, foreclosures increased, and the Federal Government increased involvement in housing and housing financing.

**1932:** Federal Home Loan Bank Board is formed.

**1933:** Home Owners’ Loan Corporation by the Federal Home Loan Bank Board. Redlining maps soon followed.





■ EXCLUSIONARY ZONING SERIES

# History of Exclusion in America's Housing Policies

**1934:** The Federal Housing Administration was formed; "redlining" was supported by the agency soon after its inception.

**1938:** Fannie Mae is formed, with low-cost home loans restricted for Black Americans.

**Post-War Boom:** The demand for new housing, fueled by the post-war economic boom, saw suburban growth exploding, with new starter homes being central to this expansion. The Great Migration continued.

**1948:** In *Shelley v. Kraemer* the U.S. Supreme Court declared racial covenants unconstitutional.

**1968:** Fair Housing Act banned racial discrimination in housing access, expanding to move beyond simply ownership. Institutional racism and exclusion in housing, such as redlining and racially restrictive covenants, were declared illegal.

**1960s - 1970s:** The "Fiscal Impact" Zoning theory took hold in growing communities. Established communities "downzone" built-out neighborhoods.

**1980s-2008:** During the peak Boomer-earning years, fiscal zoning became the base planning theory for exurbs that are now suburbs. During this time, property rights eroded as the general public's opinions on taste and design became a part of the approval process for new housing. The discretionary approval process, minimum home sizes, larger lots, aesthetic mandates, mandatory design styles, and other local land-use controls used to raise home prices take hold.

**2008-Present:** The Great Recession laid the groundwork to the housing crisis with housing production falling to critical levels. Housing production remains suppressed, and the cost of new housing increases due to regulatory pressures. Housing reform movement begins with policymakers seeking reforms focused on increasing housing inventory, affordability, and access.

## NOTES

Aloi, Frank and Goldberg, Arthur. "Racial and Economic Exclusionary Zoning: The Beginning of the End?" *Urban Law Annual; Journal of Urban and Contemporary Law*. 1971.

*Buchanan v. Warley*, 245 U.S. 60 (1917)

Comen, Evan. "The Size of a Home the Year You Were Born." *24/7 Wall St.* Dec. 2021.

*Corrigan v. Buckley*, 271 U.S. 323 (1926)

Dain, Amy. "Exclusionary by Design: An investigation of zoning's use as a tool of race, class, and family exclusion in Boston's suburbs, 1920 to Today." *Boston Indicators*. November 2023

Demas, Jerusalem. "America's racist housing rules really can be fixed." *Vox*. Feb. 2021.

Fischel, William. "Fiscal zoning and economists' views of the property tax." *Lincoln Institute of Land Policy*. 2013

Gerken, Mathew ,et al. "Assessing the legacies of historical redlining." *Urban Institute*. January 2023.

Kim, Michael. "Exclusionary Economic Zoning: How the United States Government circumvented prohibitions on racial zoning through the Standard State Zoning Enabling Act." *Journal of Legislation*. Sept. 2022.

Power, Garrett, "Apartheid Baltimore Style: The residential segregation ordinances of 1910-1913". *Francis King Carey School of Law*. 1983.

*Shelley v. Kraemer*, 334 US 1 (1948)

"Standard State Zoning Enabling Act and Standard City Planning Enabling Act." *American Planning Association*.

Standard City Planning Enabling Act. *United States Department of Commerce*. 1927.

Standard State Zoning Enabling Act. *United States Department of Commerce*. 1922.

Thomason, Cheryl et al. "Racial covenants, a relic of the past, are still on the books across the country." *National Public Radio*. November 2021.

"The Great Migration, 1910 to 1970." *Unities States Census Bureau*. " 2012.

*Village of Euclid v. Ambler Realty Co.*, 272 US 365 (1926).

Cover Photo Credit: Mark Mathosian, <https://www.flickr.com/photos/markgregory/7651774934>

