

ACKNOWLEDGING THE RACIST ROOTS OF DISINVESTMENT
AND ABANDONMENT: HOW LOCAL GOVERNMENT CAN SET
THE STAGE FOR CHANGE

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Abstract

Disinvestment and associated property abandonment are defining features of many post-industrial legacy cities. While the reasons are varied and complex, racist law and policy are at the root. Though abandoned properties negatively affect an entire city, their effects usually disproportionately fall on neighborhoods of color. Law and policy have been major drivers of how such neighborhoods look and feel today. Because law and policy have been part of the problem, they are also a necessary part of the solution. This kind of large-scale, multi-disciplinary problem is beyond the ability of a single institution or sector to address. Stakeholders such as local governments, neighborhoods, and philanthropic organizations have tools to address this challenge. However, to generate effective solutions in the modern community development system, these stakeholders must use their respective tools in close coordination and cooperation. Cooperation requires a foundation of trust and shared vision. Local governments possess not only the tools to address disinvestment and abandonment but also the power to set the rules of the game. As such, local governments are uniquely able to lay the groundwork for the racial healing needed to rebuild trust and develop a shared vision. This Article recommends local governments provide a public disclosure about a property's history as a part of their development and demolition processes to take the first step toward racial healing. By providing such disclosures, local governments can create the conditions necessary for making existing tools far more effective and for furthering self-initiated reparative actions.

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INTRODUCTION

Disinvestment and property abandonment are defining features of many post-industrial legacy cities.¹ While the reasons for disinvestment and abandonment are varied and complex,² racist law and policy are at the root of the problem.³ Detailed histories of the discrimination that undergirds modern urban and suburban spaces have been extensively documented,⁴ but much of the historical record remains unknown or misunderstood by average neighborhood residents, policymakers, and developers. Indeed, most of the Author's own students do not know the historical connections between the legal and policy underpinnings of

1. ALAN MALLACH, *THE DIVIDED CITY: POVERTY AND PROSPERITY IN URBAN AMERICA* 75–96 (2018) [hereinafter MALLACH, *DIVIDED CITY*]; ALAN MALLACH, *THE EMPTY HOUSE NEXT DOOR: UNDERSTANDING AND REDUCING VACANCY AND HYPERVACANCY IN THE UNITED STATES* 4–5 (2018) [hereinafter MALLACH, *EMPTY HOUSE*]; ALAN MALLACH & LAVEA BRACHMAN, *REGENERATING AMERICA'S LEGACY CITIES* 7 (2013).

2. AM. BAR ASS'N, *VACANT AND PROBLEM PROPERTIES: A GUIDE TO LEGAL STRATEGIES AND REMEDIES* xix–xxvi (Alan Mallach et al. eds., 2019); MALLACH, *EMPTY HOUSE*, *supra* note 1, at 4–8; DANA M. MALKUS, *A GUIDE TO UNDERSTANDING AND ADDRESSING VACANT PROPERTY IN THE CITY OF ST. LOUIS* 6–7 (2018).

3. *See infra* Part I.

4. *See, e.g.*, RICHARD ROTHSTEIN, *THE COLOR OF LAW* 39–47 (2017) (explaining that racial residential segregation is the result of explicit government policy); JESSICA TROUNSTINE, *SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES* (2018) (detailing the role of local government policy around land use, zoning, and control of public services in creating and perpetuating segregation); MALLACH, *DIVIDED CITY*, *supra* note 1, at 75–96 (describing the historical connections between race, real estate, and revitalization); NANCY O. ANDREWS, *RACE, GENDER, AND EQUITY IN COMMUNITY DEVELOPMENT: TEN FINDINGS, SIX WAYS FORWARD* 2 (2019) (noting that, while there have been significant efforts toward racial equity in the community development sphere, society remains a long way from undoing the racism baked into law, policy, investment priorities, and social attitudes).

segregation and the disinvestment and abandoned property so prevalent in the city many of the Author's students call home, was not well known to the students until they read *The Making of Ferguson: Public Policies at the Root of its Troubles*.⁵ It is as if these histories have been carefully documented and displayed on historical markers all along the community development highway, but only a few individuals have stopped to read them. Without greater understanding, policy proposals aimed at reckoning with history will feel neither urgent nor compelling.

The modern community development system in the United States is fragmented and largely relies on stakeholder coordination and cooperation.⁶ In this kind of system, solutions to problems like disinvestment and abandonment require coordination and cooperation among a diverse set of stakeholders. Using the post-industrial legacy city of St. Louis, Missouri, as an example, Part I of this Article demonstrates the ways in which racist roots have resulted in distrust, creating barriers to the shared vision foundational to the kinds of coordination and cooperation the modern system requires. Part II argues that local governments can and should set rules that create conditions for the racial healing needed to produce more trust and shared vision among stakeholders. Finally, Part III explores the self-initiated reparative actions that could follow when local governments take the actions described in Part II.

I. RACIST ROOTS HAVE RESULTED IN DISTRUST

Like similarly situated legacy cities, St. Louis faces a serious vacant property challenge. Since its population peak in the 1950s, the city has lost well over half of its population and has one of the highest rates of vacant and abandoned property in the country.⁷ The overwhelming majority of these properties are concentrated in Black neighborhoods on the city's north side.⁸ The serious negative impacts of vacant and

5. RICHARD ROTHSTEIN, *THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES* 1, 12, 20–22 (2014).

6. CLARENCE N. STONE & ROBERT P. STOKER, *URBAN NEIGHBORHOODS IN A NEW ERA* 28 (2015).

7. TYLER SWEHLA ET AL., *PARCELS AND PEPPERS: SAVORY IDEAS FOR ADDRESSING VACANCY IN ST. LOUIS* xix, 7 (2015); ALEXANDRA MILLER ET AL., *ASAKURA ROBINSON CO., ST. LOUIS LAND BANK ASSESSMENT* 18 (2017).

8. SWEHLA ET AL., *supra* note 7, at 8; MILLER ET AL., *supra* note 7, at 18; *see Vacancy Property Explorer*, STL VACANCY COLLABORATIVE, <https://www.stlvacancytools.com> [https://perma.cc/5NB8-CASC] (last visited Oct. 7, 2022).

abandoned property—including crime,⁹ decreased property values,¹⁰ and severe pressure on a city’s tax base and its ability to provide basic services¹¹—are well documented and have been explored in depth by

9. See, e.g., MALLACH, EMPTY HOUSE, *supra* note 1, at 19–20 (explaining that vacancy is associated with crime and violence); MAX WEINSTEIN ET AL., FINAL REPORT OF THE FORECLOSURE IMPACTS TASK FORCE OF THE STATE OF MASSACHUSETTS 41 (2014) (reporting that violent crime increases by more than 15% within 250 feet of a vacant property); DAN IMMERGLUCK, THE COST OF VACANT AND BLIGHTED PROPERTIES IN ATLANTA: A CONSERVATIVE ANALYSIS OF SERVICE AND SPILLOVER COSTS 1 (2015) (noting that vacant properties are associated with higher crime rates); Charles C. Branas et al., *Urban Blight Remediation as a Cost-Beneficial Solution to Firearm Violence*, 106 AM. J. PUB. HEALTH 2158, 2158, 2161 (2016) (finding that abandoned building remediation significantly reduced firearm violence by 39%); William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. CRIM. JUST. 481 (finding that blocks with unsecured vacant buildings had 3.2 times as many drug calls to police, 1.8 times as many theft calls, and twice the number of violent calls as blocks without vacant buildings). See generally CHRISTOPHER WALKER & FRANCISCA WINSTON, PLACE, PEOPLE, POLICE: THE EFFECTS OF PLACE-CENTRIC CRIME REDUCTION EFFORTS IN THREE NEIGHBORHOODS (2017) (finding as much as a 41% decline in crime incidents in Providence, Rhode Island, after police and community developers worked together to renovate and program a park, construct affordable housing, renovate blighted structures, and introduce more active policing); Charles Branas et al., *Citywide Cluster Randomized Trial to Restore Blighted Vacant Land and Its Effects on Violence, Crime, and Fear*, 115 PROC. NAT’L ACAD. SCI. (2018) (indicating that participants living near treated vacant lots reported significantly reduced perceptions of crime, vandalism, and safety concerns as well as increased use of outside spaces for relaxing and socializing, and finding that the treatment of vacant lots in neighborhoods below the poverty line resulted in significant reductions in overall crime, gun violence, burglary, and nuisances).

10. MALLACH, EMPTY HOUSE, *supra* note 1, at 19–20; U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-34, VACANT PROPERTIES: GROWING NUMBER INCREASES COMMUNITIES’ COSTS AND CHALLENGES 45 (2011); NIGEL G. GRISWOLD & PATRICIA E. NORRIS, ECONOMIC IMPACTS OF RESIDENTIAL PROPERTY ABANDONMENT AND THE GENESEE COUNTY LAND BANK IN FLINT, MICHIGAN 4 (2007); IMMERGLUCK, *supra* note 9, at 1; see Hye-Sung Han, *The Impact of Abandoned Properties on Nearby Property Values*, 27 HOUS. POL’Y DEBATE 311 *passim* (2013) (examining the impact of abandoned properties on nearby property values in Baltimore from 1991 to 2010 using longitudinal data sets while simultaneously controlling for both nearby foreclosures and local housing market trends, and finding that, as properties are abandoned for longer periods of time, the impact on nearby property values increases in magnitude and is seen increasingly farther away); GORDON WHITMAN, BLIGHT FREE PHILADELPHIA: A PUBLIC-PRIVATE STRATEGY TO CREATE AND ENHANCE NEIGHBORHOOD VALUE 21 (2001) (finding that houses within 150 feet of a vacant or abandoned property experienced a net loss of \$7,627 in value); STEPHAN WHITAKER & THOMAS J. FITZPATRICK IV, DECONSTRUCTING DISTRESSED-PROPERTY SPILLOVERS 15 (2012) (reporting that, in Cleveland, Ohio, vacant property within 500 feet reduces sales price of a home by 1.7% in low-poverty neighborhoods and 2.1% in medium-poverty neighborhoods); JAMES ALM ET AL., PROPERTY TAX DELINQUENCY AND ITS SPILLOVER EFFECTS ON NEARBY PROPERTIES 2 (2016) (finding that, in Chicago, Illinois, tax delinquent properties not successfully sold had a negative spillover of 5.1% delinquency discount on value of nearby properties).

11. See, e.g., MALLACH, EMPTY HOUSE, *supra* note 1, at 19–20 (explaining that vacancy has devastating effects on a city’s fiscal condition due to direct maintenance and demolition costs and lost tax revenues from the vacant properties themselves and from the devaluing of neighboring properties); Kermit Lind, *Vacant Property Research Network, Data-Driven Systems: Model Practices & Policies for Strategic Code Enforcement*, VPRN RES. & POL’Y 4 (2016) (noting the direct costs on government agencies and indirect costs on tax revenues); Bradley Pough & Qian

researchers, scholars, practitioners, and community residents alike. Somewhat less emphasized—but no less important—are the health effects of vacancy on the neighborhood, including feelings of fear and depression, increased lead levels, and a loss of community.¹²

The “extremely large” volume¹³ of vacant property in St. Louis is not the result of mere market forces or individual preferences, although those issues are part of the story. Rather, as has been documented,¹⁴ these properties are inextricably tied to legal and policy systems rooted in racism. In other words, law and policy are part of the problem. In St. Louis, racially restrictive covenants established durable patterns of segregation that were subsequently sanctioned and sustained by zoning laws, redlining policies, and other government actions.¹⁵ For example, the Federal Housing Administration (FHA)—relying on a model of neighborhood change which underscores the idea that racial change leads to a decline in property values¹⁶—adopted underwriting policies that incentivized using racially restrictive covenants to preserve homogenous white residential areas.¹⁷ FHA policy led to white flight from the urban core to new housing markets in suburban areas while barring non-whites

Wan, Data Analytics and the Fight Against Housing Blight: A Guide for Local Leaders 2 (Mar. 2017) (unpublished manuscript), https://dash.harvard.edu/bitstream/handle/1/31852257/2017-03_responsivecommunities%20%281%29%5b7140%5d.pdf?sequence=1&isAllowed=y [<https://perma.cc/4FV9-YPJ5>] (explaining that housing blight spreads and brings with it a host of negative externalities impacting a city’s financial and physical well-being); see also Melanie B. Lacey, *A National Perspective on Vacant Property Receivership*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 134 (2016) (discussing problems at neighborhood, city, and regional levels).

12. ERWIN DE LEON & JOSEPH SCHILLING, URBAN BLIGHT AND PUBLIC HEALTH: ADDRESSING THE IMPACT OF SUBSTANDARD HOUSING, ABANDONED BUILDINGS, AND VACANT LOTS *passim* (2017); see STACY ROSS, WORKING TOGETHER: THE ST. LOUIS VACANCY SUMMIT FINAL REPORT 3 (2017) (describing psychological impacts of vacancy); MALLACH, EMPTY HOUSE, *supra* note 1, at 19–20 (explaining that vacant lots negatively affect quality of life and sense of well-being and lead to social fragmentation); see also CLAUDIA J. COULTON ET AL., HOUSING DETERIORATION CONTRIBUTES TO ELEVATED LEAD LEVELS AND LOWER KINDERGARTEN READINESS SCORES IN CLEVELAND 1 (2016) (“Lead exposure is one of the consequences of housing deterioration that has shown clearly negative effects on early cognitive development. Studies show that young children with elevated blood lead levels consistently score lower on school readiness and developmental assessments compared to their unexposed peers.”).

13. MILLER ET AL., *supra* note 7, at 18.

14. See *supra* note 4.

15. Colin Gordon, *Dividing the City: Race-Restrictive Covenants and the Architecture of Segregation in St. Louis*, J. URB. HIST., Mar. 2021, at 1, 12.

16. Adam Gordon, *The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 YALE L. J. 186, 208, 219–20 (2005).

17. DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF AN UNDERCLASS 53–54 (1998); see Adam Gordon, *supra* note 16, at 209 (noting that the FHA encouraged housing segregation).

from those markets.¹⁸ These kinds of policies cemented residential segregation.¹⁹ Moreover, other decisions contributed to the problem, including the way that municipal services and resources were allocated, schools were organized and funded, policing practices focused on regulating racial boundaries,²⁰ and incorporation laws enabled suburbanites to establish separate governments with their own zoning rules.²¹ In addition, choices by businesses and institutions to follow the exodus to suburban spaces (and government policies subsidizing such sprawl) meant white flight was not limited to the residential arena, further compounding disinvestment and segregation.²²

In St. Louis, like other urban areas, the decline in property values triggered by white flight was exacerbated by policies that effectively barred Black individuals from accessing mortgage loans,²³ disfavored making loans on the kind of housing stock typically found in urban

18. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH* 16–17 (1995); Colin Gordon, *supra* note 15; see Audrey McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 *SAN DIEGO L. REV.* 295, 336 (1999) (describing state and federal policies promoting movement of people to the periphery of metropolitan regions).

19. Adam Gordon, *supra* note 16, at 208, 219–20.

20. Colin Gordon, *supra* note 15, at 12.

21. PETER DREIER ET AL., *PLACE MATTERS* 37, 99 (2014) (explaining that, in competition for favored residents and investments, each jurisdiction is incentivized to adopt exclusionary zoning and development policies, while distressed suburbs and central cities provide housing of last resort for those whom suburban jurisdictions have excluded by reason of low income, lack of mobility, or race).

22. David Libonn, *From Cautionary Example to “City on a Hill”: Revitalizing Saint Louis May Require an Innovative Regional Taxation Model*, 91 *WASH. U. L. REV.* 1035, 1051 (2014); see DREIER ET AL., *supra* note 21, at 40 (finding that, from the 1960s to 1990s, more new jobs were in suburban areas).

23. Colin Gordon, *Making Ferguson: Segregation and Uneven Development in St. Louis and St. Louis County*, in *FERGUSON’S FAULT LINES: THE RACE QUAKE THAT ROCKED A NATION* 75–91 (Kimberly Norwood ed., 2016); OLIVER & SHAPIRO, *supra* note 18, at 18; see Adam Gordon, *supra* note 16, at 216–17 (noting that, from 1945 to 1959, fewer than 2% of FHA loans went to Black homeowners). Black individuals were effectively barred from obtaining FHA loans due to discrimination and from non-FHA loans due to bank safety-and-soundness regulations. In other words, if the FHA would not insure a particular borrower, that borrower could not get a long-term mortgage with a low down payment from another source. Adam Gordon, *supra* note 16, at 217.

neighborhoods,²⁴ and disfavored neighborhoods with Black residents.²⁵ Moreover, the real estate industry's use of racial steering and sanctions for members who helped Black individuals acquire housing in white neighborhoods along with the use of racist and discretionary appraisal standards added to the discrimination prevalent in the housing industry.²⁶ These policies and practices contributed to artificially low market values for homes in Black and integrated neighborhoods.²⁷ Being cut off from traditional financing and sources of investment left such neighborhoods vulnerable to predatory "investors" and slumlords who were able to use legal structures and evasion strategies to effectively shield owners from accountability for property conditions.²⁸ Lower property values,

24. See Adam Gordon, *supra* note 16, at 208 (explaining that underwriting standards were biased against homes with rental units or stores, a common type of housing stock in urban neighborhoods, favoring instead single-family homes in single-use neighborhoods); Robert Fishman, *The American Metropolis at Century's End: Past and Future Influences*, 11 HOUS. POL'Y DEBATE 199 (1999) (describing how a white home buyer who wished to stay in the neighborhood had to resort to an old-style conventional mortgage with a high rate and short term but how the same purchaser who opted for new suburban housing could get a FHA mortgage with a lower rate, longer term, lower down payment, and lower monthly payment).

25. Thomas W. Hanchett, *The Other "Subsidized Housing"*, in FROM TENEMENTS TO TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA 167 (John F. Bauman et al. eds., 2000).

26. DREIER ET AL., *supra* note 21, at 119–120; Jodi Rios, *Racial States of Municipal Governance: Policing Bodies and Space for Revenue in North St. Louis County, MO*, 37 LAW & INEQ. 235, 244 (2019); Robert G. Schwemm, *Segregative-Effect Claims Under the Fair Housing Act*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 709, 760 (2017); COLIN GORDON, MAPPING DECLINE 88–89 (2008); MAUREEN YAP ET AL., IDENTIFYING BIAS AND BARRIERS, PROMOTING EQUITY 16 (2022).

27. See Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 PUB. AFFS. Q. 255, 265 (2007) (explaining that FHA policy generated demand for segregated white neighborhoods while simultaneously lowering demand, and therefore the market price, for housing in predominately Black neighborhoods). For more on problems associated with appraisal practices, see DAVID HARSHBARGER ET AL., THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY *passim* (2018); see also Joe Neri, *Can Using a Racial Equity Lens Increase Capital in Communities of Color?*, SHELTERFORCE (May 20, 2019), <https://shelterforce.org/2019/05/20/can-a-racial-equity-lens-increase-capital-in-communities-of-color/> [<https://perma.cc/BCP6-NRK9>] (reporting that low-income communities face discrimination from redlining, which reduces property values, and that this discriminatory system is reinforced each time a lender relies on appraisal).

28. See Alan Mallach, *The Two Vacancy Crises in America's Cities*, SHELTERFORCE (Nov. 13, 2018), <https://shelterforce.org/2018/11/13/the-two-vacancy-crises-in-americas-cities/> [<https://perma.cc/6888-53VU>] (finding that non-local investors in areas of high concentrations of vacancy tend to invest little or nothing in the properties, hold them, and then abandon the properties after getting the anticipated return on their investment); Kermit J. Lind, *Perspectives on Abandoned Houses in a Time of Dystopia*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 121, 124, 127–28 (2015) (explaining that local rehab professionals and home improvement amateurs who once absorbed mortgage failures in the market have been replaced by investors and speculators who treat unprofitable and unmarketable houses as waste); Steven E. Barlow et al., *Ten Years of Fighting Blighted Property in Memphis*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L.

combined with a lack of access to traditional financing, meant that cash transactions—without assistance from lawyers or title companies—became the norm in some neighborhoods, often leading to complicated, clouded titles that further reduced a property’s value and made it more likely to be abandoned.²⁹ Add to this the title insurance industry’s risk aversion to properties with foreclosure histories,³⁰ and the result is a system where reinvestment becomes difficult and disinvestment becomes the path of least resistance.

The political marginalization of segregated urban neighborhoods exacerbated abandonment and disinvestment. For decades following World War II, segregated urban neighborhoods had little leverage to advance neighborhood-level concerns and received little attention from policymakers, as city leaders focused on redeveloping the central business core in an effort to “save” the city and its economy.³¹ This singular focus on economic redevelopment left neighborhoods relegated to the political sidelines³² and tended to ignore issues of racial and economic equity.³³ Moreover, as the dominant voices on planning and redevelopment bodies, business elites often had little regard for lower income residents or the ways in which redevelopment policies affected them.³⁴ While demographic changes, civil disorder, and Black political

347, 364–372 (2017) (noting that the factors contributing to property abandonment include investors, absentee owners, and corporate owners, among others).

29. The problem of clouded title and of liens exceeding a property’s worth in a market with already depressed property values is a serious issue that is exacerbated by a creditor’s rights system that includes only a very narrow homestead exemption, virtually guaranteeing title encumbrances since almost every debt attaches automatically to property owned by the debtor. See Harry D. Boul, *The Need for a Rational Homestead Exemption in Missouri*, 69 J. MO. BAR 264, 266–67 (2013); Christopher P. Lauer, *Belt and Suspenders: Two Key Changes to Reduce Money Laundering Through Residential Real Estate*, 70 CASE W. RES. 1225, 1228–29 (2020). Moreover, a lack of access to simple estate planning tools—like beneficiary deeds—for homeowners in these neighborhoods results in fractured titles as title passes by operation of law, with the fracturing becoming worse with each passing generation. See Barlow et al., *supra* note 28, at 368. The subprime mortgage crisis compounded the problem. See AM. BAR ASS’N, *supra* note 2, at xix; see also Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS PUB. L. REV. 113, 116 (2009) (discussing the vulnerability of low-income buyers).

30. Grant S. Nelson & Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial Foreclosure Act*, 53 DUKE L. J. 1399, 1433 (2004).

31. STONE & STOKER, *supra* note 6, at 6, 11.

32. See *id.* at 6, 11 (noting that scholarly research has consistently confirmed the marginal political status of neighborhoods during this time period and that neighborhood-level concerns paled in comparison to economic redevelopment efforts, which were accorded a privileged position).

33. DREIER ET AL., *supra* note 21, at 157.

34. See STONE & STOKER, *supra* note 6, at 9 (describing how an alliance between city hall and business leadership possessed strong capacity to act but were not inclined to probe any conditions beyond the need to rebuild city economy and had limited knowledge and few concerns

mobilization did affect this dynamic at the margins, the urban playing field tilted heavily in favor of economic development and elite business interests at the expense of nonaffluent residents for years.³⁵ While neighborhoods have experienced modest policy attention gains in more recent decades, that attention remains very uneven.³⁶

This history has left vacant and abandoned properties in its wake and has severely eroded trust in local government by many of the very citizens such local governments should serve. Of course, St. Louis is not alone. Shaped by varying local themes and flavor, versions of the racist-roots story are present in urban areas all over the country.³⁷ The patterns of segregation and disinvestment in St. Louis and in other urban areas not only affect where people live today and who their neighbors are, but also are foundational to the unequal distribution of opportunity that defines much of the U.S. experience³⁸ and speak to who bears the disproportionate burden of vacancy and abandonment. A problem as multi-disciplinary and large-scale as vacancy is beyond the ability of a single institution or sector to address. Local governments have a variety of tools to address the problem—such as code enforcement, tax and special lien foreclosure, demolition, and land banking³⁹—but these tools alone have failed to solve the problem. Neighborhood residents can organize to collectively advocate, and sometimes litigate,⁴⁰ against problem property owners and work to attract new resources and reinvestment to their neighborhoods from philanthropy, institutions, and

about how their actions could have spillover effects). For example, between 1956 and 1972, urban renewal and highway construction displaced an estimated 3.8 million individuals in the United States—many of them nonwhite—and pushed them from their homes and businesses, destroying social ties and disbursing residents without sufficient compensation for their losses. *See* DREIER ET AL., *supra* note 21, at 119; Sonya Bekoff Molho & Gideon Kanner, *Urban Renewal: Laissez-Faire for the Poor, Welfare for the Rich*, 8 PAC. L. J. 627, 628 (1977).

35. STONE & STOKER, *supra* note 6, at 13.

36. *Id.* at 22.

37. *See supra* notes 1–3; ALAN BERUBE, SMALL AND MIDSIZED LEGACY COMMUNITIES: TRENDS, ASSETS, AND PRINCIPLES FOR ACTION 20 (2019) (noting that the long-standing patterns of segregation in legacy communities are driven, in part, by public policy); Werner Troesken & Randall Walsh, *Collective Action, White Flight, and the Origins of Racial Zoning Laws*, 35 J. L. ECON. & ORG. 289, 294 (2019) (examining the segregation trends in twenty-seven cities that passed segregation ordinances between 1910 and 1917).

38. Anika Singh Lemar, *Building Bridges and Breaking Down Walls: Taking Integration Seriously in CED Practice*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 207, 210 (2019) (residential segregation made it possible to allocate resources such as transportation networks, parks, libraries, quality schools, and employment opportunities to white neighborhoods and not to other neighborhoods; racial segregation facilitates unequal distribution of opportunity infrastructure); Kaplan & Valls, *supra* note 27, at 265–66 (segregation lead to differences in access to high quality educational opportunities, local financial institutions, health care resources, and other tangible neighborhood assets).

39. AM. BAR ASS'N, *supra* note 2, at 172.

40. *See infra* note 101.

developers. However, such strategies, when used in isolation, have not reversed the tide. A coordinated effort among local government, neighborhood residents, and other stakeholders is required.⁴¹ In other words, coordination and cooperation are not optional components of effective vacancy solutions. Rather, they are foundational to everything else.⁴² Racism's effects are barriers to the trust and shared vision foundational to the kind of coordination and cooperation needed for effective solutions.

II. CREATING CONDITIONS FOR INCREASED TRUST AND SHARED VISION

The kind of coordinated and cooperative work necessary for effective solutions requires two foundational elements: trust and shared vision. As stakeholders, local governments bring essential tools to the abandonment challenge. Importantly, though, they are not merely stakeholders. Given that local governments also set the “rules of the game”⁴³ that govern local community development law and policy, such governing bodies can set rules that acknowledge the racist roots of disinvestment and abandonment and create conditions for the racial healing needed to produce more trust and shared vision among stakeholders. Rule-setting by local governments is a mechanism to create conditions where trust and shared vision become

41. See JOE SCHILLING & KERMIT LIND, STRATEGIC CODE ENFORCEMENT: A NEW MODEL FOR RECLAIMING VACANT PROPERTIES AND STABILIZING NEIGHBORHOODS 9 (2018) (emphasizing that an effective approach coordinates programs, policies, and cases among city departments and agencies and that those departments and agencies routinely collaborate with neighborhood associations, CDCs, and other nonprofits and community-based organizations); Barlow et al., *supra* note 28, at 380–84 (emphasizing that multisector partnerships are critical and explaining that vacancy progress in Memphis, Tennessee, came “only as a result of a core cross-sector team that sincerely agreed on a path forward to address the longstanding problem of blighted property in [the] city,” relying on mutual trust and communication); Lind, *supra* note 28, at 130 (noting that the most effective response is sustained collaboration between civic groups and public managers at the local community level).

42. In recognition of this reality, a multi-year effort to bring law and policy solutions to bear on the vacancy challenge in St. Louis has grown into what has come to be known as the St. Louis Vacancy Collaborative, a coalition of partners committed to the reduction of vacant property as a top priority in St. Louis. SAINT LOUIS VACANCY COLLABORATIVE, <https://www.stlvacancy.com/> [<https://perma.cc/ZFK6-6LZU>] (last visited Oct. 10, 2022). The Collaborative is a coalition of community representatives, private and non-profit stakeholders, and local government agencies. *General Information*, SAINT LOUIS VACANCY COLLABORATIVE, <https://www.stlvacancy.com/general-info.html> [<https://perma.cc/WNN4-NNTZ>] (last visited Oct. 10, 2022). The Collaborative “coordinate[s] existing vacancy efforts under one umbrella” and encourages the public and private sectors to work together toward solutions in a comprehensive and coordinated way. *Id.*

43. See DREIER ET AL., *supra* note 21, at 175 (using the argument that local governments set the “rules of the game” to support the assertion that state and federal governments make regional initiatives limited and difficult to sustain).

more likely.⁴⁴ Using restorative justice and remembrance principles as a guide, local governments should add a “truth” element to existing development and demolition processes to acknowledge abandonment’s racist roots and make its historical context more publicly known. A public disclosure of this kind sets the stage for the racial healing that is a prerequisite to trust and shared vision.

A. Foundational Restorative Justice and Remembrance Principles

Scholars, political actors, and activists have called for reckoning with historical racial injustice.⁴⁵ These calls for action—which, for convenience, are collectively referred to in this Article as reparations—encompass a range of ideas that fall into two categories: (1) truth and acknowledgment of harms, and (2) some kind of reparative action or amends.⁴⁶ As many such ideas recognize, the current status quo of distrust

44. Notably, without shared vision and power, fear and distrust are likely to be the logical responses to any proposed development or demolition decisions. When residents lack power, distrust becomes the dominant narrative. Alan Mallach relates the following story:

My friend Paul Brophy, one of the wisest thinkers about [gentrification] issues I know, taught a graduate seminar at Washington University in St. Louis a few years ago and told me a story that captures this better than anything else I can think of. A young African American student in the class was clearly unhappy with much of his presentation; finally, he made his point directly. “Listen, professor,” he said. “When you talk about gentrification, you talk about numbers, about incomes and house prices and such. When we talk about gentrification, it’s about powerlessness.” MALLACH, *DIVIDED CITY*, *supra* note 1, at 120.

45. These injustices include slavery, housing discrimination, and employment discrimination. *See, e.g.*, Brian G. Gilmore & Hannah D. Adams, *The Case for a Reparations Clinic: A Proposal for Investigation, Documentation, and Remediation of Historic Housing Discrimination Through the Law School Clinic Model*, 2018 MICH. ST. L. REV. 1309 *passim* (2018) (discussing Jim Crow era injustices and slavery); Kaplan & Valls, *supra* note 27, at 255 (describing housing discrimination); Brian Gilmore, *Home Is Where the Hatred Is: A Proposal for Federal Housing Administration Truth and Reconciliation Commission*, 10 U. MD. L. J. RACE, RELIGION & CLASS 249 *passim* (2010) (detailing discriminatory housing policies).

46. *See, e.g.*, Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689 *passim* (2003) (defining reparations narrowly); Alfred Brophy, *Reconsidering Reparations*, 81 IND. L. J. 811 *passim* (2006) (defining reparations broadly); W.K. KELLOGG FOUND., TRUTH, RACIAL HEALING & TRANSFORMATION IMPLEMENTATION GUIDEBOOK 13 (2016) (placing an emphasis on transformation rather than reconciliation); HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE 274 (2005) (explaining that transformative justice is more appropriate than restorative justice because what is needed is an effort to go forward to a new reality and not back to something that existed before); Martin Luther King, Jr., *Facing the Challenge of a New Age*, in I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD 14, 22 (1963) (using the term “redemption”); ROY BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS 142 (2004) (using the term “atonement” and defining it to include apology and restitution); RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS *passim* (2000); Bennett Collins & Alison M. S. Watson, *Examining the Potential for an American Truth and Reconciliation Commission*, CARNEGIE COUNCIL (Feb. 5, 2015), <https://www.carnegiecouncil.org/media/series/ethics-online/examining-the-potential-for-an->

and open racial wounds is not cost-free.⁴⁷ The concept of reparations focuses on restorative justice, which is centered on the idea that those with a stake in an offense will engage in a collective effort to put things as right as possible.⁴⁸ Restorative justice is generally recognized as embodying three core concepts: (1) focus on the harms done to those who have been victimized, to those who caused the harm (whether individuals or systems), and to the community as well as on repairing relationships to the degree possible; (2) harms result in obligations, and so accountability and responsibility are essential; and (3) because connection and engagement are foundational to healing, everyone impacted by the harm has a role to play in deciding what justice and healing require.⁴⁹ It is designed to acknowledge past harms,⁵⁰ understand its present impacts,⁵¹ and engage stakeholders in creative problem solving and making amends.⁵² It views confronting and reckoning with the past as foundational to a transition from the resentment and tensions

american-truth-and-reconciliation-commission [https://perma.cc/S5L4-DX3U]; DONALD SHRIVER, *HONEST PATRIOTS: LOVING A COUNTRY ENOUGH TO REMEMBER ITS MISDEEDS* *passim* (2008); DAVID ANDERSON HOOKER & AMY POTTER CZAJKOWSKI, *COMING TO THE TABLE, TRANSFORMING HISTORICAL HARMS* *passim* (n.d.), <https://emu.edu/cjp/docs/transforming-historical-harms.pdf> [https://perma.cc/2TU7-SFLD]. Reparations in the United States to date have largely occurred at the state and local levels. *See, e.g., Mayor Jorge Elorza Announces Truth-Telling, Reconciliation and Municipal Reparations Process*, CITY OF PROVIDENCE (July 15, 2020), <https://www.providenceri.gov/mayor-jorge-elorza-announces-truth-telling-reconciliation-municipal-reparations-process/> [https://perma.cc/HXD7-FA26]; Joel Burgess, *In Historic Move, North Carolina City Approves Reparations for Black Residents*, USA TODAY (July 15, 2020, 8:59 AM), <https://www.usatoday.com/story/news/nation/2020/07/15/ashville-passes-reparations-black-residents-historic/5441792002/> [https://perma.cc/G3T9-5ZWU]; GREENSBORO TRUTH & RECONCILIATION COMM'N, <https://greensborotrc.org> [https://perma.cc/54FK-ZM5Z] (last visited Oct. 11, 2022); CITY OF LONG BEACH, *RACIAL EQUITY AND RECONCILIATION INITIATIVE: INITIAL REPORT* *passim* (2020); Valerie Vande Panne, *What Truth and Reconciliation Looks Like in Practice*, NEXT CITY (Nov. 2, 2020), <https://nextcity.org/features/what-truth-and-reconciliation-looks-like-in-practice> [https://perma.cc/WSE4-CMAP].

47. IMAMU AMIRI BARAKA, *THE ESSENCE OF REPARATION: AFRO-AMERICAN SELF-DETERMINATION & REVOLUTIONARY DEMOCRATIC STRUGGLE IN THE UNITED STATES OF AMERICA* 21 (2003); *see* Gilmore, *supra* note 45, at 278 (explaining that to not address the problem means to “accept an unequal society well into the future with all the difficulties such an unequal society imposes” on every individual).

48. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 37 (2002).

49. *Id.* at 17–18.

50. An understanding of past harms and their present impact emerges through research, acknowledgment, and the sharing of personal, community, and national histories of race. *See id.* at 21.

51. Brophy, *supra* note 46, at 835.

52. Michael F. Blevins, *Restorative Justice, Slavery, and the American Soul: A Policy-Oriented Intercultural Human Rights Approach to the Question of Reparations*, 31 T. MARSHALL L. REV. 253, 291–92 (2006).

associated with that past.⁵³ Perhaps the most powerful aspect of reparations in the context of the disinvestment and abandonment that define many legacy cities is its potential to create space for dialogue, provide opportunity for more shared understanding, and move public sentiment. That is, it can engender new forms of community building⁵⁴ and localized solutions that disrupt the status quo.⁵⁵ As a communicative act,⁵⁶ reparations can help participants talk to each other rather than past each other,⁵⁷ create a fuller picture of the harm in context,⁵⁸ build a foundation for more productive working relationships,⁵⁹ and reveal the injustice that otherwise tends to remain hidden in a way that brings a

53. *What Is Truth and Reconciliation?*, GREENSBORO TRUTH & RECONCILIATION COMM'N, https://greensborotrc.org/truth_reconciliation.php [<https://perma.cc/6MMW-79YW>] (last visited Oct. 11, 2022); see Joshua Inwood, *The Politics of Being Sorry*, 13 SOC. & CULTURAL GEOGRAPHY 607, 614 (2012) (“[R]estorative justice focuses on narrow definitions of guilt and innocence that apply to specific acts and the agency of those involved, [but] restorative justice broadens the scale of injustice to include social, political, and economic conditions that are implicated in continuing racism and inequalities.”); RACE FORWARD, BUILDING THE WE: HEALING-INFORMED GOVERNING FOR RACIAL EQUITY IN SALINAS 33 (2016) (“[C]ommunities of color, who often hold historical trauma from decades of racially unjust government policies, need to have that truth recognized to move forward together.”); ERIC YAMAMOTO, INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA *passim* (2000) (emphasizing the need to face ourselves and one another); SHRIVER, *supra* note 46, at 260 (explaining the two ways to go after harm: retreat into memory and nourish mutual hostility with plans for reprisal, or search together for new ways of living that do not repeat the past).

54. Thalia Gonzalez, *Reorienting Restorative Justice: Initiating a new Dialogue of Rights Consciousness, Community Empowerment and Politicization*, 16 CARDOZO J. CONFLICT RESOL. 457, 473 (2015).

55. *Id.* at 468, 474–75. Restorative justice brings the “potential to reorient, restore, and redefine power” and can create structures and networks essential to larger mobilization by exposing marginalized people to the strength of collective power to find a new reality. *Id.* at 461–62.

56. *Id.* at 460; see Patryk Labuda, *Racial Reconciliation in Mississippi: An Evaluation of the Proposal to Establish a Truth and Reconciliation Commission*, 27 HARV. J. RACIAL & ETHNIC JUST. 1, 42 (noting that knowledge itself is a form of restorative justice).

57. See Eric Miller, *Reconceiving Reparations*, 24 B.C. THIRD WORLD L. J. 45, 52 (“[T]oo much of the discussion of race in America and elsewhere is characterized by the various participants shouting past, rather than talking to, each other.”).

58. Gonzalez, *supra* note 54, at 464–65; see Brophy, *supra* note 46, at 839 (arguing for the need to reframe collective memory to more fully incorporate those who have been excluded and to have a history that is fair to them).

59. YAMAMOTO, *supra* note 53, at 7–12; see Tera Lynn McIntosh, *Show and Tell: Using Restorative Practices and Asset Based Community Development to Address Issues of Safety and Violence passim* (2012) (Ph.D. dissertation, Antioch University) (on file with Antioch University Repository & Archive) (using restorative practices helps increase social fabric within a community to address safety and violence); see also Panne, *supra* note 46 (explaining that the truth and reconciliation process were essential because understanding and coming to terms with the history of removal of native children was foundational to a productive working relationship).

greater sense of urgency.⁶⁰ Importantly, reparations may have the best chance of success when done publicly⁶¹ and led by the local community.⁶²

The conceptually related ideas of “remembrance” and “enduring injustice” provide additional instructive principles. While traditional legal theory and practice encompass certain ideas about what justice requires—for example, perpetrators should be punished and remorseful, and victims ought to be made whole—historical injustice is a challenge in this paradigm because some or all of the perpetrators and original victims are dead.⁶³ Nevertheless, “memories of the injustice linger, and harmful effects are often visited on descendants of the victims.”⁶⁴ Moreover, such injustices often “were made possible by the laws and practices of a society . . . [and] were endorsed by the attitudes and prejudices of many citizens,” raising questions about responsibility, harm, and duties.⁶⁵ A historical injustice is an “enduring injustice” if it “has not been remedied . . . , continues today in some form, and it seems that without a change in policies, it will continue into the future.”⁶⁶ Remembrance both makes possible the duty owed to those harmed and

60. THOMAS NORMAN DEWOLFE & JODIE GEDDES, *COMING TO THE TABLE FOR TRUTH-TELLING, LIBERATION, AND TRANSFORMATION* 23 (2019); Regina Munch, *Worship of a False God: An Interview with Bryan Massingale*, COMMONWEAL MAG. (Dec. 27, 2020), <https://www.commonwealmagazine.org/worship-false-god> [<https://perma.cc/9QEF-DS5F>] (referencing Thomas Aquinas’s view of anger as the passion that moves the will to justice and commenting that the lack of a critical mass of white Americans who are angry about the situation perpetuates the status quo); see PEOPLE’S HISTORY TOOL, *DESIGN IMPACT 1* (2021), https://d-impact.org/wp-content/uploads/2021/04/people_history_worksheet_d1.pdf [<https://perma.cc/A7YB-3XEM>] (delineating an activity to create and explore timelines of historic laws that directly changed racial demographics of neighborhoods as a basis for conversation about the ways that policies and practices reinforce racial inequality).

61. See Gonzalez, *supra* note 54, at 468 (explaining that restorative justice can function as a definitional drama that reintegrates aggrieved social groups into the community when experienced in a public way); see also Marshall Ganz, *Public Narrative, Collective Action, and Power*, in *ACCOUNTABILITY THROUGH PUBLIC OPINION: FROM INERTIA TO PUBLIC ACTION* 273–89 (Sina Odugbemi & Taeku Lee eds., 2011) (discussing that, through public narrative, participants can mobilize, construct new shared identities, and find the courage to act).

62. See Collins & Watson, *supra* note 46 (explaining that a single reconciliation process that encompasses the entire United States may place too much faith in a top-down model and that allowing multiple reconciliation processes to occur, tailored by local people, is a better option); LISA MAGARRELL & BLAZ GUTIERREZ, *LESSONS IN TRUTH-SEEKING: INTERNATIONAL EXPERIENCES INFORMING UNITED STATES INITIATIVES* 26 (2006) (voicing skepticism about state-sponsored efforts, particularly in the United States); W.K. KELLOGG FOUND., *TRUTH, RACIAL HEALING & TRANSFORMATION: DESIGN TEAM RECOMMENDATIONS* 39 (2016) (arguing that community members need to decide themselves on the proper course of action and how to best accomplish it given local politics, circumstances, and history). *But see* MAGARRELL & GUTIERREZ, *supra*, at 27–28 (2006) (cautioning that local communities can be repressive, discriminatory, and divisive).

63. *HISTORICAL JUSTICE AND MEMORY* 10 (Klaus Neumann & Janna Thompson eds., 2015).

64. *Id.*; see JEFF SPINNER-HALEV, *ENDURING INJUSTICE* 56–57 (2012).

65. *HISTORICAL JUSTICE AND MEMORY*, *supra* note 63, at 11.

66. SPINNER-HALEV, *supra* note 64, at 64.

can be an end in itself as a form of restorative justice.⁶⁷ Without the memory of historical injustice, the obligations arising out of that injustice would be forgotten and reparative action would never be accomplished or even attempted.⁶⁸ Functioning as restorative justice, remembrance provides a path to the mitigation of harm and the prevention of a recurrence of the injustice.⁶⁹

Thus, while past injustices of discriminatory housing policies and community development practices may have dissipated from the larger public's collective memory, historical injustices often remain in the memory of the people and communities affected by them.⁷⁰ Although the harms to affected communities are visible (for example, abandoned properties and disinvested physical spaces), less visible is the "effect of a group's history on identity and individual development," which likely "play[s] a role in how present members understand themselves and their place in the world."⁷¹ The pattern of injustice often leads to distrust, making it less likely that harmed communities trust local government and related institutions.⁷² Moreover, the ability of these communities to utilize the resources offered by local governments is "often undermined by . . . a history of reduced expectations and discouragement."⁷³ As a result, reparative actions alone are inadequate without the corresponding acknowledgement of these historical injustices.⁷⁴

B. *Using Development and Demolition Processes to Trigger Truth*

Restorative justice and remembrance principles help us understand that, while there is no way to undo the harm to individuals and

67. Jeffrey Blustein, *How the Past Matters: On the Foundations of an Ethics of Remembrance*, in HISTORICAL JUSTICE AND MEMORY 76–77 (2015); see HISTORICAL JUSTICE AND MEMORY, *supra* note 63, at 15 (“[T]ruth telling can itself be a form of reparation . . . injustices . . . damage moral relationships in a community by undermining trust and by destroying normative expectations and hopefulness in relations with others.”).

68. Blustein, *supra* note 67, at 77.

69. *Id.* at 79.

70. See HISTORICAL JUSTICE AND MEMORY, *supra* note 63, at 6 (“In movements for historical justice, memory plays a key role. Even in cases where injustices have vanished from public memory . . . memories of injustice often continue to fester among victims and their families and then resurface in the public realm.”).

71. Janna Thompson, *Reparative Claims and Theories of Justice*, in HISTORICAL JUSTICE AND MEMORY 50 (2015).

72. *Id.* at 57; see SPINNER-HALEV, *supra* note 64, at 75 (explaining that the failure of the state to effectively deal with discrimination and ensure equal treatment creates the secondary issue that the victimized group will mistrust the government for its past conduct and noting that mistrust is passed down from one generation to the next).

73. Thompson, *supra* note 71.

74. See SPINNER-HALEV, *supra* note 64, at 77 (explaining that lack of trust is an obstacle to overcome when devising ways to end an enduring injustice and that working to repair the wounded relationship is also often necessary).

communities resulting from the racist roots of disinvestment and abandonment, communities affected by those racist roots can still take meaningful steps toward racial healing.⁷⁵ Local development and demolition law, policy, and practice provide opportunities to develop processes traditionally concerned only with regulating physical space into ones that also trigger truth. As part of the consideration of any development proposal or demolition request, a local government should provide a public disclosure aimed at giving basic information about the property's history. While the contents of the disclosure should be tailored to each locality, basic elements should include: (1) ownership history, (2) any racially restrictive covenants or zoning designations based on race associated with the property, (3) historical racial demographics of the neighborhood and region, (4) the lending and appraisal practices that have affected the property, and (5) a concise summary of the foregoing elements limited to no more than 800 words. The entire disclosure, including research methods and sources, should be posted on a public

75. Two very different examples—one from Chicago, Illinois, and one from Mississippi—help to illustrate this point. First, as required by a Chicago ordinance requiring companies doing business with the city to disclose connections to slavery (one of several “slavery disclosure laws” enacted in the United States starting in the early 2000s), J.P. Morgan Chase & Company disclosed it had no connections to slavery. A subsequent investigation by J.P. Morgan itself revealed that two of the bank’s predecessors accepted thousands of enslaved individuals as collateral and took ownership of some individuals when loans went into default. J.P. Morgan publicly apologized and pledged to provide five million dollars of scholarship money to Black students attending college in Louisiana. *J.P. Morgan Says Two Precursor Banks Held Slaves*, L.A. TIMES (Jan. 21, 2005), <https://www.latimes.com/archives/la-xpm-2005-jan-21-na-slavery21-story.html> [<https://perma.cc/5RY4-33V3>]. For an analysis of slavery disclosure laws, see Jason Levy, *Slavery Disclosure Laws: For Financial Reparations or for Telling the Truth*, 2009 COLUM. BUS. L. REV. 468 *passim* (2009). Second, to make the history of racial terror lynchings in the United States more visible, the Equal Justice Initiative (EJI) erected physical monuments at its National Memorial for Peace and Justice in Alabama to identify the more than eight hundred counties implicated in lynchings. Part of the initiative includes inviting those counties to erect their own historical markers to build a consciousness around the legacy of lynching. *The National Memorial for Peace and Justice*, EQUAL JUST. INITIATIVE, <https://museumandmemorial.eji.org/memorial> [<https://perma.cc/8EBB-S84N>] (last visit Oct. 11, 2022). In the case of installing a local historical marker in Lafayette County, Mississippi, participants described how the process of placing the marker in a specific place in their community initiated dialogue and represented a first step toward healing. Cristina Carreon, *Lafayette County Recognizes History of Racial Violence, Lynching Memorial Marks First of Seven*, DAILY J. (Nov. 9, 2018), https://www.djournal.com/news/lafayette-county-recognizes-history-of-racial-violence-lynching-memorial-marks-first-of-seven/article_97f99f88-6701-5c48-9202-fd05714a55c4.html [<https://perma.cc/3GRU-52JN>]. EJI’s “disclosure” in the form of a monument invited Lafayette County to acknowledge past racial injustice. See also SPINNER-HALEV, *supra* note 64, at 81 (noting that justice does not mean today’s communities are taking responsibility for the past but rather that they are taking responsibility for the present and future by working to undo current injustices).

website.⁷⁶ The concise summary should be displayed at the property itself, provided in any public notices associated with the development or demolition decision, and presented at any public meetings associated with the process.

This kind of public disclosure serves several purposes. The disclosure is itself a public form of truth and an acknowledgment of the historical injustices that undergird current patterns of disinvestment and abandonment. It disrupts the status quo by increasing awareness of information previously known only to those who prioritized learning and understanding—or who otherwise had reason to know—the information.⁷⁷ Truth, dialogue, and a shared understanding create space for stakeholders to decide what to do with history and how to shape future actions in ways that address the past.⁷⁸ While disclosure encompasses “a reminder of the truth of the past and how it bears on the present,” it also constitutes “a challenge that calls us to act in recognition of that past and its legacy in our present life.”⁷⁹ While the public disclosure recommended here represents only a first step in racial healing and is tailored to deal only with disinvestment’s most direct racist roots,⁸⁰ it is a powerful and simple tool that can create conditions for dialogue and action in response

76. To increase the likelihood that future end-users of the property will have more exposure to the information, the local government could also permanently link the disclosure to the assessor’s tax records or enact an ordinance requiring that disclosure be provided by a transferor each time the property’s ownership changes hands.

77. Without this prompting, truth is likely to continue to be easily ignored. *See* MAGARRELL & GUTIERREZ, *supra* note 62, at 2 (explaining that privileged, empowered members of a community are generally comfortable with the status quo and may have no interest in a truth-seeking effort).

78. *See* Miller, *supra* note 57, at 73 (explaining that the community needs to explore what to do in the face of a history of discrimination and decide who bears responsibility for redeeming the past and the consequences of failing to address it); *About*, GREENSBORO TRUTH & RECONCILIATION COMM’N, https://greensborotrc.org/about_the_commission.php [https://perma.cc/8Q7P-FZX4] (last visited Oct. 12, 2022) (explaining the commission’s goals of amplifying multiple voices and creating a depth of historical understanding within the community based on contextual analysis and self-examination).

79. Howard J. Vogel, *Healing the Trauma of America’s Past: Restorative Justice, Honest Patriotism, and the Legacy of Ethnic Cleansing*, 55 *BUFF. L. REV.* 981, 1042, 1045 (2007) (discussing how a truth and dialogue process leads to actions demonstrating serious intent).

80. Such a disclosure is not a panacea. *See* Inwood, *supra* note 53, at 613 (explaining that restorative justice cannot immediately undo decades of tension and exclusion); DEWOLFE & GEDDES, *supra* note 60, at 40 (noting that the outcome of truth-telling efforts is unpredictable and may not result in apologies, forgiveness, or reconciliation); MAGARRELL & GUTIERREZ, *supra* note 62 (explaining that truth-recovery processes can, but do not always, lead to more inclusion in participatory democracy and social justice); Barry Yeoman, *Healing Racial Fault Lines*, *MINDFUL* (AUG. 11, 2016), <https://www.mindful.org/healing-racial-fault-lines> [https://perma.cc/HR6M-YPKM] (explaining that progress is slow, even at the local level); HISTORICAL JUSTICE AND MEMORY, *supra* note 63, at 21 (noting that memory can exacerbate divisions and turn into competition in victimhood).

to new understanding.⁸¹ Moreover, disclosure can help generate the public sentiment needed for increased local consciousness of racial division and inequity⁸² and for the will to take seriously racism's threat to the stability and economic viability of neighborhoods.⁸³

Making the information an explicit part of regular development processes invites conversation and negotiation that not only makes a property's historical context more visible and concrete, but—perhaps more importantly—provides a foundation for dialogue, education, advocacy, and action. A neighborhood is “both a totality in itself and . . . part of a larger totality,”⁸⁴ and development choices should recognize underlying structural reasons for present-day realities.⁸⁵ Understanding a property's story can help us move beyond seeing a neighborhood's particular challenge as internally driven and remediable and toward recognizing the influence of systemic inequities.⁸⁶ This deeper understanding can help break through market-based stereotypes equating individuals' worth and entitlement with the market value of their neighborhood.⁸⁷ Without knowledge of why a neighborhood looks and

81. Spending time on truth, dialogue, and shared understanding are foundational for any effort to make amends. See Miller, *supra* note 57, at 47 (asserting that reparation requires exploration of harm and strategies to restore and repair the damage done, together); Programs, S. TRUTH & RECONCILIATION, <https://southerntruth.net/programs> [<https://perma.cc/GJS6-MG64>] (last visited Oct. 12, 2022) (“Toward our goals of trust building and truth-telling, STAR helps communities’ [sic] connect-the-dots between collective histories and current affairs so leaders can manage, leverage and optimize connections between past and present.”); Panne, *supra* note 46 (emphasizing that the main focus and priority is truth); Ezra Klein, *Bryan Stevenson on How America Can Heal*, VOX (July 20, 2020, 9:20 AM), <https://www.vox.com/21327742/bryan-stevenson-the-ezra-klein-show-america-slavery-healing-racism-george-floyd-protests> [<https://perma.cc/Y5P3-EJCV>] (“[Y]ou have to commit to truth-telling first. You can’t jump to reconciliation. You can’t jump to reparation or restoration until you tell the truth. Until you know the nature of the injuries, you can’t actually speak to the kind of remedies that are going to be necessary.”); Vogel, *supra* note 79, at 1025 (“To demand or rush to forgiveness and reconciliation . . . is likely to cover up and cast off the past without any needed reparation essential to the construction of a basis for trust between the groups of people involved.”).

82. Gail C. Christopher, *Truth, Racial Healing, and Transformation: Creating Public Sentiment*, 5 HEALTH EQUITY 668, 669 (Sept. 2021); see Brophy, *supra* note 46, at 836–37 (explaining that truth admissions and apologies are important because they involve how history is viewed, which has significant consequences for subsequent action and current behavior).

83. Christopher, *supra* note 82, at 668.

84. Audrey McFarlane, *Race, Space, and Place*, 36 SAN DIEGO L. REV. 295, 300–01 (1999).

85. See *id.* at 301, 352–54 (explaining that we must look at the concepts, history, and purposes associated with development in the specific community and that development processes must recognize underlying structural reasons for depressed economic and social conditions tainted by racism).

86. *Id.* at 342; Audrey McFarlane, *When Inclusion Leads to Exclusion*, 66 BROOK. L. REV. 861, 924 (2001) (cautioning society not to view a neighborhood's problems as internally driven).

87. STONE & STOKER, *supra* note 6, at 230. Society ought to make it more difficult to view residents of distressed neighborhoods as “beyond the bounds of common concern and social obligation, as entitled to only token gestures at most.” *Id.*

feels the way it does, it is too easy to assume that any physical decline is directly attributable to the neighborhood's current occupants. Purposefully linking the past to the present helps us see and question the built environment in new ways,⁸⁸ enabling us to turn away from the false view of segregation and racist resource allocation as benign or inevitable.⁸⁹ In addition, while the recommended disclosure is limited in scope, its existence could form the basis for further research and inquiry by neighborhood residents and other stakeholders, leading to relationship-building⁹⁰ and increased self-determination.⁹¹

To ensure local governments have the resources necessary to produce such disclosures, they should identify a sustainable funding stream to support the research and data distribution necessary to carry out their obligations. Consultants or other outside experts could help produce the disclosures and find ways to create production and distribution efficiencies.⁹² Importantly, this proposal centers on the role of local government, not because it bears more responsibility than state or federal actors for the racist roots of disinvestment and abandonment—indeed, it does not—but because local government alone has the unique ability to shape a disclosure process informed by local needs and conditions.⁹³

88. W.K. KELLOGG FOUND., *supra* note 62, at 31.

89. *Id.*; JOE R. FEAGIN & KIMBERLEY DUCEY, RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS 135–52 (4TH ED. 2019); *see* DEWOLFE & GEDDES, *supra* note 60, at 22 (“People so often ignore or excuse historic harms committed in their community, taking resulting present-day circumstances for granted.”); RACE FORWARD, *supra* note 53 (explaining that racial inequity accumulates in all types of government services, from policing to budgeting).

90. *See* Miller, *supra* note 57, at 46 (encouraging reparations more in the style of “conversation” than “confrontation” because, if presented purely as confrontation, reparations create disabling political and ethical problems and alienate large numbers of potential allies).

91. *See id.* at 78 (noting that reparations provide opportunity for fractured communities to reconstruct themselves through forward-looking actions designed to overcome past inequity); McIntosh, *supra* note 59, at 130 (using restorative practices of study circles led to formation of new relationships, laying the foundation for further addressing other neighborhood issues).

92. For example, researchers have worked to map the location of racially restrictive covenants in some areas. The disclosure proposed in this Article could incorporate and build upon such existing research. *See About the Project*, MAPPING SEGREGATION IN IOWA, <https://dsps.lib.uiowa.edu/mappingsegregationia/10-2/> [<https://perma.cc/5523-38G2>] (last visited Oct. 12, 2022). Moreover, local history museums, historical societies, recorders of deeds, title companies, and community members with GIS or data experience could be natural partners.

93. To be clear, state and federal agencies can and should also create conditions for racial healing. Abandonment and disinvestment have regional historic contexts and, like many community development issues, cry out for a regional approach. *See* DREIER ET AL., *supra* note 21, at 175–91 (explaining that it is difficult for central cities by themselves to solve problems generated by larger regional dynamics and arguing that a regional approach is needed). Unfortunately, a local government has no power, on its own, to address the fact that there are many majority-white communities that are thriving at the expense of disinvested spaces or to impose accountability on those outside its jurisdiction who contributed to the problem. For

III. SELF-INITIATED REPARATIVE ACTION THAT COULD FOLLOW

Many community development proposals are focused on actions intended to repair the harm that flows from the racist roots described in Part I. While the public disclosure proposed in Part II lays the groundwork for reparative action, such disclosures do not mandate or necessarily lead to reparation.⁹⁴ Rather, disclosure focuses on the first step of telling the truth, with the goals of dialogue, understanding, negotiation, and making relevant history harder to ignore. Disclosure recognizes acknowledgment as the initial step toward racial healing, which could then prompt creative and localized reparative actions. A public disclosure lays the groundwork for stakeholders like institutions, developers, property owners, philanthropists, and local governments to bargain, negotiate, and compromise in ways that help rebuild trust.⁹⁵ Reparative actions attempt to respond to the present-day consequences of past injustice and are the second major step in the reparations process. A public disclosure could prompt reparative action, whether self-motivated or motivated by pressure from another stakeholder. For example, the public disclosure process could put pressure on bad actors and motivate them to stop perpetuating harm to the neighborhood. It could also catalyze a greater degree of neighborhood organizing, a prerequisite to the effective cooperation and shared vision necessary in the modern community development system.⁹⁶ In situations where the problem

recommendations about the actions that the federal government can take, *see* BETH DENVER ET AL., *A HOUSING PLAYBOOK FOR THE NEW ADMINISTRATION passim* (2021).

94. *See supra* note 81.

95. JOHN TORPEY, *POLITICS AND THE PAST 25* (JOHN TORPEY ET AL. EDS., 2004) (“While the term ‘reconciliation’ is bandied about in many of the discussions of coming to terms with the past, perhaps the best that can be said about it is that previously divided groups will come to agree on a mutually satisfactory narrative of what they have been through, opening the way to a common future. With luck, what they do with that future will be a matter of bargaining, negotiation, and compromise—the mundane business of politics.”).

96. Community associations—resident-led voluntary organizations focused on a particular geographic area—that serve as an intermediary between residents and other stakeholders, such as local governments and philanthropic organizations, are a mechanism for neighborhoods to have a seat at the community development table. *See* Robin Jacobs, *Building Capacity Through Community Lawyering*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 30, 30 n.2, 38 (2015); Michael Diamond, *Community Economic Development: A Reflection on Community, Power and the Law*, 8 J. SMALL & EMERGING BUS. L. 151, 170 (2004) (explaining that community organizing and capacity building can lead to greater and more balanced interaction with local governments and outside institutions and can result in more political influence); K. Sabeel Rahman, *Balancing Political Power: Community Economic Development and Institutional Design*, 28 J. AFFORDABLE HOUS. & CMTY. DEV. L. 497, 498 (2019) (noting that, at the systems level, inequitable development is rooted in disparities of political power between communities, developers, and city officials and emphasizing that disparities are especially stark in the context of urban planning and development decisions). Moreover, in some jurisdictions, community associations are a vehicle through which neighborhoods can achieve vacancy reduction goals by using nuisance litigation tools as leverage against problem property owners. *See* Melanie B. Lacey, *A National Perspective*

property owner is an heir who became the owner by operation of law, the disclosure could prompt more effective owner engagement and creative solutions by helping stakeholders acknowledge the ways in which such heirs have been impacted by law and policy choices.⁹⁷

The proposed disclosure could further prompt other kinds of reparative actions such as physical markers, neighborhood monuments, public art installations, grief gardens, museum exhibits, honorary street names, and statutes that officially nullify racially restrictive covenants,⁹⁸ all of which can all help foster collective understanding and memory.⁹⁹ In addition, committing financial resources to affordable housing in residential and commercial developments, creating programs that help residents acquire and remain in homes (for example, homeownership programs, real estate tax relief, and home repair programs), initiating

on Vacant Property Receivership, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 133, 135 (2016) (cataloging vacant property receivership laws in the United States); Jacobs, *supra*, at 32 (encouraging lawyers working with communities struggling with vacancy to rely on receivership and nuisance law); Peter Hoffman, *Legal Aid of Western Missouri's Economic Development Project: Bringing Self-Empowered Revitalization to Distressed Neighborhoods*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 403, 404–05 (2016) (emphasizing the importance of nuisance litigation tools in empowering neighborhoods to address vacancy in a community-focused way).

97. These heirs have legal responsibility for—and emotional ties to—properties they often cannot maintain for a variety of reasons. See Barlow et al., *supra* note 28, at 368 (explaining that it is often the case that an heir may become the owner by operation of law even when the property is a liability and not an asset). Understanding and acknowledgment by stakeholders could, for example, prompt mediated solutions that could lessen the anger, bitterness, and distrust that can accompany the judicial process.

98. See, e.g., MO. REV. STAT. § 213.041 (2022) (delineating the process of removing racially restrictive covenants in Missouri). While racially restrictive covenants are no longer legally enforceable by operation of law, the symbolic act of affirmatively nullifying them could bring a measure of healing.

99. See SPINNER-HALEV, *supra* note 64, at 58 (explaining that robust acknowledgment of enduring injustices through museums and monuments is one way a government can show it is committed to a new path); YAMAMOTO, *supra* note **Error! Bookmark not defined.**, at 35 (discussing how public education is commemorative, imparts lessons learned, and generates a new justice narrative about a democracy's commitment to civil and human rights); DEWOLFE & GEDDES, *supra* note 60, at 36 (describing the healing benefits of memorializing and contextualizing that which caused racial wounds as well as those individuals that have contributed to justice, peace, and transformation); COMING TO THE TABLE, REPARATIONS . . . THE TIME IS NOW! 11–12 (Aug. 2019) (discussing how community-level reparation responses can include collaborating with and supporting organizations devoted to history and providing support to writers, filmmakers, and other artists); *Partner Communities*, ALLUVIAL COLLECTIVE, <https://alluvialcollective.org/community-building/partners/> [<https://perma.cc/WP5K-CMYA>] (last visited Oct. 12, 2022) (listing actions that community partners have taken to promote healing, such as conducting public ceremonies, oral history projects, and civil rights driving tours); Bridges O'Neil, *Justice Fleet Awarded \$23K Grant to Launch Community Grief Garden*, ST. LOUIS UNIV. (APR. 1, 2021), <https://www.slu.edu/news/2021/april/justice-fleet-grant.php> [<https://perma.cc/2398-PBD8>] (using horticulture therapy and conservation to create a grief garden serving as a public green space for racial trauma healing).

physical infrastructure projects for historically disinvested areas, greenlining funds,¹⁰⁰ and supporting other community reparative actions are more ways to work toward making amends.¹⁰¹ Moreover, local governments can modify existing policies and programs that reinforce existing patterns of segregation,¹⁰² affirmatively further fair housing through zoning,¹⁰³ and enact other policy reforms informed by a community's history.¹⁰⁴ Local governments can also institute training and policies for agency decision makers and elected officials that foster greater inequity consciousness and just decision making.¹⁰⁵ Moreover, local governing bodies can ensure neighborhood residents have opportunities to participate in developing and carrying out a shared vision for their neighborhoods.¹⁰⁶

100. NANCY CAMBRIA ET AL., *SEGREGATION IN ST. LOUIS: DISMANTLING THE DIVIDE* 99–100 (2018).

101. See Benjamin Appel & Cyanne E. Loyle, *To Fight US Racism, Research Prescribes a Nationwide Healing Process*, THE CONVERSATION (JUNE 24, 2020, 8:08 AM), <https://theconversation.com/to-fight-us-racism-research-prescribes-a-nationwide-healing-process-140679> [HTTPS://PERMA.CC/P9LB-ZDYQ] (suggesting actions like providing funding for public spaces, hospitals, and educational scholarships); Sandra Moore, *Ferguson: Undoing the Damage of the Past—Creating Community Wealth*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 298 *passim* (2017) (encouraging the building of wealth through homeownership for those disproportionately economically disadvantaged by historic policies, procedures, and practices); Brophy, *supra* note 46, at 840 (proposing a community development trust fund designed to repair specific past discrimination with remedial goals).

102. See Tim Iglesias, *Threading the Needle of Fair Housing Law in a Gentrifying City with a Legacy of Discrimination*, 27 J. AFFORDABLE HOUS. & CMTY. DEV. L. 64–65 (proposing the use of community preferences to explicitly favor residents of color to restore the level of demographic balance that existed prior to government-sponsored discrimination).

103. For example, the local zoning code in Boston, Massachusetts, requires that proposals for residential or mixed-use developments undergoing large project reviews include (1) a narrative description of how the project will further the goal of reducing segregation, (2) an assessment of historical exclusion and displacement risk along with an affirmative fair housing marketing requirement, and (3) a description of measures to be taken to achieve affirmative fair housing goals, chosen from a menu of intervention options. See Memorandum from Heather Campisano, Chief of Staff, Boston Planning & Dev. Agency, to Brian P. Golden, Director, Boston Planning & Dev. Agency (Dec. 17, 2020), <https://bpda.app.box.com/s/r59pn90sdmj5kfh5lm7kmr4rstnye9l6> [https://perma.cc/XU8K-75RU].

104. Other policy reforms could include inclusionary zoning requirements, policies giving living descendants the opportunity to name or otherwise participate in decisions concerning development projects, community ownership strategies, and requirements tied to development incentives that apply amends to an entire area. Development incentives could be tied to symbolic actions such as releasing (now unenforceable) racially restrictive covenants or disbursing funding for local artists to tell the history of the community. Localities could also require ongoing monitoring and public disclosure of the racial demographics of the development area or a detailed history of the area that includes racialized land use policies and migration patterns.

105. RACE FORWARD, *supra* note 53.

106. For instance, local governments can allocate resources to support the robust community organizational infrastructure that can represent a collective neighborhood voice. Along with philanthropic partners, local governments can financially support capacity-building and ongoing

CONCLUSION

Because racist laws and policies are at the root of the disinvestment and abandonment that many legacy cities face, efforts to fix the problem without addressing the distrust and lack of power engendered by history will tend to fail. Local governments, neighborhood residents, and other stakeholders must use their respective tools in coordinated and cooperative ways. Thus, effective solutions require a foundation of trust and a shared vision. Because local governments are in the unique position of being stakeholders with the power to set the rules of the game, they should use that power to create conditions that make such trust and shared vision more likely. If local governing bodies fail to act accordingly, the status quo of distrust and lack of a shared vision will probably continue to undermine the effectiveness of efforts—however well-intentioned—to meet the challenge. While local governments cannot eliminate past historical injustices and are limited in their ability to provide regional solutions, localities can generate conditions for historical injustices to become better known and harder to ignore. At least within their own jurisdictions, local governments can promote power sharing and accountability, which are essential to develop and carry out a shared vision. Ultimately, trust and cooperation will make stakeholders’ fight against the effects of disinvestment and abandonment more successful.

operations as well as provide in-kind resources such as meeting spaces. *See id.* at 32 (arguing that city governments should invest in community organizations as a long-term strategy to build trust with residents and expand participation); Jacobs, *supra* note 96, at 53–54 (explaining that flexible funding for community associations is needed to sustain operations over time).