Neighbors Without Notice: The Unequal Treatment of Tenants and Homeowners In Land Use Hearing Procedures

*Sarah Schindler and Kellen Zale**

Abstract

Recent empirical work has suggested that the people who show up at land use hearings tend to be whiter, wealthier, older, and more likely to be homeowners than the surrounding community. They also are more opposed to new housing construction in their communities. Thus, the views of these groups are amplified and the outsized opposition to new housing (often referred to as NIMBYism) stymies needed development—despite the fact that these voices are not representative of the community as a whole.

Scholars have just begun to explore the question of why community members who support development fail to have their voices heard. Existing scholarship has identified several reasons why lower income people and people of color are underrepresented at public hearings, such as scheduling of meetings during the workday, the burdens that attendance imposes on those who lack childcare, and the lack of communication to the public about hearings in languages other than English.

But these barriers to participation are only part of the story. Relying on an original compilation and analysis of empirical data, we argue in this Article that there is an even more fundamental reason for the underrepresentation of these community members: Because they are not invited. Our analysis shows that unlike homeowners, tenants—who are disproportionately lower income and more likely to be Black and Latinx—often do not receive notice of public hearings under local ordinances. We find that, of the 75 largest cities in the United States, only twelve cities affirmatively provide notice of public land use hearings to tenants, whereas nearly all of these jurisdictions affirmatively provide notice to property owners.

Our research has major implications for land use and local government scholarship. The prevailing pattern of non-notice to tenants reflects a broader pattern of anti-tenancy that exists throughout the legal system. Anti-tenancy is rooted in race and class biases, and thus contributes to deepening wealth inequality and systemic racism. Non-notice to tenants not only exacerbates this systemic inequality, but is also economically inefficient, and may amount to a due process violation in some instances. For these reasons, we contend that the failure to notify tenants of land use changes in their neighborhood is normatively unjustified. As a prescriptive response, we offer a model ordinance, showing how local governments can readily modify their notice requirements to include tenants with minimal cost or logistical friction.

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Table of Contents

Introduction

> Attention: this is to notify you that [applicant], the owner of 123 main street has applied for a zoning map amendment to permit a change in use from single-family to multi-family, which will result in a 10-story, 15,000 square foot multi-family building. This matter will be heard at a public hearing of the city council on __ date at __ time in __ location. The purpose of this notice is to afford you the opportunity to appear at the time and place designated above for the purpose of being heard with respect to this application if you so desire. The application and all relevant documents are available at city hall.

If you have owned a home, you have likely received a notice like this in the mail—perhaps a postcard or a letter—notifying you that one of your neighbors has applied for a land use permit in order to change something about their property. Many different types of land use permits require cities to provide notice to neighbors. For example, if a nearby apartment building is seeking a rezone for hotel use, or a single-family home on your block needs a variance in order to add a front porch, the city will typically let you

know when (or whether) there will be a public hearing or opportunity to provide comments about the proposed change.

If you are a renter, however, you probably have never received such a notice. This is not because land use changes like rezonings and variances never occur near where renters live. It is because—based on our empirical research examining notice requirements in the 75 most populous cities—it appears that the vast majority of U.S. cities only require that property *owners* be notified of proposed land use changes. In most of these jurisdictions, renters are not required to be notified—often even if those renters live in the very property that is applying for a change.[1]

At first glance, the disparity in notification standards for owners and tenants may seem logical. After all, property values may be affected—perhaps negatively[2]—by zoning or other land use changes and in that sense, owners and tenants are not similarly situated. Yet this framing fails to recognize the fact that both owners and tenants have interests in the development of their neighborhoods. Further, the interests of tenants—particularly those that align with increasing the supply of housing—can serve as a counter-balance to the anti-development sentiment held by many homeowners.[3] This is important given that the lack of housing supply not only contributes to the affordability crisis, but also has broader negative ramifications for the economy.[4] Moreover, because tenants have far less wealth and are disproportionately people of color,[5] the failure to provide tenants with the same type of notice that nearby owners receive entrenches longstanding racial and class biases. Regardless of whether there is discriminatory intent behind these disparate notice laws, there is discriminatory impact due to the racialized make-up of renters in many cities. As more cities confront the history of racism in the formation and enforcement of their property laws, reforming

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[1] Memorandum from Christie Grimando, Acting Dir., City of Portland Plan. & Urb. Dev., to Councilor Duson, Chair, City of Portland Hous. Comm. (Sept. 5, 2009) [hereinafter Grimando Memorandum] https://portlandme.civicclerk.com/Web/GenFile.aspex?ad=3132 [https://perma.cc/3NNB-E7GM].

[2] *But see infra* note 130 and accompanying text (discussing studies showing that land use approvals of multi-family development—the type of projects often protested as threatening neighbors' property values—actually rarely negatively impact property values of single-family homes, and in fact often have a slight positive impact).

[3] *See infra* Part III.

[4] *See infra* Part IV.A.2.

[5] Nationally, approximately twenty percent of renter households are Black, and approximately twenty percent of renter households are Hispanic or Latinx. *See* U.S. Dep't Hous. & Urb. Dev., American Housing Survey 2017 Results (2018), https://www2.census.gov/programs-surveys/ahs/2017/infographs/2017%20Housing%20Profile%20Renters%20Profile.pdf [https://perma.cc/74LF-7Q9C] (tabulating data showing that approximately fifty-one percent of renters are white; twenty percent are Black; twenty percent are Hispanic; six percent are Asian; and two percent are Indigenous). The racial makeup of renters varies greatly by locality; in some metropolitan areas, a large majority of renters are people of color. *Id.* Note that the term Hispanic is used in the Census, which is the basis for some of the race-based data referred to in this Article. However, we will use the term Latinx more broadly to refer to people who are from or descended from Latin America.

notice procedures to bring greater parity to how tenants and owners are notified of land use actions is a simple and relatively low-cost step toward recognizing and redressing these harms.

Local administrative law is generally understudied, and notice procedures outside of the litigation context have received almost no scholarly attention.[6] This Article begins to redress this gap by providing empirical data to explain what is happening in cities across the country with respect to a key feature of local government law: land use hearings. In doing so, we make both descriptive and normative contributions to property and housing law scholarship. Descriptively, our original empirical data set shows that in most large U.S. cities, only homeowners are entitled to receive direct notice of most types of land use changes.[7] We unpack this empirical data by identifying several reasons that likely underlie this widespread practice, such as logistical and fiscal concerns, and assumptions that homeowners have more at stake than tenants, as well as systemic race and class biases. While some of these reasons for the failure to notify tenants will be more salient in certain jurisdictions than others,[8] we explain why, in many jurisdictions, these assumptions fail to hold up under scrutiny.

We argue that the damaging effects of this prevailing practice justify a shift in approach. At base, the lack of notifying tenants leads to renters having less knowledge about, and thus less opportunity and power to influence, development decisions in their neighborhoods. We contend that the failure to give notice to tenants is normatively unjustified for three reasons: (1) It exacerbates systemic inequality; (2) it is economically inefficient; and (3) it is a due process violation in some instances.

Non-notice to renters exacerbates inequality because it is part of a much broader pattern of anti-tenancy that we have previously identified in our research, in which tenants are systematically treated less favorably than similarly situated homeowners.[9] Not only is this pattern of anti-tenancy

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[6] There have only been a small number of articles on the general topic of local administrative law and notice outside of the litigation context. *See, e.g.*, Nestor M. Davidson, *Localist Administrative Law*, 126 Yale L.J. 564 (2017); Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 109 Iowa L. Rev. 2339 (2021); Maria Ponomarenko, *Substance and Procedure in Local Administrative Law*, 170 Pa. L. Rev. 1527 (2022); Casey Adams, *Home Rules: The Case for Local Administrative Procedure*, 87 Fordham L. Rev. 629 (2018); *see also* Robin J. Effron, *The Invisible Circumstances of Notice*, 99 N.C. L. Rev. 1521 (2021) (notice in the context of litigation); Shannon E. Martin, *State Laws Mandating Online Posting of Legal and Public Notices Traditionally Published in Newspapers*, 25 Comm. & L. 41, 43 (2003).

[7] *See infra* Part II. By "direct notice," we mean notice mailed directly to an individual or household. As discussed in more detail in Part III.B, other, non-direct forms of general public notice may also be required for the proposed land use change (typically newspaper publication and/or posted signage). *See infra* Part III.B.

[8] For example, in some jurisdictions, the failure to notify tenants may be primarily the result of cost concerns, while in other jurisdictions, it may be due to legal barriers to notifying tenants, such as state preemption. On the pervasiveness of systemic racism in property law, *see generally* Richard Rothstein, The Color of Law (2017).

[9] Sarah Schindler & Kellen Zale, *The Anti-Tenancy Doctrine*, 171 Pa. L. Rev. 267 (2023).

driven in part by race and class biases, but the long history of structural racism has also resulted in the majority of Black and Latinx families in the U.S. being renters.[10] In contrast, white families are comparatively more likely to own their own homes. Further, renters generally have less wealth than homeowners.[11] When anti-tenancy is layered on top of these underlying disparities, it serves to exacerbate racial and wealth inequality. Thus, by not inviting tenants to participate in the land use hearing process, cities are depriving them of a chance to influence changes in their communities, and contributing to the land use process being dominated by people who are whiter and wealthier than the community itself.[12]

The prevailing pattern of non-notice to tenants also contributes to economically inefficient outcomes, since it makes it more likely that anti-development voices will dominate land use hearings: The homeowners who receive notice are generally more opposed to proposed projects that will increase density than the community overall.[13] The disproportionate influence of anti-development homeowners in land use decisions thus contributes to a shortage of housing over time, as the housing supply fails to keep up with population growth. These housing shortages in turn contribute to workforce shortages, environmental costs, and housing instability and homelessness. While providing notice to tenants cannot ensure that they attend the hearing, or that they will support greater density in their neighborhoods, the current system of homeowner-only notice contributes to the disproportionate amplification of opposition to needed development in the face of major housing shortages.[14] Thus, even a modest recalibration to rebalance the current system merits consideration. At base, providing tenants with notice of land use changes on similar terms to owners is a low-cost reform that municipalities can readily implement to nudge the land use process away from the status quo and toward one that allows housing supply to keep up with demand.[15]

Finally, we argue that due process requires notice to tenants, at least in certain circumstances. While the property interest of tenants is different in kind and degree from that of owners, tenants do have a property interest in their leasehold that could be impaired when local governments fail to give them notice and an opportunity to be heard at public land use hearings—especially when those hearings affect the property in which the tenants live.

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[10] *Id.*

[11] *Id.*

[12] Katherine Levine Einstein, Maxwell Palmer, & David M. Glick, Neighborhood Defenders: Participatory Politics and America's Housing Crisis (2019).

[13] *See infra* Part IV.

[14] Einstein et. al., *supra* note 12; *see also infra* Part IV.A.2 (discussing how economists and legal scholars across the political spectrum have criticized aspects of the land use process for these reasons).

[15] As noted in Part I and Part IV.C, notice requirements are generally found in ordinances enacted by local governments which have been delegated authority by the state.

Thus, for tenants in this scenario, there is a colorable argument that a court applying a procedural due process test should find that the administrative burden of sending additional notices and welcoming additional people to comment at the hearing is small when compared to the interest at stake.[16]

In light of these equity, economic efficiency, and due process concerns, we argue that notice requirements for land use hearings should treat all residents equally: Where notice is provided to homeowners, it should also be provided to tenants. Further, our research underscores how the prevailing pattern of unequal treatment is unnecessary given that local governments can readily modify their notice requirements to include tenants. To this end, we provide a model ordinance in Appendix B that municipalities could adopt with minimal cost or logistical difficulty.

Here, a few preliminary comments about the scope of this project are warranted. First, while this Article focuses on the prevailing failure to provide tenants with notice of land use changes, this is just one of several shortcomings in the land use notice and hearing process. Other shortcomings of the process—such as the lack of accessibility to speakers of languages other than English and the timing of public hearings during hours when many people are working or do not have childcare—need to be remedied as well in order to improve the process as a whole.[17] Second, as discussed in more detail in Part IV, while we argue for greater parity in notice to tenants and homeowners, we are cognizant of the critiques of, and concerns with, excessive public participation in the land use process.[18] Specifically, participation paired with status quo bias often leads to the production of less housing due to NIMBYism[19] and anti-development sentiment. Thus, we agree with

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[16] *See infra* Part IV.A.3 (discussing due process standards set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976)).

[17] *See, e.g.*, Audrey McGlinchy, *White Homeowners Dominate Input Over Austin's Land Code Rewrite. One Group is Trying to Change That*, Austin Monitor (Dec. 9, 2019), https://www.austinmonitor.com/stories/2019/12/white-homeowners-dominate-input-over-austins-land-code-rewrite-one-group-is-trying-to-change-that/ [https://perma.cc/47AS-VZ5S] ("The lack of participation by younger, more diverse residents is not a new problem in the city's process of rewriting the Land Development Code. Language, work, child care and transportation barriers make it difficult for people to come to City Hall and speak. The comments online also have come from people living in wealthier neighborhoods."); Michele Estrin Gilman, *Beyond Window Dressing: Public Participation for Marginalized Communities in the Datafied Society*, 91 Fordham L. Rev. 503 (2022) (discussing barriers to public participation).

[18] Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 Fordham L. Rev. 1083 (2021).

[19] NIMBY stands for "Not In My Backyard." The academic literature, as well as mainstream media coverage on NIMBYism and its causes and potential solutions, is immense. *See generally* Georgina McNee & Dorina Pojani, *NIMBYism as a Barrier to Housing and Social Mix in San Francisco*, 37 J. Hous. Built Env't 553 (2021); Corianne Payton Scally & J. Rosie Tighe, *Democracy in Action?: NIMBY as Impediment to Equitable Affordable Housing Siting*, 30 Hous. Stud. 749 (2015); Margaret F. Brinig & Nicole Stelle Garnett, *A Room of One's Own? Accessory Dwelling Unit Reforms and Local Parochialism*, 45 Urb. Law 519, 525 (2013); Richard Schragger, *Consuming Government, the Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land Use Politics*, 101 Mich. L. Rev. 1824, 1836 (2003); Connor Dougherty, *Twilight of the NIMBY*, N.Y. Times (June 5, 2022),

some proposals advanced by scholars to reduce opportunities for public participation in the land use process, such as eliminating the homeowner veto.[20] While we argue for notice procedures that offer equal opportunities to homeowners and tenants to participate in public hearings, we also recognize that ultimately, further reforms to notice procedures that serve to limit participation of both owners and tenants may be necessary.[21]

This Article proceeds in three parts. In Part I, we provide a primer on key aspects of land use law, permitting, and the local public hearing process. Part II then highlights findings from our original data set (set out in detail in Appendix A) with empirical evidence from the 75 largest cities in the U.S., showing that the vast majority fail to require that tenants receive notice of nearby land use changes. Specifically, only twelve cities affirmatively require notice to tenants.[22]

Although the primary work of this paper is to identify and describe the phenomenon of unequal notice, in Part III we identify and evaluate several potential reasons why local governments fail to provide notice of land use hearings to tenants. We do not purport to identify all of the reasons that jurisdictions fail to give tenants notice, but we hope to start a conversation and suggest that many of these justifications do not stand up to scrutiny.

In Part IV, we argue that providing notice of land use hearings to tenants is necessary as a matter of equity, as a mechanism to promote economic efficiency, and because the current practice of non-notice might be a due process violation in some instances. We also acknowledge the possibility that inviting tenant participation in land use decision-making may result in greater opposition to development in certain contexts, but we contend that this risk is outweighed by the equity, efficiency, and legal interests at stake.

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https://www.nytimes.com/2022/06/05/business/economy/california-housing-crisis-nimby.html [https://perma.cc/Q7R9-G8CL].

[20] For an explanation of the mechanisms of the homeowner veto and the arguments against it, *see* Michael Lewyn, *Against the Neighborhood Veto*, 44 Real Est. L.J. 82, 83–84 (2015) ("[A] landowner who wants to build more densely . . . or to change a parcel's use must petition a city for a rezoning. When a landowner files such a petition, the city typically informs nearby property owners of its existence. These property owners generally oppose additional density. Cities often defer to the wishes of these 'not in my backyard' (NIMBY) activists, because in a small suburb (or even in a city council district within a larger municipality) even a few homeowners can make a difference in a close election."); *see also* Andrew Weber, *Austin Hopes to Build Taller Buildings Near Single-Family Homes,* KUT (June 8, 2023), https://www.kut.org/austin/2023-06-08/austin%20hopes%20to%20build%20taller%20buildings%20near%20single-family%20homes [https://perma.cc/83JY-G737] (discussing debates over the elimination of the homeowner veto in Austin, Texas).

[21] *See infra* Part IV.

[22] *See infra* Part II and Appendix A. A few of these cities explicitly require notice to "tenants," while the others implicitly do so by requiring that notice be sent to both the "owner and occupant [or resident]," which thereby includes tenants residing at the address. In contrast, nearly every city we examined specifically requires that notice be mailed to property owners whose properties are located within a certain distance from the property that will be the subject of the hearing or land use change. *Id.*

Finally, we provide a model ordinance that municipalities could adopt to provide tenants with notice of land use hearings. A brief Conclusion follows.

I. Background: Local Administrative Law and the Land Use Hearing Process

In this Part, we provide an overview of major types of land use actions, permitting procedures, and the legal requirements for notice and public hearings in the local land use process.

There are almost 20,000 municipalities in the U.S.[23] While there are common themes to their administrative procedures, the details of these administrative procedures vary from state to state and even from municipality to municipality. Thus, this primer necessarily provides a generalized overview of procedures in the land use context. There are a wide variety of land use changes for which notice and public hearings are typically required;[24] while varying by jurisdiction, these include rezonings,[25] variances,[26] conditional use permits ("CUPs"),[27] subdivision replats,[28] and historic district designations,[29] as well as others.

The initial decisions on the various types of land use changes described above are made by different decision-makers within local governments, depending on the type of land use change at issue.[30] Local administrative

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[23] *See infra* note 43.

[24] Typically, changes are initiated by applicant property owners, but in many jurisdictions, local governments can initiate some of the types of land use changes described herein. *See, e.g.*, Anaheim, Cal., Mun. Code § 18.76.030 (2005) (describing how a rezoning may be initiated by a property owner, city council, city planning commission, or member of the city planning staff).

[25] Rezonings (also known as zoning amendments) fall into two categories: text amendments and map amendments. Thomas E. Roberts, et. al., Land Use Planning and Development Regulation Law § 5.8 (3d ed. 2023). A text amendment changes the textual standards for a zoning category (for example, by changing the permitted height for all residential zones). *Id*. A map amendment changes the zoning designation of land: it might change the underlying zoning districts for an entire area of the city, or for a single parcel of land. *Id*.

[26] Variances are typically granted to allow some deviation from existing land use regulations when the physical aspects of a parcel of land make it difficult or impossible to build upon in strict compliance with existing requirements. *Id.* at § 5.14.

[27] CUPs are sometimes contemplated by the zoning code; a use that might cause some conflict might be permitted, but only with discretionary approval, and so long as the owner complies with certain requirements. *Id.* at § 5.24.

[28] Subdivision replats might involve changing the location of lines subdividing a larger area of land into smaller parcels. *Id.*

[29] Historic district designations often limit the ways in which owners can modify their properties if those properties are viewed as contributing to the historic character of the area. *Id.* at § 12.7.

[30] Staff in the city planning department typically review many of these types of land use change proposals/applications and make initial recommendations to the relevant entity tasked with approving or denying the application. *See, e.g.*, *Development Review Flowchart, Fort Collins, CO*, https://www.fcgov.com/drg/pdf/development-review-flowchart.pdf [https://perma.cc/4LPN-CNDY] (providing a detailed flowchart of the typical steps in development review and

entities, such as zoning boards of adjustment and planning commissions, typically decide variances and CUPs, while other decisions (particularly rezonings in many jurisdictions) are considered legislative actions and require approval of the local legislative body (known variously as the city council, board of supervisors, board of aldermen, etc.).[31] In either scenario, decisions may be appealed; in some jurisdictions, appeals are made directly to a court, while in others they go through an intermediary city appeals process.

Most states have adopted laws, often modeled on the standard State Zoning Enabling Act ("SZEA"), which require that local governments provide notice of certain types of pending land use applications or proposed changes in land uses.[32] These laws generally delegate significant authority to local governments to enact notice ordinances[33] while setting the bounds of that authority.[34]

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noting that after the application is submitted and prior to the public hearing the planning department "staff's initial and subsequent reviews each take 3 weeks").

[31] As will be discussed in more detail below, the classification of the decision-making body or land use change at issue as either an administrative or legislative one can have impacts for the notice requirements.

[32] The SZEA provides: "Method of procedure. . .no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality." Standard State Zoning Enabling Act, Section 4, Procedure, p. 7, https://www.govinfo.gov/content/pkg/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873/pdf/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873.pdf [https://perma.cc/ZGG2-S9UP]. The SZEA specifically notes that "and citizens" meant that "any person" was permitted "to be heard, and not merely property owners whose property interests may be adversely affected by the proposed ordinance. It is right that every citizen should be able to make his voice heard and protest against any ordinance that might be detrimental to the best interests of the city." *Id*. at 7 n.28. While this does not speak to notice requirements, and while further legislative history analysis would be needed to confirm who exactly the drafters of the SZEA understood "citizen" to include, it does suggest that the early crafters of zoning law may have assumed that both owners and tenants had a right to shape their cities. The text goes on to the state that the notice requirement should provide "ample time for citizens to study the proposals and make their opposition manifest." *Id*. at 7 n.29. Again, the SZEA here refers to citizens, not owners, potentially implying that tenants might also be entitled to notice and an opportunity to be heard.

[33] In recent years, many states have been reasserting state control over more aspects of land use law. *See* Richard Briffault, *Preemption: The Continuing Challenge*, 36 J. of Land Use & Env't L. 251 (2021); Nestor M. Davidson & Timothy M. Mulvaney, *Takings Localism*, 121 Columbia L. Rev. 215 (2021); Richard Briffault, Laurie Reynolds & Nestor M. Davidson, The New Preemption Reader: Legislation, Cases, and Commentary on State and Local Government Law (1st ed. 2019).

[34] When there is a conflict between state and local law on the same topic, states will typically prevail. *See* Richard Briffault & Laurie Reynolds, State and Local Government Law (9th ed. 2022). More often, though, state law functions as a floor, which means that local governments must comply with the minimum standards set out in state law, but they can go above and beyond the state law, establishing broader and/or more robust standards. At times, state laws explicitly state as much. *See, e.g.*, Florida Stat. § 166.041(8) (West 2023) ("The notice procedures required by this section are established as minimum notice procedures"). However, state law is often silent; and in most states, silence is understood to mean that local governments are free to enact more stringent or robust standards than state law provides. *But see* New York SMSA Ltd. P'ship v. Twp Council of Twp of Edison, 889 A.2d 1129 (N.J. Super. Ct. App. Div. 2006) (holding that the distance from the subject property set out in state law established both

While the specific form of notice required varies by jurisdiction and by type of land use approval at issue, typically notice occurs in one of three formats: (i) publication via local newspaper (and/or government website); (ii) posting signage on the property seeking the change; or (iii) mail or personal service to those parties designated by the local ordinance to receive it. The mechanics for each type of notice vary by jurisdiction, but generally local ordinances identify the party responsible for complying with the notice ordinance (applicant or city);[35] the type of notice required based on the type of land use action at issue;[36] the time frame within which the requisite notice must be published, posted, or mailed;[37] and for mailed notice, information about who is required to receive notice and methods for identifying recipients.[38] Jurisdictions vary in whether minor deviations or omissions related to notice affect or invalidate any subsequent decisions made on the land use action that the notice related to.[39]

There are both legal and policy principles underlying why notice to the public is required in the land use context. Generally, notice of land use hearings is provided both as a matter of due process,[40] and because voice is considered an important part of public decision making (with notice serving as a means of facilitating public participation). As one scholar has noted, "[p]rocedural justice researchers have long argued that giving people a

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a mandatory floor and ceiling, and thus a local government could not enact an ordinance that established a greater distance from the subject property for which notice would be required).

[35] *Compare* Tampa, Fla., Code of Ordinances § 27-149 (2020) (stating applicant shall notify all owners of property within 250 feet), *with* Seattle, Wash., Mun. Code § 23.84A.025 (2022) (stating notice shall be mailed by the Director to all property owners, lessees, and residents within 300 feet).

[36] *See, e.g.*, Durham, N.C., Unified Dev. Ordinance § 3.2.5(A)(1) (2023) (providing a chart on type of notice required for each procedure).

[37] *Compare* Cincinnati, Ohio, Mun. Code § 1443-05 (2015) (requiring notice be provided at least fourteen days prior to the hearing), *with* Nashville, Tenn., Code of Ordinances § 17.40.720 (2015) (requiring notice be provided at least twenty-one days in advance of public hearing).

[38] San Antonio, Tex., Unified Dev. Code, § 35-403 (2023) ("Notice shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property, within two hundred (200) feet of the property."). Anecdotally, one of the authors used to be a land use attorney in San Francisco representing developers. She hired a company, Radius Services, which generated radius maps and address labels. The lawyer then addressed and stuffed the envelopes and the city mailed them out. *See* Radius Services, http://www.sfradius.com/more.html [https://perma.cc/KK6M-JCR9].

[39] *Compare* S.F., Cal., Planning Code § 333(e)(2)(C) (2018) ("Failure to send notice by mail to any such property owner where the address of such owner is not shown on such assessment roll shall not invalidate any proceedings in connection with such action," implying the inverse—where an address is on the rolls but fails to be included—would invalidate the proceedings), *with* Tulsa, Okla., Code of Ordinances Tit. 42 § 70.010(F)(6) ("Failure to provide any form of courtesy notice that is not required under this zoning code or any defect in courtesy notice that is provided does not invalidate impair, or otherwise affect any application, public hearing or decision rendered in respect to the matter under consideration").

[40] *See, e.g.*, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) ("there can be no doubt that at a minimum [the Due Process Clause] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing").

voice in decision-making proceedings leads to heightened satisfaction with the outputs of those processes and enhanced compliance with decisions."[41] Other scholars have observed that public participation is a key part of a democratic process, and one that leads to better, more informed decisions.[42] Of note, while public participation is intended to inform the ultimate decisions made in the land use process, decision-makers are not legally required to decide in ways that reflect the majority viewpoint. That said, as a matter of practice, land use decision-makers often decide an issue in the way the majority of their constituents (or at least, the majority of those that have voiced an opinion) want them to; this is the central finding of the homevoter hypothesis.[43] Notice in the land use context thus serves as both an end—in that it is legally required—but also as a means to an end—enhanced public participation in the land use process.

II. Overview of Empirical Data

This Part of the Article turns to our original data set, unpacking empirical evidence about land use notice ordinances from the 75 most populous cities in the United States.[44] Although this data necessarily reflects a subset of all U.S. cities,[45] this is an important sample because these are the cities where nearly twenty percent of the entire U.S. population lives.[46] Further, it is where millions of renters live: Many of these cities have majority or near-majority renter households.[47] Thus, these cities provide an important

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[41] Stacy G. Ulbig, *Voice is Not Enough: The Importance of Influence in Political Trust and Policy Assessments*, 72 Public Op. Q. 523, 523 (2008). *See also* Jackson L. Frazier, *Perfecting Participation: Arbitrariness and Accountability in Agency Enforcement*, 96 N.Y.U. L. Rev. 2094, 2117 (2021) ("When agencies enact policies via rulemaking, the value of public participation is widely acknowledged and even statutorily embedded in the policymaking process.").

[42] *See generally* Jim Rossi, *Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking*, 92 Nw. U. L. Rev. 173, 185–187 (1997) (explaining and critiquing participation's value); Camilla Stivers, *The Public Agency as Polls: Active Citizenship in the Administrative State*, 22 Admin. & Soc'y 86 (1990). As discussed in more detail in Part IV.B, *infra*, public participation is not necessarily an unalloyed good, and critiques of over-participation in various contexts have been voiced by scholars. *Id.*

[43] William A. Fischel, The Homevoter Hypothesis: How Home Values Influence Local Government Taxation, School Finance, and Land-Use Policies (2005) (arguing that land use decisions of local governments (particularly anti-development decisions) are driven by local governments responding to the desire of homeowners to maximize their property values).

[44] The complete set of data is presented in Appendix A.

[45] There are almost 20,000 municipalities (a term which includes both cities and towns, but not counties or special districts) in the United States. *Number of Municipal Governments & Population Distribution*, Nat'l League of Cities, https://perma.cc/TAA2-A56C.

[46] *See The 100 Biggest Cities have 59,849,899 People and the Rural Areas Have 59,492,267 People*, Nat'l Popular Vote, https://www.nationalpopularvote.com/100-biggest-cities-have-59849899-people-and-rural-areas-have-59492267-people [https://perma.cc/C4MF-NHCH].

[47] Michael Maciag, *Renter Population Data By City*, Governing (Mar. 27, 2019), https://www.governing.com/archive/city-renter-population-housing-statistics.html [https://perma.cc/52ZD-MT5J].

snapshot of what notice looks like for large numbers of tenants.[48] Our research shows that the vast majority of these cities do not require the provision of notice to tenants in the face of proposed nearby land use changes. The complete set of data is provided in Appendix A.

First, a feature of notice ordinances common to almost all cities is a requirement that for most types of land use actions, notice must be mailed to the owner of the property that has applied for or is the subject of the land use change.[49] Beyond this, there is significant variation in notice ordinances. The full details of these variations are summarized in Appendix A; for reader clarity, we describe the notice ordinances as falling into one of two primary categories: "standard-notice" or "notice-plus." We also identify a few cities that have ambiguous provisions in their notice ordinances.

We find that the vast majority of cities can be categorized as what we term "standard-notice" cities. We define these cities as those that only require notice to be mailed to *property owners* within a designated distance of the property that is the subject of the hearing or land use change.[50] The distance varies by jurisdiction and land use application type, even within a single jurisdiction, but is typically a few hundred feet.[51] A small number of standard-notice cities also require mailed notice to the street address of the property that has applied for or is the subject of the land use change; in that

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[48] While further empirical work is needed to confirm whether notice requirements in smaller cities mirror those of larger cities, anecdotally, the authors' own informal review of a number of smaller cities suggests that the prevailing pattern of non-notice to tenants appears to also be present in smaller cities. This would make sense, as many of the reasons for non-notice that we discuss in Part III apply to both larger and smaller cities; however, it is also possible that their smaller size would make it logistically less complex to provide notice to more people, including tenants, and that their notice provisions might reflect that.

[49] *See e.g.*, Arlington, Tex., Unified Dev. Code § 10.3.6(C)(4) (2022) ("The Zoning Administrator shall send the written notice to: [t]he owner of the property for which the approval is sought . . . ."). Of note, in some municipalities, it is the project proponent/property owner who mails out the notices; thus, the city may not require them to mail a notice to themselves. *See* Appendix A (providing examples of such cities).

[50] Again, most standard-notice ordinances also require mailed notice to the property owner pursuing the land use change, or whose property is the subject of the land use change. *Id*. Further, not all jurisdictions require mailed notice for all types of land use changes. As noted in Part I, *supra*, in some jurisdictions, rezonings are considered legislative actions, and therefore some notice ordinances do not require mailed notice even to property owners subject to such actions. Because these jurisdictions treat the rezoning ordinance like any other ordinance a city council might adopt, there is no individualized mailed notice requirement; rather, there is usually simply a requirement that the city publish notice in a newspaper about the public hearing at which such ordinances will be considered. *See, e.g.*, Lincoln, Neb., Mun. Code. § 27.81.050(b) (requiring only published notice, rather than mailed notice, of proposed rezonings).

[51] *See, e.g.*, Detroit, Mich., Code of Ordinances § 50-3-8 (2006) (stating written notice is required for occupants within 300 feet of the subject property); Pittsburgh, Pa., Code of Ordinances § 922.06.B (2003) (stating written notice is required for all property owners within 150 feet of the subject property); Plano, Tex., Zoning Ordinance § 4.300.6 (2023) (stating written notice is required for all real property owners within 500 feet of a proposed change in zoning classification).

case, the notice might be addressed to "occupant," "resident," or "tenant."[52] Such provisions provide notice to a narrow subset of non-owners (i.e., those residing at the property that is the subject of the proposed land use change); otherwise, non-owners are largely left out of standard-notice ordinances.[53]

In contrast, our findings uncover only twelve cities that provide notice to tenants in the surrounding neighborhood in a manner similar to the notice provided to property owners. We refer to these as "notice-plus" cities,[54] and define them as cities where, in addition to owners, *tenants* are either explicitly mentioned or implicitly included in those who must receive mailed notice for a majority of key land use actions.[55] Of these notice-plus jurisdictions, only four cities explicitly require notice to be mailed to property owners *and tenants* who reside within the designated radius of the proposed change.[56] The remainder of notice-plus cities do not explicitly refer to tenants in their notice statutes, but have notice provisions that would likely result in tenants being notified.[57] For example, some of these cities require

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[52] *See, e.g.*, Durham, N.C., Unified Dev. Ordinance § 3.2.5.B.2.b. (2023) ("Where the tax records reflect a different mailing address for an owner of the property and the actual property address, then notification shall be mailed to the address of the property itself in addition to the property owner address.").

[53] We say "largely" left out because ordinances in a handful of standard-notice cities include provisions providing for notice to a sub-set of non-owners or tenants in limited circumstances. *See infra* notes 54–66 and accompanying text.

[54] These cities are: Los Angeles, CA; San Diego, CA; San Jose, CA; Seattle, WA; San Francisco, CA; Louisville, KY; Detroit, MI; Long Beach, CA; Anaheim, CA; Irvine, CA; Santa Ana, CA; and Anchorage, AK. *See* L.A., Cal., Mun. Code § 12.24(W)(1)(b) (2023); San Diego, Cal., Mun. Code § 121.0302 (2023); San Jose, Cal., Code of Ordinances § 20.100.190 (2000); Seattle, Wash., Mun. Code § 23.84A.025 (2022); S.F., Cal., Plan. Code art. 3 § 333(e)-(f) (2018); Louisville, Ky., Land Dev. Code. § 11.4.1 (2014); Detroit, Mich., Code of Ordinances § 50-3-8 (2006); Long Beach, Cal., Mun. Code § 21.21.302(B)(4)(a) (2018); Anaheim, Cal., Mun. Code § 18.60.100 (2021); Irvine, Cal., Zoning Code § 2-23-1(B) (1976); Santa Ana, Cal., Code of Ordinances § 2-153(a)-(c) (2021); Anchorage, Alaska, Code of Ordinances § 21.03.020(H)(3) (2021).

Note that while we include San Francisco in our count of notice-plus cities (because it explicitly references mailed notice to both occupants and owners within a statutorily defined distance), the San Francisco ordinance differs from other notice-plus ordinances in that it qualifies the occupant notice requirement with the phrase "to the extent practical." See S.F., Cal., Plan. Code art. 3 § 333(e)(2)(C) (2018) ("All owners and, to the extent practicable, occupants of properties within no less than 150 feet of the subject property . . . ."). Thus, depending on how "to the extent practical" has been interpreted and how the San Francisco ordinance operates in practice, San Francisco may ultimately not require notice to tenants.

[55] We include a city as a notice-plus city only if it requires notice to tenants for key types of land use changes—for example, variances, CUPs, rezonings, and subdivisions. If a city requires that tenants receive notice of a single type of land use action (for example, demolition permit hearings or historic preservation hearings), but no other types of land use hearings, we do not designate it as a notice-plus jurisdiction, since tenants will not receive notice of most major types of land use actions. For additional details at this level of granularity, *see* Appendix A.

[56] *See* Appendix A (identifying such cities that explicitly reference tenants as San Diego, Anaheim, Long Beach, and Irvine).

[57] For example, although the municipal code in Seattle does not explicitly mention tenants, it does require that notice be mailed to "residents" within a set distance of the property at issue. Seattle, Wash., Mun. Code § 23.84A.025 (2022). But in a publicly disseminated "Guide to Neighborhood Notices and Commenting," the Seattle Department of Construction and

that notice be mailed to both property owners and "occupants" or "residents" of all properties within the designated distance.[58] Thus, tenants residing at the address would likely receive the notice, though it would not be addressed to them by name.

Of note, if a city's ordinance only requires notice to a subset of tenants or is applicable only in limited circumstances, we do not designate it as a notice-plus jurisdiction, since significant numbers of tenants are left out of such provisions.[59] For example, notice to tenants may be dependent on the physical form or type of housing the tenants reside in and thereby leave out significant numbers of tenants: New York City only requires notice to tenants residing in co-ops or condos, but not to tenants residing in other types of properties.[60] Four other cities—New Orleans, Memphis, Durham, and Raleigh—have notice ordinances stating that if the home address of the property owner is different than the property address within the notice radius, then notice should be mailed to both the property owner's home address and the address of the property.[61] In that instance, a tenant residing at the property within the radius would likely receive notice if it were a single family home but not if it were a multi-unit building. This is because in a multi-unit building, a single notice might be mailed to the building's

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Inspections states that it will generally mail "notice of certain land use applications to property owners *and tenants* within 300 feet of the proposed project." (emphasis added). *Neighbors Who Notice: SDCI's Guide to Neighborhood Notice and Commenting*, SEATTLE.GOV (June 2021), https://www.seattle.gov/documents/Departments/SDCI/Permits/NeighborsWhoNotice.pdf [https://perma.cc/9B5U-6GMZ]. Similarly, though the San Jose code refers to "occupants," their Public Outreach Policy for Pending Land Use and Development Proposals states that "notice is provided . . . to property owners, *tenants* and other stakeholders within a defined radius." (emphasis added). COUNCIL POLICY 6-30: PUBLIC OUTREACH POLICY FOR PENDING LAND USE AND DEVELOPMENT PROPOSALS, SAN JOSE, CAL. (2004), https://www.sanjoseca.gov/home/showpublisheddocument/12813/636669915135130000 [https://perma.cc/XJV7-T82B]. Thus, it is likely that notice-plus cities like Seattle and San Jose intend for tenants to receive notice though they are not expressly mentioned in the code.

[58] *See, e.g.*, SEATTLE, WASH., MUN. CODE § 23.84A.025 (2022) ("'Mailed notice' means notice mailed by the Director to such property owners, commercial lessees, building managers, and residents of properties including and within 300 feet of the boundaries of a specific site as can be determined from the records of the King County Department of Assessments, the City Master Address File, and such additional references as may be identified by the Director.").

[59] Such cities are designated in Appendix A table as "standard-notice" with a notation included in their entry indicating the specific sub-set of tenants that get notice. *See* Appendix A.

[60] *See* N.Y.C., N.Y., BD. OF STANDARDS & APPEALS RULES OF PRAC. & PROC. § 1-05.6 (2012). Further, the New York ordinance does not even necessarily require mailed notice to this subset of tenants; rather it just requires notice in the customary manner, which is not defined by the ordinance. *See id.* ("if the property is a cooperative or condominium, all tenants should be notified in the manner customarily employed by the cooperative or condominium").

[61] *See, e.g.*, DURHAM, N.C., UNIFIED DEV. ORD. § 3.2.5.B.2.b (2023) ("All mailed notification shall be performed through first class mail utilizing the County property tax listings for property ownership. Where the tax records reflect a different mailing address for an owner of the property and the actual property address, then notification shall also be mailed to the address of the property itself in addition to the property owner address[.]"); NEW ORLEANS, LA., COMPREHENSIVE ZONING ORD. § 3.3.B (2022); RALEIGH, N.C., UNIFIED DEV. ORDINANCE § 10.2.1 (2013) (same); MEMPHIS, TENN., UNIFIED DEV. ORD. § 9.3.2.B.1 (2010) ("all property owners within the notification area, if different from the current residents").

address, rather than to each apartment within the building. Indeed, two of these cities, Raleigh and Memphis, explicitly exclude units in multi-family rental properties from this notification requirement.[62] Thus, we do not include these cities as notice-plus jurisdictions, given that only a small number of tenants would likely be notified by these types of provisions.[63]

Finally, we identify a small number of cities whose notice ordinances are ambiguous in terms of interpretation, operation, or both. While some of these cities' ordinances may theoretically provide notice to tenants in some circumstances, in practice, it is unlikely for one of several reasons. For example, a few cities include a provision in their notice ordinances requiring that notice be sent to anyone who has registered in advance with the city to receive notice of certain types of land use hearings (and allows for cities to charge a fee to those who have so registered).[64] Thus, in theory, if a tenant were aware of this option in their city,[65] they could register in advance and pay the fee, and thereafter, be entitled to mailed notice. Likewise, a number of cities' ordinances require notice to be mailed to registered neighborhood organizations ("RNOs") or neighborhood associations.[66] Such organizations vary greatly by jurisdiction; for example, in terms of whether membership fees are required, how frequently meetings are held, and how neighborhood residents are alerted to such meetings. Further, participation in RNOs is often less diverse than the surrounding community for the same reasons that participation in other land use processes is racialized, and tenants and younger residents are often less likely than older owners to be part of such groups.[67] However, if a tenant is a member of or participates in the activities

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[62] Raleigh, N.C., Unified Dev. Ord. § 10.2.1.C.1.c (2013) ("the applicant shall comply with [the general mailed notice requirements in Sec. 10.2.1.C.1.a] except if the individual mailing addresses of tenants in any type multi-tenant properties are not readily available, the multi-tenant property shall be posted in accordance with [section on posting notice]."); Memphis, Tenn., Unified Dev. Ord. § 9.3.2.B.1 (2010) ("If the applicant is unable to make notification to the multi-family dwellings, he or she shall provide notice to the Division of Planning and Development the reason and shall mail notification . . . to the rental or management offices of all multi-family dwellings within the notification area with a request that said rental or management office post the notification in a conspicuous location within a common area(s), including, but not limited to: entry doors, hallways, mailbox areas and laundry rooms.").

[63] Another city that we do not include as notice-plus is Austin, Texas, because it only provides notice to tenants in limited circumstances; it does not provide notice to tenants for most types of land use hearings, but contains an exception whereby tenants do receive notice if the land use hearing might result in demolition or displacement of the tenant-occupied residence. *See* Appendix A; *see also* Austin, Tx., Code of Ord., § 25-1-711 (2016).

[64] *See, e.g.*, Sacramento, Cal., City Code § 17.812.030 ("notice is given by mail or personal delivery at least ten days prior to the hearing to . . . [t]hose persons who have requested in writing notice of the hearing").

[65] This seems unlikely; the authors, who are land use experts and former land use attorneys, had not been aware of these provisions before researching this project.

[66] *See, e.g.*, Matthews Municipal Ordinances § 33.160 (3rd ed. 2023); Austin, Tex., Land Dev. Code § 25-1-132 (2023).

[67] *See New Report Shows White-Led Neighborhood Groups Perpetuate Segregation*, La. Fair Hous. Action Ctr. (Oct. 7, 2021), https://lafairhousing.org/new-report-shows-white-led-neighborhood-groups-perpetuate-segregation/#:~:text=In%20neighborhoods%20that%20are%20

of such an organization, it is possible that the notification to the RNO may operate indirectly to provide notice to some such tenants. Another ambiguous aspect of some cities' notice ordinances are provisions stating something such as, "if in the Director of the Planning Department's discretion, it would be advisable to provide mailed notice to additional parties," they are authorized to do so.[68] While further empirical research would be needed to determine if such discretion is ever exercised—and if so, if it is utilized to provide mailed notice to tenants—it appears that this type of language in local notice ordinances is a generic, catch-all provision, and we have found no evidence of cities with such language utilizing this authority to routinely provide tenants with notice.

As to what might distinguish the twelve notice-plus cities that notify tenants from the vast majority of cities that do not, the data offers some insights but raises more questions than answers. Notably, it is not clear that there is any political valence to these ordinances. Most of the notice-plus cities that do give tenants notice are majority renter cities,[69] with solidly Democratic majorities.[70] However, many of the standard-notice cities are also majority renter cities, and even more have Democratic majorities.[71]

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only,board%20members%20are%2059%25%20white [https://perma.cc/T5WX-8WCC] (discussing Louisiana: "The report uses publicly available data for over 800 neighborhood association board members, as well as a survey, to reveal that neighborhood association boards are almost always whiter than the neighborhoods they represent . . . The City as a whole is 31% white and 58% Black, but of the 852 neighborhood association board members whose race could be identified, 60% are white and 35% are Black. In neighborhoods that are only 20%-29% white, neighborhood association board members are 45% white. In neighborhoods that are 30%-39% white, neighborhood association board members are 59% white."); *see also* Allan Tellis, *What Makes Some Neighborhood Organizations More Effective Than Others?*, Denverite (May 22, 2018), https://denverite.com/2018/05/22/denver-neighborhood-organizations/ [https://perma.cc/7GJU-Q3D7] ("Like other RNOs, RiNo has had some difficulty in recruiting a representative cross-section of neighbors . . ." and according to the President of another RNO, "Despite living in a multicultural neighborhood, Bolt said his RNO's crowd can tend to hover around 95 percent white."). A candidate for City Council in Denver, who was the former President of his neighborhood's RNO listed as one of his priorities to "increase [the] reach of RNOs to renters, English as second language speakers and others." Capitol Hill United Neighborhoods, Municipal Election Questionnaire (2023), https://www.chundenver.org/uploads/7/5/9/8/75987511/chun_candidate_questionnaire_responses.pdf [https://perma.cc/5DF4-62UA].

[68] Tucson, Ariz., Unified Dev. Code § 3.2.4.B.6 (2013) ("Mailed notice must be sent to . . . any other persons the Director determines are affected by the application or has an interest in the matter . . .").

[69] The exceptions are San Jose, California (55.8% households are owner-occupied); Anchorage, Alaska (63.8% households are owner-occupied); and Louisville-Jefferson County, KY (the Census data is consolidated for this metro area since it is a consolidated city-county metro government) (60.4% households are owner-occupied). *See Quick Facts*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/US/PST045222 [https://perma.cc/VA95-QRN6].

[70] *See Party Affiliation by Metro Area*, Pew Research Center, https://www.pewresearch.org/religion/religious-landscape-study/compare/party-affiliation/by/metro-area/ [https://perma.cc/ZUU2-5QHA].

[71] While further empirical analysis would be needed to determine if there are any statistically significant correlations, the race and ethnicity of residents also does not appear to be a distinguishing factor between cities that provide notice to tenants and those that do not: while

A number of the standard-notice cities have also enacted other types of laws that *are* protective of tenants. For example, in Portland, Oregon, if a tenant is evicted without cause or due to a large rent increase, landlords must pay for the moving costs.[72] In Philadelphia, tenants are permitted to challenge eviction notices before the Fair Housing Commission, and during deliberations they cannot be evicted.[73] Thus, for the most part, even generally pro-tenant, majority Democratic, majority renter cities appear to have not considered notifying tenants, or in a few cases, considered and rejected proposals to notify tenants.[74]

It also is noteworthy that eight of the twelve notice-plus cities are in California, a blue state with many other state laws that are protective of tenants.[75] One might therefore assume state law is the reason that so many California cities notify tenants. However, state law in California is silent on whether tenants are required to be notified of land use hearings,[76] and the notice-plus cities in California have adopted their ordinances at different times and for different reasons in the absence of a state mandate to do so.[77]

While these and other questions raised by our data will be explored in our future research, in the remainder of this Article, we consider two of

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several of the notice-plus cities have significant Black and Latinx populations, so do many of the standard-notice cities that do not provide notice to tenants; further, some notice-plus cities, such as Anchorage, Alaska, have lower percentages of Black and Latinx residents than standard-notice cities. *See Quick Facts: Anchorage Municipality, Alaska*, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/anchoragemunicipalityalaska/PST045222 [https://perma.cc/7XHQ-HZR5] (showing that 5.3% of Anchorage, Alaska's population is Black).

[72] Gordon R. Friedman, *Portland Makes Permanent Rule That Landlords Must Pay Some Tenants' Moving Costs*, Or. Live (Mar. 7, 2018, 4:24 PM), https://www.oregonlive.com/portland/2018/03/portland_makes_permanent_rule.html?utm_source=Next+City+Newsletter&utm_campaign=457c5dfdab-EMAIL_CAMPAIGN_3_6_2018&utm_medium=email&utm_term=0_fcee5bf7a0-457c5dfdab-43830561 [https://perma.cc/KAL8-JT2Q]; *see also* Portland, Or., City Code § 30.01.085 (2022).

[73] Philadelphia, Pa., Philadelphia Code and Charter § 9-804(12)(d) (2020).

[74] *See infra* note 87 (discussing example of Dallas, Texas).

[75] *See, e.g.*, Cal. Civil Code §§ 1946.2, 1947.12 (2023) (providing just cause termination protections and limiting rental rate increases, respectively).

[76] *See* Cal. Gov. Code § 65091.

[77] For example, in a July 14, 2023 phone interview, an Assistant Planner with the city of Santa Ana (a notice-plus city) indicated that the city had adopted the tenant notification requirement within the past six months and stated his understanding of the reasoning behind that city's adoption of the requirement for tenants to be notified: "whatever the cost, it would be worthwhile to kind of pass that along to developers. The more information, the more transparency . . . I would imagine that's sort of the case, the more people that are notified, the more citizens of Santa Ana are informed, the better result because everybody's informed, and they have ample opportunity to provide feedback." Another California notice-plus city, San Jose, discusses its tenant notice requirements and the goals it hoped to advance in a 2019 report issued by the city; the report also identifies several cities in California which do not provide notice to tenants, and confirms that notice to tenants is not a requirement under state law. *See* Office of the City Auditor, City of San Jose, Development Noticing: Ensuring Outreach Policies Meet Community Expectations (2019), https://www.sanjoseca.gov/home/showdocument?id=38455#:~:text=State%20law%2C%20along%20with%20the,days%20prior%20to%20the%20hearing [https://perma.cc/ZFC9-4L3V].

the most important issues that the empirical data raises. Part III considers reasons why the vast majority of jurisdictions do not notify tenants of land use hearings pertaining to changes in their neighborhoods and contends that the assumptions underlying these reasons largely do not hold up to scrutiny. Part IV contends that the prevailing practice in most jurisdictions of failing to provide notice to tenants is normatively problematic for reasons of equity, economic inefficiency, and due process. Further, the fact that twelve jurisdictions do provide tenants with direct notice illustrates that it is a feasible option for local governments; to this end, we also offer a model ordinance that cities could adopt.

III. The Status Quo: Explaining the Failure to Provide Notice to Tenants

As our empirical data in Part II has shown, the vast majority of large cities in the U.S. fail to provide notice to tenants of proposed land use changes. We believe that this novel descriptive finding is the primary work and contribution of this Article: It demonstrates empirically that most cities do not provide notice of land use hearings to tenants although they provide it to homeowners, and surfaces this failure as a form of anti-tenancy. While we cannot definitively explain all of the reasons that jurisdictions do not give notice to tenants, we hope to initiate discussion about the subject, and we invite empiricists to engage with our findings herein.

To that end, this Part identifies several reasons that likely underlie the widespread failure to provide notice of land use hearings to tenants and explains how the assumptions behind these justifications do not hold up to scrutiny. We also acknowledge that in some jurisdictions, none of these reasons may have ever been articulated: The status quo in most localities typically has only involved providing notice to owners, and thus cities might never have even considered giving notice to tenants. While further research is needed to determine whether this is an oversight, or whether the reasons identified below have influenced the drafting of notice ordinances, we contend that the end result—the failure to consider the interests of tenants—is normatively problematic for reasons that will be discussed in Part IV.

A. Fiscal and Logistical Concerns

In most states, state laws (often modeled on the SZEA) specifically require local governments to provide mailed notice to designated property owners of land use applications and public hearings.[78] As noted in Part II, however, most of these state laws are silent regarding notice to non-property owners living near a proposed project.[79] Thus, the default baseline in

[78] *See, e.g.*, Cal. Gov. Code § 65091.

[79] *Id.*

most states is that there is no requirement for local governments to provide notice to tenants. While local governments could potentially provide notice to tenants even if not required by state law,[80] a number of potential logistical and fiscal concerns may factor into why so few localities currently do so.[81]

Cost concerns loom large for local governments, many of which operate under constrained budgets and state-imposed limits on their ability to raise revenues.[82] While the cost of mailing notices may be relatively modest, it is an additional cost to city budgets nonetheless.[83] Some jurisdictions address these concerns by requiring that applicants bear the cost of mailing required notices, while others impose application fees on applicants intended to cover the cost of the municipality mailing required notices.[84] But even in jurisdictions that do not bear the costs themselves, there may be reluctance to pass on such costs to applicants, since there may be concerns about political pushback or about adding another logistical step to the development process.

The process of actually identifying the tenants to whom to mail notice also might pose logistical questions. Regardless of whether the applicant or local government is responsible for identifying and mailing hearing notices, the process for locating the names and addresses for property owners is more straightforward than it is for tenants. Local ordinances typically set out the specific process for identifying property owners who must receive mailed notice: for example, through tax rolls or recorder's office records.[85]

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[80] *But see infra* notes 114-116 and accompanying text (discussing case law holding that if state law is considered both a ceiling and a floor, then local governments cannot provide greater notice than state law allows for).

[81] *See infra* note 87 (discussing this concern being articulated in Dallas, Texas).

[82] *See, e.g.*, Erin Adele Scharff, *Powerful Cities?: Limits on Municipal Taxing Authority and What to Do About Them*, 91 N.Y.U. L. Rev. 292 (2016) (discussing state laws that limit municipal taxing authority); Ariel Jurow Kleiman, *Tax Limits and the Future of Local Democracy*, 133 Harv. L. Rev. 1884 (2020) (discussing the "inexorable dilemma" posed for local governments by state-imposed property tax limits).

[83] The authors attempted to contact planning department staff in each of the notice-plus cities we identified to try to obtain estimates for this cost; in the few cities where we were able to speak to staff, they were not able to provide a monetary estimate. While further empirical research would be needed to say with certainty what the exact costs are, from these conversations as well as anecdotal discussions with land use attorneys at private firms (representing clients who pay the costs of mailing), the costs appear to be a de minimis amount in the context of the overall costs associated with the entitlement approval and development process.

[84] *See infra* Appendix A (providing examples each type of local ordinances).

[85] *See, e.g.*, *Instructions for Variance Applications and Public Hearing*, Borough of Midland Park, New Jersey, https://www.midlandparknj.org/sites/g/files/vyhlif896/f/uploads/variance_instructions_-_residential.pdf [https://perma.cc/E8LG-6AXX] ("Property owners within 200 feet must be notified by certified mail or by hand a minimum of 10 days before the meeting date. After submitting, you will receive the 200' Property Owners List from the Tax Assessor via email. If this list is not used within 6 months, you will need to request/pay for a new list."); St. Cloud, Minn., Land Dev. Code § 3.3(D)(6) (2019) ("For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners, including the current City Assessor tax records."); Va. Code. Ann. § 15.2-2204(B) (2018) ("One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real

In contrast, there is not an analogous, obvious method for identifying individual tenants at specific addresses by name. While we contend there are readily available methods for overcoming this logistical hurdle,[86] this concern has been articulated by at least one major city, Dallas, Texas, which considered and rejected a tenant notification requirement.[87] San Jose, California, a notice-plus city that provides notice to tenants, has recognized that doing so requires additional effort by the city staff: "[b]ecause the City notifies both tenants and property owners, creating a mailing list requires the extraction of addresses from two different data sources . . . with two different software tools and substantial data cleaning."[88]

Relatedly, renters tend to move more frequently than homeowners.[89] While there are official government sources with records of tenant addresses (such as Department of Motor Vehicle records, or public utility records), those records may not always reflect the current addresses of tenants. Furthermore, depending on variations in state law, those databases may not be accessible to local governments or applicants responsible for providing notice, unlike property owner tax assessor records, which are generally publicly available and searchable online.[90]

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estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case."); CAL. GOV. CODE § 65091(a)(4) ("Notice of the hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of using the assessment roll, the local agency may use records of the county assessor or tax collector which contain more recent information than the assessment roll."); MINN. STAT. § 462.357(3) (2020) ("For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners.").

[86] *See infra* notes 90-96 and accompanying text.

[87] *See* Schindler & Zale, *supra* note 9 ("Instead, the city [of Dallas] added a line to its form notice mailings to owners stating, "[t]he City encourages the property owners to inform tenants of potential zoning changes . . . The city identified three reasons for not adopting the proposed change: (1) it would cause confusion for property owners who occupy their homes, as they would receive two notices under the proposal; (2) at a minimum, it would double the cost of mailing; and (3) it would be difficult to obtain multifamily/multi-unit data for mailing."); *see also* VASAVI PILLA, DALL. CITY PLAN. COMM'N, ZONING PROPERTY OWNER NOTIFICATION 10 (2019), https://dallascityhall.com/departments/sustainabledevelopment/planning/DCH%20Documents/code%20amendments/Property%20Owner%20Notification/Presentation_10172019.pdf [https://perma.cc/P3RP-XP5N].

[88] *See* OFFICE OF THE CITY AUDITOR, *supra* note 77, at 15–16.

[89] The moving rate of renters is approximately four times that of homeowners. *See* Derick Moore, *Overall Mover Rate Remains at an All-Time Low*, U.S. CENSUS BUREAU (Dec. 21, 2017), https://www.census.gov/library/stories/2017/12/lower-moving-rate.html [https://perma.cc/FX2W-R2LU] (discussing the unusually low moving rates for renters in 2017, while noting it remains approximately four times higher than for homeowners).

[90] *See Public Records Online Directory*, NATIONAL ENVIRONMENTAL TITLE RESEARCH, https://publicrecords.netronline.com/ [https://perma.cc/56D6-CBS3] ("The Public Records Online Directory is a Portal to those Tax Assessors', Treasurers' and Recorders' offices that have developed web sites for the retrieval of available public records over the Internet. Examples of records that can be accessed include deeds, mortgages, assessment data, tax details, and parcel maps.").

While the fiscal and logistical concerns identified above may factor into why so few cities we surveyed currently provide notice to tenants, we suggest that all of these concerns can be readily overcome. With regard to the fiscal concern about additional costs of requiring mailed notice to tenants, as noted above, many cities already pass this cost on to applicants. Further, mailing notices is likely a de minimis cost; anecdotally, a land use partner at a large California law firm noted that although his clients typically pay to mail notices, he is unaware of the cost, given that for the clients' large developments projects, this cost does not even rise to a budget item.[91] Even for smaller development projects, which may cost less overall (and for which the additional costs of mailing notices to tenants may be an incrementally larger share of overall costs), it is likely still de minimis compared to the other costs of development (such as contractor and construction costs, architect and attorneys' fees, and other costs associated with most land use development).

Regarding the logistical difficulty and costs of identifying tenants to whom notice should be mailed, rather than looking for a method analogous to that used to identify property owners, local governments could instead simply require that notices be mailed to all "residents" or "occupants" at all addresses within the designated distance used for property owners.[92] Indeed, this is what a number of the notice-plus ordinances described in Appendix A do.[93] Local and state governments—not to mention private entities and political candidates—often send mailers and other notices about events to "Resident" or "Occupant" at designated addresses, and such address databases are publicly available.[94] In multi-unit buildings, just as regular mail

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[91] *See* Interview with Partner at Coblentz Law (July 13, 2023) (how de minimis the costs are relative to the overall project costs will obviously vary).

[92] In some cities, notice must be sent through certified mail, which requires an addressee name. In those localities, the ordinance could be modified to instead require first-class mail delivery (which can be addressed to "Occupant") and alternate proof of mailing, such as attestation by the person or entity responsible for providing the notice. In fact, many cities already take this approach for notice to property owners, and thus could readily mirror it for notice to tenants. *See, e.g.*, VA. CODE. ANN. § 15.2-2204(B) (2018) ("Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case."); MINN. STAT. § 462.357(3) (2020) ("For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings.").

[93] *See* Appendix A (identifying such provisions in several notice-plus cities).

[94] Mailing addresses can be accessed legally by government entities, as well as by members of the public through a variety of methods, such as Open Records laws in many states; property tax records; voter registration records; as well as through USPS Change of Address notices, which are explicitly made available to the public. *See Government Records and Your Privacy*, PRIVACYRIGHTS.ORG, https://privacyrights.org/consumer-guides/government-records-and-your-privacy [https://perma.cc/C3G5-P8SW]; *see also, e.g.*, *Open Records Request*, COLORADO DIVISION OF REAL ESTATE, https://dre.colorado.gov/consumers/consumer-resources/

gets delivered to each individual unit (i.e., Apt. 1 and Apt. 2 each receive their own mail delivery), such notices are also typically mailed to individual units (not just the building address). Thus, similar approaches could be made applicable to tenant notice requirements.

Finally, mailed notice to tenants (even if relatively costless and logistically uncomplicated) may not be considered cost-effective, in light of the tendency many of us have to throw away non-individualized mail that we perceive as junk mail. While recognizing that the behavioral economics of how homeowners and tenants respond to mailed notice merits further empirical study, we would suggest that the robust attendance of homeowners at (some) public hearings anecdotally indicates at least some of the current recipients of mailed notice do pay attention and do not ignore it as junk mail.[95] This suggests that at least some tenants would likely also participate in public hearings as a result of receiving mailed notice.[96]

B. Alternative Methods of Notice

Another reason that local governments may fail to provide direct notice to tenants is that their municipal codes often require the provision of alternate channels of notice—something other than direct mailings. For example, many jurisdictions require that public notice of proposed land use changes be published in local newspapers, displayed on a local government website and/or posted on a sign that is visible to the public on or in the vicinity of the property seeking the land use approval. For example, like many cities, Lincoln, Nebraska requires three methods of notice for rezonings: publication in a local newspaper; mail to owners of property within a set number of feet of the property applying for the land use change; and a sign posted on or near the property at issue.[97]

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open-record-requests [https://perma.cc/86ZP-FLV5] ("Unless specifically outlined in Colorado statute, all Division of Real Estate (the 'Division') and Department of Regulatory Agencies ('DORA') documents are open to the public and can be requested at any time.").

[95] While other factors also contribute to why homeowners attend public hearings more than non-homeowners (for example, greater perceived financial interests, per the homevoter hypothesis, or fewer logistical barriers to attendance, as discussed earlier in this Article), those factors are only relevant once homeowners learn that a hearing will take place. While further empirical studies are needed to determine the statistical effect of mailed notice on attendance, and how those in attendance learned about the public hearing (i.e., from mailed notice, or from other sources, such as a posted sign or newspaper/government website notice or talking to their neighbors), mailed notice can serve to inform people of the existence of a hearing. This is not to say all land use public hearings are well-attended by homeowners; indeed, public hearings are often sparsely attended. *See, e.g.*, *Last Week Tonight*, *Special Districts: Last Week Tonight with John Oliver*, YouTube (Mar. 7, 2016), https://www.youtube.com/watch?v=3saU5racsGE [https://perma.cc/A6NX-PTXG] (starting at minute 4:00) (showing local government officials diligently conducting a public hearing to an empty room).

[96] *See* Einstein et al., *supra* note 12 (describing interviews with renters in Massachusetts who felt invited to participate in various local government processes after explicit invitations to do so).

[97] *See* Lincoln, Neb., Mun. Code § 27.81.050 (requiring all 3 types of notice); Arlington, Tex., Unified Dev. Code § 10.3.6 (describing requirements for all 3 types of notice); *see also*

Newspapers are used to disseminate notice because they are "easily accessible to both the reading public and the government, they provide a relatively inexpensive distribution mechanism with documented subscribership, and the newsprint format is a relatively stable format for evidence and records."[98] In recent years, many cities and states have amended their notice ordinances to allow or require publication on government websites (in addition to or in lieu of public notice in newspapers). For example, in 2014, Colorado began requiring newspaper publishers who provide notice to also provide notice on a statewide website.[99]

Some tenants, and perhaps even some owners, might learn about proposed land use changes through these alternative channels. However, it is unlikely that most people regularly check their local government websites, read the public notices section of their local newspaper, or even subscribe to local newspapers.[100] Indeed, scholars examining public notice requirements in other contexts have argued that notice via newspaper has become outdated.[101]

Further, in some municipalities, local government officials have recently "stripped [] newspaper[s] of [] lucrative contract[s] to print public notices."[102] This is apparently being done, at least in part, as retaliation for

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Luz Moreno-Lozano, *New Building Under Construction on Your Block? Austin Could Change How You're Notified*, KUT News, https://www.kut.org/austin/2023-07-03/new-building-under-construction-on-your-block-austin-could-change-how-youre-notified [https://perma.cc/G6ZB-9GPB] ("Austin notifies residents through mail, newspaper ads and signs posted on a property. These notices go to property owners within 500 feet of a project—about a city block—though state law requires written notice only to neighbors within 200 feet.").

[98] Shannon E. Martin, *State Laws Mandating Online Posting of Legal and Public Notices Traditionally Published in Newspapers*, 25 Comm. & L. 41, 43 (2003).

[99] "When any legal notice is required by law to be published in any newspaper, the newspaper publishing the notice shall, at no additional cost to the person or entity placing the notice, place the notice on a statewide website established and maintained by an organization representing a majority of Colorado newspapers as a repository for the notices." Colo. Rev. Stat. § 24-70-103(5) (2014).

[100] Katerina Eva Matsa & Kirsten Worden, *Local Newspapers Fact Sheet*, Pew Rsch. Ctr., https://www.pewresearch.org/journalism/fact-sheet/local-newspapers/ [https://perma.cc/4FTJ-TK6H] (May 26, 2022) (noting that total nationwide, combined print and digital circulation for local was 8.3 million for weekday and 15.4 million for Sunday, and print circulation of local newspapers is at its lowest point, having fallen over 50% since 2015); *The Lost Local News Issue*, Wash. Post (Nov. 30, 2021), https://www.washingtonpost.com/magazine/interactive/2021/local-news-deserts-expanding/ [https://perma.cc/MC6N-TLLH] (noting that nearly 2,200 local print newspapers have closed since 2005, and the number of newspaper journalists fell by more than half between 2008 and 2020).

[101] Lauren A. Rieders, Note, *Old Principles, New Technology, and the Future of Notice in Newspapers*, 38 Hofstra L. Rev. 1009, 1010 (2010) ("In the twenty-first century . . . citizens are not reading print newspapers like they used to; instead, they are using the Internet to fulfill their information needs"); Madison L. Moore, *Legal and Public Notices Need to Be Where the Public Notices: Why Kansas's Antiquated Laws Requiring Notice by Publication in Print Newspapers Violate Kansans' Procedural Due Process Rights*, 69 U. Kan. L. Rev. 675, 675–76 (2021) ("Although print newspapers have long served as the statutorily required location for disseminating notice to the public, this method of notice has become somewhat outdated").

[102] Emily Flitter, *How Local Officials Seek Revenge on Their Hometown Newspapers*, N.Y. Times (June 18, 2023), https://www.nytimes.com/2023/06/18/business/newspapers-public-notices.html [https://perma.cc/7RD3-9T3Y].

the "manner in which [the] paper reports county business,"[103] and "newspapers in Colorado, North Carolina, New Jersey and California, as well as New York, have been stripped of their contracts for public notices after publishing articles critical of their local governments."[104] Some states, like Florida, have gone further and completely eliminated the requirement that public notices be published in newspapers.[105] In light of online publication alternatives, requirements for newspaper publication may eventually be eliminated more broadly.[106] Nonetheless, it is concerning that local governments that fail to provide direct notice to tenants—on the grounds that newspaper publication is considered an adequate form of alternate notice—could be the same local governments that then decide to eliminate the requirement of newspaper notice.

Posting signs in the vicinity is thought to provide notice because the ordinances requiring it specify details such as the size and location of the sign, as well as the number of days the sign must be posted prior to the hearing. For example, in San Antonio, Texas, signs notifying neighbors of rezonings must be at least 24 by 36 inches, contain specific information about the zoning change, and follow detailed design instructions: it must "be constructed of corrugated plastic sign stock and shall be in highly visible fluorescent style color with contrasting colors. Lettering shall be a block font in as large a type as permitted by the sign size."[107] However, whether the physical posting of signage at the actual property address results in someone, such as a neighboring tenant, being notified depends on the tenant actually walking by the property and stopping to read the sign. Of course, many places in the U.S. lack sidewalks,[108] and thus in many parts of the country, neighbors are more likely to drive by rather than walk by. It is virtually impossible for someone in a moving vehicle to observe or be able to safely read a posted sign.[109]

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[103] *Id.* ("Sometimes, though, public officials revoke the contracts [for publishing notices] in an effort to punish their hometown newspapers for aggressive coverage of local politics. Such retaliation is not new, but it appears to be occurring more frequently now. . . .").

[104] *Id.* Although it is likely unconstitutional for localities to cancel contracts because they disagree with a newspaper's reporting, it might be hard to prove that is the reason for the contract cancellation. U.S. Const. amend. I; Bd. of Cnty. Comm'rs v. Umbehr, 518 U.S. 668, 678 (1996) (holding that a contractor must show that termination was in response to, rather than merely occurring after, the engaged speech).

[105] Flitter, *supra* note 102.

[106] The Florida law requires notices to be published on government websites, but not in physical newspapers; supporters of the bill argue that this would result in more, not less, transparency. Kirby Wilson, *Did the Florida Legislature Pass This Bill to Punish Newspapers? Some Lawmakers Say Yes*, Tampa Bay Times (Mar. 10, 2022), https://www.tampabay.com/news/florida-politics/2022/03/10/did-the-florida-legislature-pass-this-bill-to-punish-newspapers/ [https://perma.cc/7YAL-E9WR].

[107] San Antonio, Tex. Code of Ordinances, § 35-403, Table 403-1.

[108] Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 Yale L.J. 1934 (2015).

[109] *See e.g.*, Andrew Bertucci & Richard Crawford, *Best Practice Standards for On-Premise Signs*, U.S. Sign Council Found. 22 (2015), https://usscfoundation.org/wp-content/uploads/2018/03/USSC-Guideline-Standards-for-On-Premise-Signs-2018.pdf [https://perma.

For each of the reasons discussed above, the existence of alternative channels of notice is not sufficient to deem mailed notice to tenants unnecessary, particularly in light of the fact that such alternate channels of notice have not stopped jurisdictions from mailing notices to property owners.

C. Legal Barriers

State law setting out requirements for local notice provisions could also explain why municipalities provide notice only to property owners. As noted in Part II, notice requirements for land use hearings are typically found in local ordinances enacted by local governments, either pursuant to the broad delegation of authority granted to them by their state through home rule, or through a specific grant of authority by the state.[110] State statutes vary in how specifically they speak to the authority granted to local governments in this context: some state laws provide very detailed notice provisions that local government ordinances must reflect, while other state laws are fairly general, leaving much of the detail to local discretion.[111]

In theory, states could set a preemptive floor in their notice requirements and require that local ordinances notify tenants (or residents or occupants, which encompasses both property owners and tenants) of certain types of land use applications or proposed changes. While our research did not uncover any such existing state laws, a bill proposing this approach was introduced in the Rhode Island legislature in 2023.[112] If the bill is enacted into law, it would mandate that local governments in the state provide notice to designated tenants as well as property owners.

However, state law can also have the opposite type of preemptive effect, by prohibiting local governments from providing notice to any parties beyond those specifically designated under state law. In this scenario, even if a municipality wanted to amend its notice ordinance to provide notice to

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cc/C6UQ-8C9Z] (demonstrating with an algebraic formula that for a motorist travelling forty miles per hour, the optimally safe and legible sign is approximately 115 square feet in area, internally illuminated, and using letters at least seventeen inches tall); *cf.* CITY & CNTY. OF DENVER, *Sign Specifications for Planning Board Public Hearing* (requiring a minimum sign area of approximately 8 square feet to provide sufficient notice). This is an area that would benefit from additional empirical research: how many people show up at public hearings because they found out about the proposed change or the hearing from reading a publicly posted sign?

[110] *See supra* Part I.

[111] *Compare* ARIZ. REV. STAT. § 9-462.04 (provided detailed requirements regarding notice that local governments must provide for land use hearings), *with* FLA. STAT. § 286.011 (requiring simply that local governments provide "reasonable public notice," without defining or providing any specific details as to what that entails).

[112] *See* Salim Furth, *Rhode Island's Housing Process Package,* MARKET URBANISM (Jun. 26, 2023), https://marketurbanism.com/2023/06/26/rhode-islands-housing-process-package/ [https://perma.cc/SL3C-CCZA] ("Another bill S 1039, has not advanced, but would make a more interesting change: expanding rezoning notice requirements from property owners within 200´ to property owners *and tenants* within 1000'").

tenants, it would be prohibited from doing so because of state preemption.[113] While such preemptive laws appear to be fairly rare with respect to notice, at least one state, New Jersey, requires its municipalities to adhere to the exact notice requirements as laid out in state law. It does not allow municipalities to provide notices more broadly than state law sets out.[114]

In *New York SMSA Ltd. Partnership v. Township Council of Tp. of Edison*, a New Jersey municipality enacted a local ordinance that required notice to properties 300 feet from the subject property, 100 feet further than the 200-foot requirement in the state notice statute.[115] A developer challenged the local ordinance, and the New Jersey Superior Court struck it down. The court held that the state's notice statute was not a minimum floor (which local governments could expand upon, as long as they met the state minimum), but instead was "mandatory, uniform [in] scope and [a] method of notification with no room for deviation from municipality to municipality."[116] While this decision did not address an attempt by a New Jersey locality to extend notice requirements to tenants, the holding in the case would likely be applied to prevent a municipality in the state from enacting such an ordinance, as the state notice statute only speaks of notice to property owners. Were an individual municipality to enact an ordinance that provided notice to tenants, there would no longer be uniformity across all municipalities. Thus, in New Jersey, state preemption likely presents a legal barrier to reforming notice requirements to include tenants.

Preemption of this kind appears limited to New Jersey. While California, Washington, and Louisiana each have state notice laws that require notice to certain designated property owners and are silent as to notice to tenants, multiple cities in California, as well as Seattle, Washington and New Orleans, Louisiana, have local ordinances which do require notice more broadly (either explicitly requiring notice to tenants, or requiring notice to occupants or residents, which would encompass tenants as well as owners).[117] Thus, the interpretation that the New Jersey court has given to that state's notice statute—and the court's emphasis on the need for statewide uniformity in the context of public notice for land use approvals—has been limited to that state.[118] While future legal challenges could lead to this

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[113] *See supra* Part I (discussing aspects of the state-local relationship such as home rule and preemption).

[114] *See* N.Y. SMSA Ltd. P'ship v. Twp. Council of Tp. of Edison, 889 A.2d 1129 (N.J. Super. Ct. App. Div. 2006) (holding that a municipality could not set the range at which other properties must be notified of land use decisions at a greater range than that laid out by statute).

[115] *Id.*

[116] *Id.* at 1132.

[117] *See* Appendix A.

[118] We would also contend that the approach taken in New Jersey is ill-advised on the law and policy. While there are areas of law where the need for statewide uniformity may outweigh factors in favor of allowing for variation at the local level, land use notice requirements are not one of them. In holding that the Township of Edison could not broaden its notice requirements to include more property owners than those within the 200 foot radius set out in state law, the

outcome in other states, notice requirements in other states' laws have not—to date—been interpreted to operate as a preemptive bar to local ordinances requiring more notice than the floor required under state law.

D. Racism and Class Bias

As noted in Part II, the vast majority of surveyed jurisdictions provide notice to property owners who live within a statutorily specified distance from a proposed land use change, but not to similarly situated renters in the same radius. In part, we argue that this disparity reflects longstanding race and class biases, which we have discussed in our previous scholarship.[119] While a slight majority of all renters in the U.S. are white, the majority of Black and Latinx families are renters. Therefore, policies that treat tenants more poorly than owners—including notice provisions—disproportionately harm people of color in the U.S.[120]

Proving that local notice ordinances were drafted with the purpose of keeping people of color away from public hearings would be difficult,[121] but it is certainly one plausible explanation—particularly in light of the documented racial motivation of some other types of land use laws, such as single-family zoning.[122] It is also possible that, because homeowners typically draft laws—as elected officials are more often homeowners than renters—they create laws to benefit themselves without consciously considering how the laws affect tenants. This could be in part due to implicit biases.[123] But regardless of whether there is discriminatory intent behind the laws, there is discriminatory impact due to the racialized make-up of renters in many

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New Jersey court ignored the reality that 200 feet may mean something very different in densely populated areas like Newark or Jersey City, where there may be dozens of property owners and residents within that distance than it does in sparsely populated rural or suburban areas of the state, where there may only be a handful.

[119] *See generally* Schindler & Zale, *supra* note 9.

[120] *Id.* at 346.

[121] Although local ordinances often lack the same robust legislative history associated with federal, or even many state, laws, the minutes of city council meetings can potentially provide this type of evidence. *See, e.g.*, Schindler, *Architectural Exclusion*, *supra* note 108 (discussing research into local legislative history to show that "the opposition to transit is often motivated by the desire to block access . . . . For example, wealthy white residents of suburban Atlanta, Georgia, suburban San Francisco, California, and Washington, D.C., have organized to oppose the locating of transit stops in their communities, at least in part because transit would enable people who live in poorer areas of the cities to easily access these wealthier areas") (citations omitted).

[122] *See* Schindler & Zale, *supra* note 9 (discussing the racially motivated history of single-family zoning).

[123] *See generally* Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 Calif. L. Rev. 945 (2006) (explaining implicit bias); Leigh Osofsky & Kathleen DeLaney Thomas, *Implicit Legislative Bias: The Case of the Mortgage Interest Deduction*, 56 U.C. Davis L. Rev. 641 (2022) (explaining that implicit biases impact legislative outcomes, and that passage of the mortgage interest deduction was a result of implicit racial biases and persistent beliefs regarding benefits of homeownership).

cities.[124] And as we and other scholars have discussed elsewhere, the fact that most Black and Latinx families are renters is not an accident; it is the result of a series of intentional governmental decisions that prevented them from accessing financing and purchasing homes.[125] Thus, the lack of notice to tenants disproportionately impacts Black and Latinx families. Whether notice ordinances that omitted notice to tenants were the result of explicit discrimination or implicit bias, or simply reflect the anti-tenancy default seen in many areas of the law, the result is that notice ordinances are affirmatively disempowering people of color in their communities.[126] The failure to include tenants in mailed notice requirements thus perpetuates and is reflective of long-standing class and race disparities.

E. Privileging the Economic Interests of Homeowners

In conversations with colleagues and acquaintances about the results of our empirical analysis, we heard variations on a similar response: that of course property owners are entitled to more notice than tenants, since they have a greater economic stake in the outcome of land use decisions because their property values may be affected—perhaps negatively—by zoning or other land use changes.[127] This response was also framed in terms of nearby property owners being more "locked in" by a rezoning or other land use change than nearby renters, who (in theory) can leave at the end of their lease term. While we recognize the intuitive appeal of these arguments, they

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[124] *See supra* note 5 (citing demographic statistics for renters).

[125] *See* Schindler & Zale, *supra* note 9, at 347 (noting the racial disparity "has deep historical roots: after the Civil War, many Black people in the south were tenant sharecroppers and did not own land, which limited their ability to build wealth. In the 20th century, racial zoning, racially restrictive covenants, exclusionary zoning, FHA policies, redlining, racial steering, and other legal and financial barriers to obtaining mortgages have limited and often prevented Black homeownership. . . . even today, people of color are much less likely to be approved for mortgages than white people, even when they share similar financial profiles. When they are approved, Black homeowners typically pay higher interest rates, mortgage insurance premiums, and property taxes, even as their homes are appraised at lower values than comparable homes owned by non-Black homeowners.") (citations omitted). Here, more research is needed into when Black people and other people of color affirmatively received notice of and had access to local public hearings. We know, for example, that some state constitutions prohibited Black people from voting, from holding public office, and from testifying in court against white people. *See, e.g.*, PBS Res. Bank, *Race-based Legislation in the North*, https://www.pbs.org/wgbh/aia/part4/4p2957.html [https://perma.cc/SNZ7-GVCT]. But there is little discussion of the role of local administrative hearings in this context.

[126] *See generally* Schindler & Zale, *supra* note 9 (describing how tenants as a group have less power and resources than homeowners, including because tenants are more likely to be from marginalized populations, including people who are younger, more transient, female, and racially minoritized).

[127] Although we have not found any academic articles arguing that property owners are specifically entitled to more notice than renters, the idea that homeowners are generally entitled to more, and get more, is deeply embedded in academia and the law itself. *See generally* Schindler & Zale, *supra* note 9 (discussing the myriad ways that the law provides a second-class status to tenants); Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. Pa. L. Rev. 1519, 1548–49 (1982) (discussing the Tiebout Hypothesis and homeownership).

do not stand up to scrutiny. They are neither accurate descriptive accounts nor valid normative takes.

Descriptively, whether owners are more "locked in" than renters does not depend solely on housing tenure status, but also on external factors, such as housing market conditions, and internal factors, such as the resident's job, income, savings, and personal attachments. In fact, some renters—particularly those who are lower-income, and often more likely to be women or people of color—may for all practical purposes, be more "locked in" to their current housing than some owners.[128] For example, for many renters, the sheer cost of moving can be a significant barrier to relocation, while for some owners—particularly high-income, investor owners—the transaction costs of selling may be small line items in their costs of doing business.[129]

The assumptions underlying the notion that owners have more at stake than tenants due to the possible impacts that land use decisions have on their property values are questionable. First, the empirical evidence is mixed on whether the most commonly opposed land use changes—such as increased density or decreased parking or rezoning to allow multi-family development—have negative impacts on neighboring property values of single-family homes; in fact, some recent studies have documented slight increases to neighboring property values from increased density nearby.[130] Second, property value, or equity, is not the only measure of what is at stake for a resident when a land use change is proposed: Many tenants are longstanding residents of their communities[131] and experience their neighborhoods on a day-to-day basis in ways similar to neighboring property owners.

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[128] *See* Jenny Schuetz, *Offering Renters Longer Leases Could Improve Their Financial Health and Happiness*, Brookings (Feb. 19, 2020), https://www.brookings.edu/articles/offering-renters-longer-leases-could-improve-their-financial-health-and-happiness/ [https://perma.cc/9DDQ-XQ5G] (finding that most renters remain at their rental for three or more years, with twenty percent of renters remaining for eight or more years).

[129] *See* Rebecca Gordon, *The Cost of Housing in America has Become Unbearable,* The Nation (Mar. 22, 2023), https://www.thenation.com/article/society/housing-cost-renting-homeless/ [https://perma.cc/VGN8-GQJS] (discussing the types of fees and costs renters face when relocating, and providing examples of how such costs can run into the hundreds or thousands of dollars); *FACT SHEET*: *Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters*, The White House (July 19, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters/ [https://perma.cc/2VV7-XU8Y] (discussing the White House plan to address excessive fees and costs "in the rental application process and throughout the duration of their lease").

[130] *See, e.g.*, Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction,* Urb. Aff. Rev. (2019) (finding that in Chicago neighborhoods where land was upzoned to allow for increased density and more housing was built, the property values of nearby residential units increased slightly); *see also* Joseph Gyourko and Raven Molloy, *Regulation and Housing Supply*, Nat'l Bur. Of Econ. Rsch. (Oct. 2014), https://www.nber.org/system/files/working_papers/w20536/w20536.pdf [https://perma.cc/98KM-3HVE] (discussing various studies coming to different results on how zoning affects property values).

[131] *See* Schuetz, *supra* note 128 (discussing the length of tenant residencies); *see also* Schindler & Zale, *supra* note 9, at 307 n.177 (noting how since "the majority of residential

Relatedly, even in scenarios where there are actual or perceived negative impacts on property values from proposed land use changes, the impacts on existing owners' property values is only one of many considerations in land use decisions. While it often is an outsized factor (see, e.g., the extensive literature on NIMBYism), law and policy dictate that other considerations also matter. For example, comprehensive plans are legally required long-term planning documents. Many states require local governments to create and regularly update their comprehensive plans, and land use decisions must be consistent with them.[132] Such plans often include a housing component and articulate the need for more housing, and in particular, more affordable rental housing.[133] Yet, time after time, in city after city, when opposition is voiced at public hearings for such developments (often by homeowners), decisionmakers fail to approve the land use changes, thereby not only undermining their own comprehensive plan requirements and goals, but also devaluing the interests at stake in the development of more housing.[134]

Privileging the interests of homeowners in this context also reflects a pervasive and widespread pattern of anti-tenancy, whereby the interests of tenants are treated as lesser than those of homeowners.[135] While there are certain contexts where housing tenure status—whether one is a homeowner or renter—is a necessary demarcation for legal rules,[136] historic feudal bias in favor of freehold estates and against leaseholds persists today, even in contexts where there is no longer a normatively justifiable basis for treating

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moves are within the same county . . . it is likely that many of the eighty percent of renters who move from their rental home after less than eight years simply move locally" within the same general community).

[132] ROBERTS, ET. AL., *supra* note 25, at § 2.9; §§ 2.13-14.

[133] *Id.*

[134] As well as would-be members of the community who are priced out currently. A full analysis of the failures of the land use process is beyond the scope of this Article, but as many land use scholars and policy advocates have recognized, the seemingly intractable patterns of NIMBYism in jurisdictions across the country can be traced at least in part to the fragmentation of local land use decision making and the (economically rational) self-interest current property owners (and decisionmakers) have to limit housing supply, both to increase the value of their assets (their home equity) as well as to ensure that there are not more new residents moving into the community and imposing additional costs (schools, fire, policy) than the taxes those new residents will pay, as well as to the inherent dynamics that preference the status quo in land use. *See, e.g.*, Eric Biber et al., *Small Suburbs, Large Lots: How the Scale of Land-Use Regulation Affects Housing Affordability, Equity, and the Climate*, 22 UTAH L. REV. 1 (2022); *see also* Jake Blumgart, *Public Hearings Thwart Housing Reform Where it is Needed Most*, GOVERNING.COM (Mar. 17, 2022), https://www.governing.com/now/public-meetings-thwart-housing-reform-where-it-is-needed-most [https://perma.cc/WJM7-RE6X] (quoting Katherine Levine Einstein: "[W]hen we think about the concentrated cost of new development, it makes sense that people who oppose new housing are going to care more about a particular proposal and show up. In contrast, you could be the most ardent pro-housing person in your city, but it's not a rational use of your time to show up to every three-hour planning board meeting about a two- or three-unit development. There are these diffuse benefits of building new housing, but they're unlikely to be as motivating as those concentrated costs.").

[135] *See* Schindler & Zale, *supra* note 9, at 272.

[136] *Id.* at 345 (discussing how mortgage law and landlord-tenant law are two such examples).

homeowners and renters differently. As one scholar has observed, "the virtues attached to property ownership (and property owners), and the presumed absence of such virtues among propertyless tenants, have remained remarkably similar over the years. It is perhaps one of the few core values that has persisted throughout the more than two centuries of U.S. society."[137]

Legal doctrine across a range of contexts thus reflects the elevated social status of freeholders—those with seisin—compared to non-freeholders, a distinction that is deeply embedded in the common law of property. So it should not come as a surprise that our empirical data show that notice requirements for land use hearings, which overwhelmingly require notice to property owners but not to similarly located tenants, also reflect this distinction. As with other examples of anti-tenancy, disparate notice requirements are problematic not simply because they use housing tenure status as a distinction, but because they fail to recognize the functional commonalities that underlie the housing tenure status of owner and tenant, particularly in terms of the functional roles of shelter and neighborhoods for both types of households.

F. Failure to Account for Differing Interests of Homeowners and Tenants

Finally, local governments may not provide notice to tenants because of assumptions that any concerns tenants might have about new development, or neighborhood changes, will mirror those of homeowners. Indeed, this may be true with respect to certain aspects of development and density, such as noise, parking availability, visual changes, and construction debris, given that these impact any nearby resident—whether owner or renter—in similar ways.[138] But the question of whether renters and homeowners share the same views about new development in their communities is more complicated.

The work of Katherine Einstein, Maxwell Palmer, and David Glick suggests that the *homeowners* who tend to participate in land use hearings are more likely to oppose new housing development than the broader community; yet, because these homeowners—who tend to be older and wealthier than the surrounding community—are the ones participating, their views are amplified, which leads to delays in development and lessens housing production overall.[139] However, there has been much less work done on the views of *renters* vis-à-vis new development. One recent empirical study

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[137] Peter Dreier, *The Status of Tenants in the United States*, 30 Soc. Probs. 179, 181 (1982).

[138] Although, one might ask, if homeowners are invited to share views on those issues, why shouldn't renters also get to express their concerns; one benefit of public hearings is the opportunity to speak and be heard—to feel as though public officials are listening to you and your concerns. *See generally* Brian Adams, *Public Meetings and the Democratic Process*, 64 Pub. Admin. Rev. 43 (2004); Greg Brown & Henry Eckold, *An Evaluation of Public Participation Information for Land Use Decisions: Public Comment, Surveys, and Participatory Mapping*, 25 Int. J. of Justice & Sustainability 85 (2019).

[139] Einstein et al., *supra* note 12, at 288, 298.

suggests that, at least in cities where rents are high, tenants oppose market-rate housing development to a similar extent that homeowners do.[140] This finding might lead to concerns that providing notice to tenants would exacerbate opposition to development at these hearings, potentially resulting in even fewer housing units being approved and constructed.[141] However, in less expensive cities—and even in expensive cities where affordable rental housing, rather than market-rate rental housing, is being proposed—the study indicates that the views of renters appear to diverge from those of homeowners. In these instances, renters, unlike homeowners, are more likely to support new development.[142] The study's author, Michael Hankinson, found that "while homeowners exhibit a constant level of NIMBYism across all housing markets, renters do not. Instead, renters on average express high support for new housing citywide and no sensitivity to the nearness of new development. However, in cities where housing prices are high, renters display NIMBYism toward market-rate housing at a level on par with homeowners. This renter NIMBYism is strongly correlated with concerns over high housing prices, suggesting that renters feel economically threatened by new nearby developments."[143]

Notice of land use hearings is generally only given to neighbors within a statutorily defined distance (typically a few hundred feet) of the proposed development or change in use.[144] Thus, based on the findings of the Hankinson study, it is possible that in high-cost cities, renters receiving notice of such hearings would oppose the changes, especially if the hearing were addressing a proposal for new market-rate housing.[145] Again, this

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[140] Michael Hankinson, *When Do Renters Behave Like Homeowners? High Rent, Price Anxiety, and NIMBYism*, 112 Am. Pol. Sci. Rev. 473, 474 (2018) (noting that "unlike homeowners, there has been little research on the attitudes and political behavior of renters who compose the majority of these cities' electorates"); *see also* Roderick M. Hills Jr. & David Schleicher, *Building Coalitions Out of Thin Air: Transferable Development Rights and "Constituency Effects" in Land Use Law*, 12 J. Legal Analysis 79, 80 (2020) ("Although homeowners, the traditional source of NIMBY (Not in My Backyard) politics, are the most important opponents of new construction, renters in big cities are [sic] also frequently join the opposition, motivated by concerns about displacement or the externalities associated with new construction.").

[141] Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 Fordham L. Rev. 1083, 1142 (2021). *See also infra* Part IV (discussing concerns with expanding notice to tenants).

[142] Hankinson, *supra* note 140, at 483.

[143] *Id.* at 474; *see also* Christopher S. Elmendorf, *Beyond the Double Veto: Housing Plans As Preemptive Intergovernmental Compacts*, 71 Hastings L.J. 79, 91 (2019) ("[T]hough renters are generally more pro-development than homeowners, renters in expensive cities have classic NIMBY preferences. They oppose projects in their neighborhood, even though they would favor citywide measures to increase housing development. Alas, their neighborhood-level preferences are likely to be more consequential for new development (or its absence), since upzoning and project-approval decisions tend to be made on a neighborhood-by-neighborhood basis, with councilmembers deferring to one another on projects in their districts.").

[144] *See supra* Part I (discussing variation in radius requirements in notice ordinances).

[145] *See* Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 106 Iowa L. Rev. 2339, 2366 (2021) ("The increasingly anti-development politics among urban renters sharply illustrates the necessity of persuasion. Renters lack the most direct financial

opposition might be based on tenants' fear that new housing could cause their own rents to rise, or could lead to their displacement.[146] However, outside of high-cost cities, the study's findings indicate that renters generally support new affordable and market-rate housing development (and even in high-cost cities, renters generally support new market-rate development).[147] Thus, if renters were to receive notice of hearings, they may be more likely to attend and voice that support for housing developments in their neighborhood (which homeowners generally oppose).[148] While additional empirical research is needed to be able to say with certainty what effect greater tenant participation would have on development, the limited existing data indicate that the views of tenants differ from those of owners. Thus, an assumption that owners represent tenant interests in all cases fails to justify the prevailing pattern of failure to provide notice to tenants.

IV. The Way Forward: Providing Notice to Tenants

This Part concludes by unpacking the arguments in favor of providing tenants with notice of land use hearings and addressing the risks of doing so.

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incentives to oppose development and the legal framework governing redevelopment in urban neighborhoods has not significantly changed in recent decades, yet ideological shifts have made tenants an increasingly potent force against development.").

[146] Tanvi Misra, *San Francisco is so Expensive Even Renters Can Be NIMBYs*, Bloomberg (Feb. 9, 2017), https://www.bloomberg.com/news/articles/2017-02-09/why-nimby-renters-obstruct-new-housing [https://perma.cc/QB63-62NS].

[147] *But see* Chan Zuckerberg Initiative, *The California Dream: A New Narrative to Engage Californians on Housing Affordability*, https://chanzuckerberg.com/wp-content/uploads/2022/01/CZI-The-California-Dream-Housing-White-Paper.pdf [https://perma.cc/AC9L-9XQM] ("Most renters and owners we heard from expressed that they are wary of affordable housing solutions in their neighborhood, citing worries that it will result in crime, noise, litter, illegal dumping, and a general lack of property upkeep."); Clayton Nall, Chris Elmendorf & Stan Oklobdzija, *Folk Economics and the Persistence of Political Opposition to New Housing* (November 15, 2022), https://ssrn.com/abstract=4266459 [https://perma.cc/QW43-PU2T] (discussing the "supply skepticism" that persists in both homeowner and renter views regarding housing development, despite the economic evidence that increasing housing supply lowers housing costs: "[W]hile nearly all renters and even a majority of homeowners say they would prefer home prices and rents in their city to be lower in the future, support for state preemption of local land use restrictions depends on beliefs about housing markets. 'Supply skepticism' among renters undermines their support for home construction.").

[148] *See* Hankinson, *supra* note 140. Again, the limited research on this question suggests that, at least in some cities, renters would support land use changes like rezonings to allow more multi-family housing, or proposals that include below-market-rate units. The reason for this is, at least in part, because those types of changes would contribute to a greater supply of rental housing, including lower-income housing. That, in turn, could help address rental housing supply shortages and dampen increases in rental housing costs. Michael Lewyn, *Zoning and Land Use Planning Will Zoning Fix Itself?*, 50 Real Est. L.J. 453, 464–65 (2021) ("Renters' willingness to accept low-income housing suggests that perhaps renter NIMBYism is driven less by abstract concerns about community character than about fears of displacement by more affluent tenants. Even though renters may believe in the abstract that more housing equals lower rents, the same renters may also believe that a new building in their own neighborhood (a) will make the neighborhood more attractive, and thus increase local rents and/or b) will be such a miniscule addition to the citywide housing supply that it will not reduce citywide rents.").

Part IV.A begins with a discussion of why tenant notice is required as a matter of equity, and how it can operate as a mechanism to promote economic efficiency. It then discusses the due process argument tenants may have if there is a proposed change to the building in which they reside when they do not receive notice. Part IV.B considers the risk that providing notice to tenants may, under certain circumstances, exacerbate NIMBYism and weighs this risk against our equity and economic efficiency arguments. In Part IV.C, we highlight a model ordinance (set out in full in Appendix B), which draws on one of the few jurisdictions (San Diego) that has a notice-plus ordinance providing notice to tenants on par with that provided to owners, and we explain how this type of ordinance could be readily adapted by many other localities at low cost and with minimal logistical friction.

A. Reasons to Provide Notice to Tenants

1. Equity

The land use process has historically been exclusionary.[149] In recent years, however, local and state governments have been engaged in a long-overdue reckoning to assess land use laws and regulations for implicit and explicit bias and advance reforms to further more equitable procedures and outcomes. For example, backers of several state laws recently enacted in California, such as S.B. 9, have specifically identified the need to address racial and economic inequities perpetuated by existing local land use processes as part of the reason for the state reasserting control over certain aspects of the development process.[150] Many cities have also recognized the need for reforms: to give just two of many examples, Portland, Oregon's 2035 Comprehensive Plan lists priorities, including "[i]ntentionally engag[ing] under-served and underrepresented populations in decisions that affect them" and seeking to "prevent repetition of the injustices suffered by communities of color throughout Portland's history";[151] and Louisville, Kentucky has been in the process of revising its Land Development Code since 2020 using an equity lens.[152] And in the context of land use hearings

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[149] *See supra* note 125 and sources cited therein.

[150] Linna Zhu & Sarah Gerecke, *Will California's New Zoning Promote Racial and Economic Equity in Los Angeles?*, Urban Institute (Feb. 10, 2022), https://www.urban.org/urban-wire/will-californias-new-zoning-promote-racial-and-economic-equity-los-angeles [https://perma.cc/QEZ4-8HTX].

[151] *Portland's Vision for Growth and Progress*, Portland.gov, https://www.portland.gov/bps/planning/comp-plan-2035/about-comprehensive-plan [https://perma.cc/VK4K-P87L]; *see also Seattle 2035 Comprehensive Plan: Managing Growth to Become an Equitable and Sustainable City*, City of Seattle 7 (Nov. 2020), https://perma.cc/A722-APHC ("This Plan encourages continued broad public participation in decisions that affect all aspects of the city.").

[152] As part of this project, Louisville created a website documenting the racism in the history of its code. *See* Land Development Code Reform, https://louisvilleky.gov/government/planning-design/land-development-code-reform [https://perma.cc/4QU7-ALJZ].

specifically, a number of local governments have sought to continue remote access that began during COVID lockdowns because it has allowed for broader access to public hearings by members of the community who face barriers to attending in person.[153]

While we commend such efforts to make land use processes and laws more inclusive, many local governments have overlooked a more fundamental barrier to members of underrepresented communities becoming more involved: they are not invited. As more cities confront the history of racism and white supremacy in the formation and enforcement of their laws,[154] one relatively straightforward, yet overlooked, way to bring more parity to the land use decision-making process is to include tenants as mandatory recipients of notice for certain proposed land use changes. Expressly providing direct notice of land use hearings to tenants is an unexamined tool to foster greater equity in communities. By expressly inviting those who rent their homes to hearings, tenants are given voice and an opportunity to be heard. As discussed above, because the majority of Black and Latinx households are renters, inviting them to public hearings might increase the diversity of those attending and commenting at hearings.[155] While demographic diversity itself does not ensure a diversity of viewpoints, inviting tenants to express their views about land use and development in their neighborhood creates space for perspectives that might otherwise be ignored. Indeed, one renter in a city that affirmatively invited renters to a land use-based focus group stated, "I have rented in Newton for more than 20 years and have never participated before. Typically, people in Newton get involved through their children's school. I do not have kids and always felt disconnected. I heard about this focus group through my landlord and just the fact that the City reached out directly to renters, like me, is why I am participating now."[156]

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[153] *See, e.g.*, *Current Hearing Policies*, City and County of Denver, https://denver.prelive.opencities.com/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Board-of-Adjustment-for-Zoning/Hearing-Process [https://perma.cc/QJ36-T38R] (stating ongoing policy of allowing members of the public to attend meetings via Zoom); *see also* Scott Beyer, *The Case for Making Virtual Public Meetings Permanent*, Governing (Sep. 1, 2020), https://www.governing.com/now/The-Case-for-Making-Virtual-Public-Meetings-Permanent.html [https://perma.cc/FU8T-8LXZ]. *But see* Katherine Levine Einstein et al., *Still Muted: The Limited Participatory Democracy of Zoom Public Meetings*, 59 Urb. Affs. Rev. 1279 (2022) (conducting a study of online public hearings and finding that demographically, "participants in online forums are quite similar to those in in-person ones" and "similarly overwhelmingly opposed to the construction of new housing").

[154] *See generally* Richard Rothstein & Leah Rothstein, Just Action: How to Challenge Segregation Enacted Under the Color of Law (2023) (discussing ways that cities are confronting laws with racist histories).

[155] We say "might" here because there are a number of other structural barriers in addition to lack of notice, that make it less likely that renters might attend public hearings. These include the timing of the hearings, which are often in the evenings (sometimes late into the evenings), the lack of childcare at the hearings, and hearings being conducted only in English, for example.

[156] Katherine Levine Einstein et al., *Public Participation*, A Research Agenda for US Land Use and Planning Law, at 102 (John Infranca & Sarah Schindler eds., 2023).

Of course, there is no way to ensure that expanding notice to tenants will result in a more equitable process. However, providing notice to tenants on par with what property owners already receive is an intervention that opens up the opportunity for participation and transparency: two of the core goals of good governance.[157] At the least, notice creates the opportunity for more tenants—who are often younger, working-class, and people of color—to make their voices heard. Further, the invitation to contribute one's voice to the political process results in people "feeling heard," and feeling more satisfied with the outcome, even when their views are not in fact followed, thereby potentially fostering a virtuous cycle of more tenant engagement in the future.[158] Thus, while establishing causation between more notice to tenants and better and more inclusive land use outcomes may not be possible, reforming land use ordinances to provide such notice is a worthwhile move to advance the deontological equity goals of cities.

2. Economic Efficiency

A related yet distinct reason to provide notice to tenants concerns economic efficiency. Whereas the previous sub-part identified how tenant notice can operate as a mechanism for achieving greater equity of opportunity for participation in local land use decision-making, this sub-part highlights how tenant notice also has the potential to lead to more efficient outcomes. By "efficiency," we mean land use outcomes or processes wherein the benefits exceed the costs.[159] While our proposed reform would broadly apply to give direct notice to tenants about a broad swath of land use actions—from a neighbor's variance application to build an addition, to a commercial property owner's rezoning application to convert a building from office to warehouse use—we focus here on the efficiency implications of our tenant notice proposal for a particular and significant category of land use decisions: public hearings relating to housing development. Specifically, we suggest that expanding notice to tenants could lead to greater support for the creation of more housing.[160]

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[157] *See, e.g.*, *Recommendation of the Council on Open Government*, Organization for Economic Co-operation and Development (Dec. 13, 207), https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0438 [https://perma.cc/EX9Z-PRG6].

[158] *See, e.g.*, Angela T. Howe, *The U.S. National Ocean Policy: One Small Step for National Waters, but Will It Be the Giant Leap Needed for Our Blue Planet*?, 17 Ocean & Coastal L.J. 65, 97 (2011) ("engaging those stakeholders will make the process more informed and the outcome more likely to be acceptable to locals than if their input was excluded").

[159] *See, e.g.*, Cornell Law School, Legal Information Institute (Sep. 2022), https://www.law.cornell.edu/wex/economic_efficiency [https://perma.cc/38RN-UHYE] ("Economic efficiency refers to a state in which the allocation of resources yields the greatest net benefit (i.e., the most efficient result).").

[160] We cannot definitively state that expanding notice to tenants will result in this outcome, since it would be nearly impossible to tease out the correlative effect that notice to tenants has on the overall land use approval process or outcomes of that process: it is not as simple

Numerous studies have documented the outsized effect homeowner opposition and NIMBYism have on local land use decisions,[161] with the result that we now have a critical housing shortage crisis in this country. Studies have found that we need to build over four million homes just to keep up with current population trajectories.[162] Economists generally agree that this undersupply of housing is a significant drag on our economy. For example, businesses cannot hire employees because there is not housing available for them.[163] Similarly, there are dramatic environmental costs of sprawl, when development is forced out to the unincorporated fringes of metropolitan areas where there are fewer veto points in the land use development process.[164] Further, the lack of sufficient housing contributes to and complicates responses to the problems of homelessness and housing insecurity.[165] Critically, community members do not bear the burdens of

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as looking at the existing notice-plus jurisdictions and asking whether they in fact have better land use outcomes—whether that is defined as more housing units, more affordable units, less litigation over housing, or any other number of ways that "better outcomes" might be defined in this context. While we think that the amount of housing cities provide might be one good proxy for the success of their land use planning and policies, there are many different factors that go into whether housing is built in a given location, including the details of the localities' zoning laws, the existence of state environmental regulations, and the local and national market, just to name a few. *See* M. Nolan Gray, *Cancel Zoning*, The Atlantic (June 21, 2022), https://www.theatlantic.com/ideas/archive/2022/06/zoning-housing-affordability-nimby-parking-houston/661289/ [https://perma.cc/7YKC-JU8K] (arguing zoning ordinances, including those limiting the construction of higher density housing or requiring minimum lot sizes, are a key driver of the housing shortage); Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 Hastings Envt'l L.J. 21, 22 (2018) (finding that lawsuits under the California Environmental Quality Act are often brought as a strategy to oppose new housing construction, exacerbating the housing crisis in California); Bloomberg, *How the 'Rise of the Rest' Became the 'Rise of the Rents'*, Bloomberg (Sep. 8, 2022), https://www.bloomberg.com/news/features/2022-09-08/why-did-housing-costs-explode-during-the-pandemic?re_source=postr_story_0 [https://perma.cc/Q7BK-T4PM] (tying affordable housing shortages to national market trends resulting from the Covid-19 pandemic and growing large-investor involvement in the U.S. housing market).

[161] *See, e.g.*, McNee & Pojani, *supra* note 19 (documenting NIMBY dominance and influence at hearings regarding housing development in San Francisco, which already faces a significant housing crisis); Scally & Tighe, *supra* note 19 (presenting findings regarding the characteristics and results—including delays, project changes, and denials—of opposition to housing development).

[162] Adam Barnes, *The US is Short More Than 4 Million Homes: Analysis*, The Hill (June 23, 2023), https://thehill.com/business/4064586-the-us-is-short-more-than-4-million-homes-analysis/ [https://perma.cc/AM5P-5VLX].

[163] *See, e.g.*, Robert Davis, *A Typical Home in Vail, Colorado, is Over $1 Million, Leaving Workers With Few Living Options. 4 People Take Us Inside Their Housing Crisis as Home Prices in Tourist Towns Across the Country Spike.*, Business Insider (Feb. 20, 2023), https://www.businessinsider.com/vail-colorado-affordable-housing-employees-2023-2 [https://perma.cc/Z5FM-PU4C]; Marissa J. Lang, *In Martha's Vineyard, Even the Doctors Can't Afford Housing Anymore*, Washington Post (Sept. 16, 2022), https://www.washingtonpost.com/dc-md-va/2022/09/16/marthas-vineyard-housing-rentals-crisis/ [https://perma.cc/J3N8-MT68].

[164] *See, e.g.*, Francesca Ortiz, *Biodiversity, The City, and Sprawl*, 82 B.U. L. Rev. 145 (2002).

[165] Jennifer Ludden, *Why Can't We Stop Homelessness? 4 Reasons Why There's No End in Sight*, NPR (July 12, 2023), https://www.everand.com/article/658643184/Why-Can-t-We-Stop-Homelessness-4-Reasons-Why-There-s-No-End-In-Sight [https://perma.cc/5V59-7P2D] (identifying reasons why the unhoused population continues to grow due to, among other

the downstream impacts of housing shortages equally; as the environmental justice literature demonstrates, historically marginalized communities, lower income households, and households of color are disproportionately affected by the negative impacts of sprawl, housing insecurity, and homelessness.[166] While this critical housing shortage is multi-causal, the status quo in most jurisdictions—of only homeowners getting direct notice of land use hearings—contributes to the disproportionate amplification of homeowner opposition to needed development.

Thus, from the perspective of economic efficiency, the benefits of providing notice to tenants in a manner similar to that provided to property owners—i.e., its potential effect as a counterbalance to the dominance of NIMBYism and the housing-positive land use decisions that could result—far outweigh the (minimal) additional monetary costs of providing notice to tenants. While acknowledging there are empirical uncertainties about what impact notice to tenants would have on housing outcomes,[167] we would emphasize what is certain: scholars and policymakers across the political spectrum have recognized that the status quo approach to land use decision-making has failed, leaving critical housing shortages in almost every city and county

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reasons, affordable housing shortages, despite improvements in connecting unhoused people with housing).

[166] *See, e.g.*, Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 Cornell L. Rev. 1001, 1001 (1993) (discussing evidence on siting of LULUs (locally undesirable land uses) and how the functioning of real estate markets post-siting may undercut environmental justice goals); *see also* Kellen Zale, *Stadiums and State Environmental Policy Acts, in* Sports Stadiums and Environmental Justice, at 72 (2023) (discussing how structural inequities and market forces have contributed to low-income neighborhoods and communities of color being "disproportionately burdened with environmental disamenities (such as polluting facilities and freeways) as well as disenfranchised from the decision-making processes that have produced these development patterns"); *see also* Jeffrey Olivet et al., *Racial Inequity and Homelessness: Findings from the SPARC Study*, 693 Annals of Am. Acad. Pol. & Soc. Sci. 82, 83 (2021) (discussing racial disparities in populations that experience homelessness).

[167] As noted in Part III, tenants do not view housing or land use decisions in a monolithic way; thus, there is no guarantee that including more tenants in the land use hearing process would automatically lead to the development of more housing in all jurisdictions. *See supra* Part III.F (discussing research findings on factors affecting tenant support for different types of housing development). Further, not every land use hearing relates to the development of housing; a variance determination might be about whether a local restaurant can add a patio, or whether a homeowner can build a driveway close to the property line. There is also no guarantee that land use officials will give as much weight to the comments of tenants as they do the comments of homeowners. Indeed, the homevoter hypothesis suggests that local elected officials tend to make decisions that mirror the desires of local homeowners. Further, most local elected officials are themselves homeowners, rather than renters, and thus may be more likely to share the biases (implicit or otherwise) of other homeowners. Local officials may also be more responsive to homeowner preferences because homeowners are likely wealthier and otherwise more politically engaged than tenants, so their preferences are more likely to affect officials' re-election prospects through things like fundraising, volunteer engagement, and voter turnout. *See supra* note 138 and accompanying text. Thus, even if tenants were to be notified and show up to public hearings, and voice opinions that differ from homeowners—and even if they did so in greater numbers than homeowners—there is no guarantee that decision-makers would reach outcomes that reflect the majority of public opinion voiced. *See supra* Part I.

across the country, exacerbating wealth inequality, and contributing to racial segregation.[168] Thus, while notice to tenants might only result in an incremental recalibration, the provision of broader notice is a readily implementable tool that, together with other reforms, could provide a counterbalance to homeowner anti-development NIMBYism that has had an outsized and negative economic impact in communities across the country.[169]

3. Due Process

In certain circumstances, tenants could argue that their failure to receive notice constitutes a violation of the Due Process Clause of the U.S. Constitution. *Mathews v. Eldridge* sets forth a test that is used to determine how much notice is due in a given situation.[170] It requires balancing the administrative burden to the local government that the additional process would require against the need of the people who want to receive notice.[171] In the context of mailed notices to tenants of land use hearings, because a lease constitutes a property interest that is subject to deprivation,[172] tenants would likely have the basis for a due process claim during the term of their lease. A tenant's due process claim might especially carry weight if they fail to receive notice of a proposed land use change to the property in which they live, which would cause them to lose their ability to continue living there.

For example, assume that the owner of a rental building (particularly an affordable housing rental property) is seeking rezoning or other approval to convert the building to condominiums or a hotel. In that case, the interests of tenants in attending the hearing and voicing their interests—to continue living in their home—might be viewed as weighing more heavily than the administrative burden that sending notices to those tenants would carry.[173]

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[168] *See, e.g.*, Adewale A. Maye & Kyle K. Moore, *The Growing Housing Supply Shortage Has Created a Housing Affordability Crisis*, Economic Policy Institute (July 14, 2022), https://www.epi.org/blog/the-growing-housing-supply-shortage-has-created-a-housing-affordability-crisis/ [https://perma.cc/CT2X-QAWF]; Vanessa Brown Calder, *Zoning, Land-Use Planning, and Housing Affordability*, Cato Institute (Oct. 18, 2017), https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability [https://perma.cc/KB4A-5LUC].

[169] Although Hankinson's research suggests some instances in which renters are also anti-development, a study in Newton, Massachusetts revealed something different. There, the city held focus groups with groups of people typically underrepresented in public hearings. One group was with renters. The authors found that "[s]upport for housing was significantly higher in these focus groups: notably, among renters and young people, all comments expressed support for greater housing density." Einstein, *supra* note 156, at 101.

[170] Mathews v. Eldridge, 424 U.S. 319, 321 (1976).

[171] *Id.*

[172] *See, e.g.*, Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 322 (2002); Alamo Land & Cattle Co., Inc. v. Arizona, 424 U.S. 295, 303 (1976); Devines v. Maier, 665 F.2d 138, 141 (7th Cir. 1981).

[173] In other contexts, the Supreme Court has determined that mailed notice is inexpensive, efficient, and not a serious burden. *See, e.g.*, *Mullane*, 339 U.S. at 307–19 (in discussing "sufficiency of notice to beneficiaries on judicial settlement of accounts," finding that "the mails today are recognized as an efficient and inexpensive means of communication . . . postal

And yet in many cities, there is no guarantee that those tenants will receive notice of the hearing: in fact, in a significant majority of the cities that we surveyed, there is no requirement for notice to be mailed to the property address, or to tenants, occupants, or residents at the property that is the subject of the proposed land use change.[174] A city could readily remedy this problem by doing what several of the notice-plus ordinances we identified already do: simply requiring that notice be mailed to tenants (addressed to "Occupant" or "Resident") at the property address for the property that is subject of the proposed land use change.[175] Alternatively, a notice ordinance could be more narrowly tailored to provide notice to tenants for specific types of proposed land use actions where there is the potential for the complete loss of a tenant's property interest; for example, San Francisco has a specific notice provision that applies in instances where residential units will be removed.[176] As discussed in Part III, and detailed in the model ordinance below, the cost and logistical effort of mailing such notice would be *de minimis* in most cases. While a city might also argue that it would bear an additional administrative burden of having more people attend the hearing, which, in theory, might require more space or would take up more of the public officials' and staff's time, this burden does not likely outweigh the benefit that the tenants would receive from having an opportunity to speak.

Of course, a city might argue that direct notice is not necessary to comply with due process; rather, posted or published notice should suffice. However, as noted earlier, fewer people read newspapers now than in the past, and the communicative value of posted signage is dubious.[177]

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notification . . . would not seriously burden the plan."); Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 490 (1988) ("We have repeatedly recognized that mail service is an inexpensive and efficient mechanism . . . .").

[174] The twelve cities with notice-plus ordinances all appear to require notice be mailed both to tenants (or occupants) in the surrounding radius and to tenants (or occupants) at the subject property, although the ordinance language on the latter point is ambiguous for two of the notice-plus cities (Louisville, Ky. and Anchorage, Alaska). *See* Appendix A (discussing these ambiguities). Of the remaining cities we surveyed, only eight other cities (Durham, N.C.; New Orleans, La., Bakersfield, Cal., Raleigh, N.C.; Memphis, Tenn.; Washington, D.C.; Nashville, Tenn.; and New York, N.Y.) required notice be mailed to a tenant (or occupant or resident) at the property that is the subject of the land use hearing—and several of those eight cities only require this notice in limited circumstances or for limited sub-sets of tenants. *See* Appendix A.

[175] *See* Appendix A (tabulating notice-plus cities that provide for this); *see also* Appendix B (providing model ordinance language providing for this).

[176] *See* S.F., Cal., Planning Code § 311(c)(2) (2023) ("When removal or elimination of an authorized or unauthorized residential unit is proposed, the Applicant shall provide notice as required in this Section 311 [which requires notice to tenants of the subject property], and shall include contact information for the appropriate City agency or resource for assistance in securing tenant counseling or legal services, as applicable. The Applicant shall post a notice of the application at least 30 inches by 30 inches in a conspicuous common area of the subject property . . . .") Although, as noted earlier, San Francisco's "notice plus" provision is somewhat ambiguous, this provision in their code is well-protective of tenants.

[177] *See supra* Part III.B.

Further, most scholars agree that actual notice is the "best" form of notice.[178] Of the three methods typically used for land use hearings, actual notice is most likely to be attained through mailing to a known address. At the same time, ideal notice is not required by law.[179] Rather, the government must simply provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[180] Thus, a city might argue that the alternate forms of notice—posting or publication—are constitutionally sufficient.

While recognizing that prevailing on a due process claim for failure to provide mailed notice to tenants is not a legal certainty, and the due process argument would be most salient in the sub-set of scenarios detailed above, the potential for legal action on due process grounds is yet another reason that local governments would be well-advised to adopt reforms to their notice requirements.

B. Risks of Providing Notice to Tenants

As noted at the outset of this Article, more public participation in land use hearings does not necessarily equate to better public participation—or better outcomes.[181] For example, because the scale of land use decision making is generally at the local (or sub-local) level, public participation in land use hearings can lead to negative externalities and elevate parochial needs over regional needs. Further, opportunities for public participation often function as a veto power—where elected officials will deny development permits in order to retain the favor of their (most vocal) constituents. Thus, the land use system often fails to function in an optimal way, giving too much power to the status quo bias of existing homeowners. Further, as discussed in Part III, tenants do not view housing or land use decisions in

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[178] *See, e.g.*, Robin J. Effron, *The Invisible Circumstances of Notice*, 99 N.C. L. Rev. 1521, 1528 (2021) (describing "[i]n-hand, personal service" as sitting "atop the hierarchy of preferred notice methods").

[179] For example, even in the context of eminent domain, the Supreme Court has stated, "[d]ue process does not require that a property owner receive actual notice before the government may take his property." *See* Jones v. Flowers, 547 U.S. 220, 226 (2006). Thus, a city might argue that if a property owner need not receive actual notice that the government will be taking their property, the city need not provide mailed notice to tenants about changes to nearby properties—or even to the property in which they live. That said, the government's ability to take private property for public use with just compensation—while indisputably involving a significant property interest of the owner—arguably involves less opportunity for public participation than the typical local land use decisions.

[180] *Mullane*, 339 U.S. at 314.

[181] Vicki Been & Anika Singh Lemar, *The Law's Effects on Public Participation*, A Research Agenda for U.S. Land Use and Planning Law (2023) (discussing public participation and its problematic elements); Vicki Been, *City NIMBYs*, 33 J. Land Use & Env't L. Rev. 217 (2018); Edward J. Sullivan, *Public Participation: Planning's Conundrum*, 43 Zoning & Planning L. Rep. no. 4, (2020).

a monolithic way, and limited empirical evidence indicates that in a subset of locations—specifically, gentrifying neighborhoods in expensive cities—tenants tend to behave like homeowners and oppose market-rate housing (although the same studies indicate these tenants still support affordable housing).[182] Thus, there is a risk that providing notice to tenants, particularly the sub-set of tenants in these wealthier locations, could exacerbate NIMBYism and affordable housing shortages, if it means that such tenants would be more likely to attend hearings and oppose development. And given broader concerns with public participation as a veto point in the land use context,[183] some readers might wonder whether anyone—owner or tenant—should receive individualized mailed notice of proposed land use changes.

While recognizing the logic underlying these concerns,[184] there are both pragmatic and normative reasons for continuing (and expanding to tenants) the provision of direct notice for the time being. In part, this is because we are cognizant of the entitlement effect:[185] Generally, leveling down by removing rights or entitlements that have already been granted is more difficult than leveling up and granting additional rights or entitlements to those who are currently excluded.[186] This principle can be seen playing out in recent years in the vigorous pushback of local governments to state level reforms in California that have been perceived as eroding local control

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[182] *See* Hankinson, *supra* note 140 (noting that overall, tenants tend to support more housing city-wide, and more affordable housing).

[183] *See supra* note 172 (citing sources articulating these types of concerns regarding public participation).

[184] A full discussion of the benefits and harms of public participation is beyond the scope of this Article. However, it is worth noting that some proposed reforms to limit public participation may be appropriate responses to the documented problems that flow from over-participation, while others raise significant concerns of their own. For example, states like California and Washington have recently enacted reforms focused on facilitating specific types of needed development (such as multi-family housing near transit), or have enacted state level legislation to eliminate veto points caused by too much public participation or too much local discretion. *See* Nall et al., *supra* note 147 (discussing examples of such state level reforms). But other states—like Florida— have enacted legislation that instead ensures that any type of development—from concrete plants near low-income communities to high-end subdivisions on wetlands—is insulated from disapproval. They have done this by effectively eliminating the likelihood of legal challenges to new development by requiring that the party who challenges and loses litigation over a local government comprehensive plan amendment pays the winner's fees. Notably, under Florida law, a comprehensive plan amendment is a prerequisite to most development approvals. As one local newspaper put it, "Citizens and public interest groups could still challenge amendments, but they would face financial ruin if they lose by getting stuck with the bills run up by local governments and by developers who intervene to defend amendments." *See* Paul Owens, *Comp-Plan Scheme Will Muzzle Floridians Who Challenge Bad Development*, Pensacola News J. (Mar. 26, 2023), https://www.pnj.com/story/opinion/contributors/2023/03/26/hb359-sb-540-will-muzzle-floridians-who-challenge-bad-development/70029508007/ [https://perma.cc/GL7P-EL57]; *see also* S.B. 540, 2023 Leg. (Fla. 2023) (signed into law).

[185] *See, e.g.*, Elizabeth Hoffman, *Entitlement, Rights, and Fairness: An Experimental Examination of Subjects' Concepts of Distributive Justice*, 14 J. Legal Stud. 259 (1985).

[186] *See* Deborah L. Brake, *When Equality Leaves Everyone Worse Off: The Problem of Leveling Down in Equality Law*, 46 Wm. & Mary L. Rev. 513, 513 (2004); *see also* Tracy A. Thomas, *Leveling Down Gender Inequality*, 42 Harv. J.L. & Gender 177, 178 (Winter 2019).

and local voice over certain land use decisions.[187] Indeed, in some jurisdictions, local governments are considering providing even more notice to more property owners, by enlarging the geographic radius for mailed notice or expanding the forms in which notice goes out to include text alerts and emails, in addition to mail.[188] Thus, while proposals for leveling down public participation (by everyone) in the land use context raise important points, the political reality is not favorable to moves that decrease voice. Our proposed reform of leveling up the voices of tenants to provide parity with owners is not only more politically feasible, but it also serves to advance some of the very same goals of the politically contested leveling down proposals: dampening the anti-development impact that homevoters often have, and putting in place conditions to make it more likely that needed housing receives public support. Thus, while broader future reforms to public participation should remain on the table, we argue for reforming land use hearing procedures to provide notice to homeowners and tenants on equal terms.

C. Model Ordinance

In Appendix B, we provide a model ordinance that local governments could adopt in order to advance the goal of ensuring that tenants receive notice of land use hearings.[189] This model ordinance is drawn from that of

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[187] Ben Christopher, *'Godzilla Next Door': How California Developers Gained New Leverage to Build More Homes*, CAL MATTERS (June 5, 2023), https://calmatters.org/housing/2023/06/california-builders-remedy/ [https://perma.cc/2QZW-S9YX]; Kriston Capps, *Housing-Strapped States Reach for a Fraught Fix: The 'Builder's Remedy'*, BLOOMBERG (May 8, 2023), https://www.bloomberg.com/news/articles/2023-05-08/the-chaotic-lawsuit-laden-way-to-fix-a-housing-crunch [https://perma.cc/9PZG-XKUB].

[188] Luz Moreno-Lozano, *New Building Under Construction on Your Block? Austin Could Change How You're Notified*, KUT 90.5 (July 3, 2023), https://www.kut.org/austin/2023-07-03/new-building-under-construction-on-your-block-austin-could-change-how-youre-notified [https://perma.cc/B57R-75WP].

[189] Alternatively, our proposed reforms to notice could be enacted at the state level, with the language in our model ordinance serving as the basis for a state statute. While there are pros and cons to both approaches, reforming notice requirements at the local, rather than state, level is likely to be more politically feasible for a number of reasons. Adopting or amending a notice ordinance at the local level is a legislative action, requiring a majority vote of the local legislative body (typically a city council in most cities), with a mean of 11.6 members in the 25 most populous cities. *See* The City of Columbus Charter Review Committee Final Report, https://www.columbus.gov/files/sharedassets/city/v/1/city-council/documents/charter-review-commission-2022/2016-charter-review-committee-final-report.pdf [https://perma.cc/FD5D-75UM] (noting the large variation, however, in the size of city councils in U.S. cities); *see also* Kellen Zale, *Compensating City Councils*, 70 STAN. L. REV. 839, 846 (2018) (discussing the variations in city council structures); Brenner M. Fissell, *Rightsizing Local Legislatures*, 23 UTAH L. REV. 393, 394 (2023). In contrast, adopting or amending a notice statute at the state level would require a majority vote of the state legislature (typically two separate chambers, ranging from 40 to 400 members in each chamber in different states), with each separate chamber needing to approve any bill, and signature into law by the governor (or a legislative super-majority vote, in the case of a gubernatorial veto). *See* Bruce Bartlett, *The Size of State Legislatures*, N.Y. TIMES (Dec. 31, 2013), https://archive.nytimes.com/economix.blogs.nytimes.com/2013/12/31/the-size-of-state-legislatures/ [https://perma.cc/UE9H-2VZS]. Further, state legislatures in many states only meet every other year for a few months and have myriad other proposed legislation

one of the few jurisdictions (San Diego) which expressly provides for direct notice to tenants residing at the property that is the subject of the land use hearing, as well as to tenants residing within a statutorily specified distance from the subject property. For many jurisdictions, the wholesale adoption of a new ordinance will not even be necessary: reforming notice requirements will be as simple as adding the word "and tenant" or "and occupant" to their existing notice ordinances or statutes, and amending their mailing procedures to specify that for any such recipients, notice requirements are satisfied by attestation that notice was mailed by first-class mail to "Occupant" or "Resident" at the addresses within the designated distance. The model ordinance also reflects the approach of many existing ordinances, which provide that the costs of mailing notices to designated property owners are to be borne by the project applicant, and such provisions can be mirrored in any amendment to provide mailed notice to tenants.[190] By providing this model ordinance, we hope to demonstrate that reforming notice requirements to include tenants does not have to involve complicated legislative drafting or significant budgetary impacts, and is a straightforward, feasible measure that can be implemented by any local government.

Conclusion

Scholars, policymakers, and communities across the country have increasingly recognized the importance of fostering greater inclusivity at their public hearings, to ensure that they are collecting input from all segments of the community. This Article identifies an unrecognized yet relatively simple, low-cost route for municipalities to better achieve this goal: expressly invite tenants to public land use hearings. As our empirical

competing for legislators' time and attention. *Id.* Thus, the political consensus to adopt or amend notice requirements is likely to be easier to achieve at the local level, rather than state level. That said, adopting or amending notice requirements through state law would have the advantage of making tenant notice requirements applicable more broadly across the state. Further, in recent years, a number of state legislatures have achieved political consensus (sometimes even bipartisan) and reasserted authority over other aspects of land use law. *See, e.g.*, Cal. Gov't Code § 65913.4 (streamlined housing development). Depending on how state legislation were drafted, it could either set a minimum radius in which notice must be sent to both tenants and owners (a floor that localities could expand upon), or it could occupy the field and set a mandatory statewide standard. The state legislature in at least one state (Rhode Island) has recently considered state legislation which would mandate that mailed notice extend to a 1000-foot radius from the subject property and include both tenants and owners within that radius statewide. Salim Furth, *Rhode Island's Housing Process Package*, Market Urbanism (June 26, 2023), https://marketurbanism.com/2023/06/26/rhode-islands-housing-process-package/ [https://perma.cc/A8XT-3RCF] ("Another bill S 1039, has not advanced, but would make a more interesting change: expanding rezoning notice requirements from property owners within 200´ to property owners *and tenants* within 1000´.").

[190] *See supra* Part II (discussing examples of each). Our model ordinance also includes an optional provision (modeled on existing provisions in several notice-plus cities) to address concerns about higher than normal costs of mailed notice in scenarios where there are very large numbers of neighboring residents, and provides for alternative methods of notice (to both tenants and property owners) in such scenarios. *See* Appendix B.

analysis has shown, the vast majority of major cities in the U.S. fail to do so, for reasons that do not hold up to scrutiny. The prevailing pattern of non-notice to tenants exacerbates systemic inequality, is economically inefficient, and it is arguably a due process violation in certain contexts. Because Black and Latinx households are disproportionately tenants, and because lower income households are more likely to be tenants, providing direct notice would make it more likely that these community members actually know about public hearings regarding proposed development and land use changes in their neighborhoods. This, in turn, will give them a greater opportunity to make their voices heard. Providing notice to tenants is not a guarantee of better outcomes in land use decision-making, and additional reforms to make the land use process more inclusive should still be pursued. However, expanding notice is a modest nudge that not only advances equity goals, but which can also potentially counterbalance the anti-development NIMBYism that has had an outsized and negative economic impact, resulting in critical housing shortages across the country.

Appendix A: Tabular Summary of Empirical Data[191]

A	B	C	D	E	F	G	H
Pop. Rank (2022 U.S. Census)	**City, State**	**Ordinance type ("Standard-notice"/ "Notice-plus"/ "Ambiguous")**[192]	Requires mailed notice of land use hearings to tenants or occupants of property within statutorily designated distance? (Y/N/ Ambiguous)	Requires mailed notice of land use hearings to owners of property within statutorily designated distance? (Y/N/ Ambiguous)	Requires mailed notice of land use hearings to owners of property that is the subject of or applicant for[193] the proposed land use action? (Y/N/ Ambiguous)	Requires mailed notice of land use hearings to tenants or occupants of property that is the subject of or applicant for the proposed land use action? (Y/N/ Ambiguous)	**Additional comments**
1	New York, NY	Standard-notice* (*with notice to limited sub-set of tenants – see Columns D and G)	Some (to tenants in coops and condos; but even for such tenants, notice is not required to be mailed)	Y	Y	Y	
2	Los Angeles, CA	Notice-plus	Y (to "occupants" within radius)	Y	Y	Y[194]	

[191] For ease of readability and due to space constraints, we do not include individual municipal code provisions for each city; however, for readers interested in this information, it is on file with the authors.

[192] As noted in Part II supra, we designate a city as having a notice-plus ordinance only if it requires notice to tenants for key types of land use action—for example, variances, CUPs, rezonings, and subdivisions. If a city only requires that tenants receive notice for a single type of land use action (for example, demolition permit hearings or historic preservation hearings), but no other types of land use hearings, we do not include it as a notice-plus jurisdiction, since tenants will not receive notice of most major types of land use actions. Relatedly, we designate a city as having a notice-plus ordinance only if it requires notice to tenants regardless of the physical or legal form of housing the tenants reside in. If a city's ordinance only requires notice to a subset of tenants (for example, tenants residing in coops or condos, but not otherwise (e.g., New York, NY); or tenants residing at properties where the owner's address differs from the property address, but not tenants residing in multi-family buildings (e.g., Raleigh, NC)), we do not include it as a notice-plus jurisdiction, since significant numbers of tenants are left out of such provisions.

[193] As noted in note 24 supra, the various land use actions discussed in this Article are often initiated by property owner applicants, but in some cases, the actions may be initiated by the city or other governmental entity. When applicants initiate the process, many city ordinances put the responsibility of mailing and paying for mailing of notice on the project applicant/property owner; thus, the ordinance may not require the applicant to mail a notice to themselves. This likely explains the somewhat counter-intuitive entries for some cities in this Appendix, where mailed notice is required to property owners in the statutorily designated radius ("Y" in Column E), but mailed notice is not required to the owner of the property that is the subject of the actual proposal land use change ("N" in Column F) (e.g., Fort Worth, TX; Plano, TX; Miami, FL; Indianapolis, IN; St. Paul, MN).

[194] The statutory language in several notice-plus cities, such as Los Angeles, is potentially subject to differing interpretations as to whether it requires mailed notice to tenants or occupants residing in the actual property that is the subject of the land use hearing. This is because, unlike ordinances in other notice plus cities such as San Diego (which expressly requires notice to any tenant address at the subject property, *see* San Diego, Cal., Mun. Code § 112.0302

A	B	C	D	E	F	G	H
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3	Chicago, IL	Standard-notice	N	Y	Y	N	
4	Houston, TX	Standard-notice* (*with notice to tenants in limited category of hearings – see Column G)	N	Y	Y	Y (only for historic designation)	Houston (in) famously does not have zoning, and thus does not have public hearings on zoning-related actions (such as rezonings or zoning variances), so the data for Houston is limited to a single category of land use actions (historic preservation designations) for which the Houston municipal code sets out notice requirements.
5	Phoenix, AZ	Standard-notice	N	Y	Y	N	

(2023) or Seattle (which explicitly requires mailed notice to occupants "including and within" the statutorily designated distance from the subject property, *see* SEATTLE, WASH., MUN. CODE § 23.84A.025 (2024), the language of the Los Angeles ordinance is phrased as requiring mailed notice to occupants "within a [statutorily designated] foot radius of the property that is the subject of the application." *See* L.A., CAL., MUN. CODE §12.24 (2024). An occupant or tenant residing at the subject property is technically "within" this radius (e.g., at its center); however, the statutory language is phrased in a way that arguably could be read to not include an occupant at the subject property. However, because Los Angeles (and the handful of other notice-plus cities that utilize this type of phrasing in their ordinances) are among the few cities that explicitly require mailed notice to occupants or tenants in the surrounding radius, it would seem incongruous that their ordinances would be interpreted to not include occupants or tenants at the subject property at the center of the radius; thus, we have designated such ordinances as "Y" in Column G. We recommend that these ordinances be revised to clearly include tenants at the subject property, using express language such as that used in the San Diego ordinance (the basis of our model ordinance). *See* Appendix B.

A	B	C	D	E	F	G	H
Pop. Rank (2022 U.S. Census)	**City, State**	**Ordinance type ("Standard-notice"/ "Notice-plus"/ "Ambiguous")**[192]	Requires mailed notice of land use hearings to tenants or occupants of property within statutorily designated distance? (Y/N/ Ambiguous)	Requires mailed notice of land use hearings to owners of property within statutorily designated distance? (Y/N/ Ambiguous)	Requires mailed notice of land use hearings to owners of property that is the subject of or applicant for[193] the proposed land use action? (Y/N/ Ambiguous)	Requires mailed notice of land use hearings to tenants or occupants of property that is the subject of or applicant for the proposed land use action? (Y/N/ Ambiguous)	**Additional comments**
6	Philadelphia, PA	Ambiguous	A (to "the owner, managing agent or other responsible person at every property" within radius)[195]	Y	Y	N	Also requires notice to Registered Neighborhood Organizations ("RNOs")
7	San Antonio, TX	Standard-notice	N	Y	Y (only for variances)	N	Also requires notice to RNOs
8	San Diego, CA	Notice-plus	Y (to all "addresses" within radius, including "each tenant address within a condo or apartment complex")	Y	Y	Y	Also requires notice to RNOs (referred to in the ordinance as "neighborhood associations")
9	Dallas, TX	Standard-notice	N	Y	Y (only for Board of Adjustment hearings)	N	
10	Austin, TX	Standard-notice* (*with notice to tenants in limited category of hearings – see Column G)	N	Y	Y	Y (only if tenant displacement will result from multi-family redevelopment/ demolition, or demolition/ change in use of mobile home parks)	

[195] The Philadelphia notice ordinance is designated as "Ambiguous" in Column D (notice to tenants within the statutorily defined radius) because it is unclear whether the "responsible person at" a given property to which notice must be mailed could be the tenant who receives mail there; the term "responsible person" is not defined anywhere in the city's municipal code. Conversely, the Philadelphia notice ordinance is designated as "No" in Column G (notice to tenants residing the property that has applied for or subject to the proposed land use change) because the wording of the city's ordinance describes the required notice in terms of other properties surrounding the subject property; thus, it appears notice is not required to be mailed to the subject property. *See* PHILA., PENN., MUN. CODE, § 14-303(12) (2021) (notice must be mailed to "[e]very property any portion of which is within 250 ft. of any portion of the applicant's property").

A	B	C	D	E	F	G	H
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11	Jacksonville, FL	Standard-notice	N	Y	Y (only for historic preservation)	N	
12	San Jose, CA	Notice-plus	Y (to "occupants" within radius)	Y	Y	Y	
13	Fort Worth, TX	Standard-notice	N	Y	N	N	
14	Columbus, OH	Standard-notice	N	Y	Y	N	
15	Charlotte, NC	Standard-notice	N	Y	Y	N	
16	Indianapolis, IN	Standard-notice	N	Y	N	N	Also requires notice to RNOs (referred to in the ordinance as "Neighborhood Groups")
17	San Francisco, CA	Notice-plus	Y (to "owners and, to the extent practicable, occupants of properties" within radius)	Y	Y	Y ("including the owner(s) and occupant(s) of the subject property, including any occupants of unauthorized dwelling units")	Also requires notice to RNOs (referred to in the ordinance as "Neighborhood Organizations")
18	Seattle, WA	Notice-plus	Y (to "residents" within radius)	Y	Y	Y ("residents… including and within 300 feet of the boundaries of a specific site…")	
19	Denver, CO	Standard-notice	Some (to "owners and tenants (if the latter is different from owners)" within radius for Community Information Meetings and for repeal of approved General Development Plans, but not general land use hearings)	Y	Y	N	Also requires notice to RNOs

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20	Oklahoma City, OK	Standard-notice	N	Y	N	N	
21	Nashville, TN	Standard-notice* (*with notice to limited sub-set of tenants – see Column G)	N	Y	Y	Y ("For the subject property where the tax records reflect a mailing address that is different than the address of the subject property, then notification shall also be mailed to the address of the property")	Also requires notice to incorporated condominium association registered with the metropolitan clerk as requesting notification
22	El Paso, TX	Standard-notice	N	Y	Y	N	"If a multifamily dwelling is located on any parcel of real property within the [radius], notice shall be provided to the property manager of the multifamily dwelling." Also requires notice to RNOs (referred to in the ordinance as "recognized neighborhood association(s)")
23	Washington, DC	Standard-notice* (*with notice to limited sub-set of tenants – see Column G)	N	Y (but for residential condos or coops with twenty-five or more dwelling units within radius, mailed notice may be provided to the board of directors of the association)	Y	Y (requiring notice "to each person having a lease with the owner for all or part of any building located on the subject property")	Also requires notice to RNOs (referred to as "Advisory Neighborhood Commissions")

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24	Las Vegas, NV	Standard-notice	Some (to "each tenant of any mobile home park" within radius)	Y	Y	N	Also requires notice to RNOs
25	Boston, MA	Standard-notice[196]	N	N	N	N	Requires mailed notice to Neighborhood Councils
26	Portland, OR	Standard-notice	N	Y	Y	N	Also requires notice to RNOs (referred to as "neighborhood association[s], district neighborhood coalition[s], and business association[s]")
27	Louisville, KY	Notice-plus	Y ("a supplemental notice to be addressed to 'Current Resident' shall be mailed to all dwelling units located on properties where notice of owners is required")	Y	N	A[197]	

[196] Boston does not require mailed notice to owners or tenants; the ordinance just requires newspaper publication and written notice to public agencies and neighborhood councils or other civic organizations that review planning and development issues. *See* BOS., MASS., MUN. CODE § 80A-2 (2023).

[197] The language of the Louisville ordinance is unclear as to whether tenants residing at the subject property may be entitled to notice, and for which types of hearings. *See* LOUISVILLE, KY., LAND DEV. CODE § 11.5A.3 (2023); KY. REV. STAT. 100 (2023).

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28	Memphis, TN	Ambiguous[198]	Y (to "current residents" for notice of neighborhood meetings, where the notice includes information about the upcoming public hearing)	Y	Y	Y (for notice of neighborhood meetings, where the notice includes information about the upcoming public hearing)	Also requires notice to RNOs ("neighborhood associations")
29	Detroit, MI	Notice-plus	Y (to "occupants of all structures" within radius)[199]	Y	Y	Y	Also requires notice to registered community organizations
30	Baltimore, MD	Standard-notice	N	Y (for rezoning and PUDs)	N	N	
31	Milwaukee, WI	Standard-notice	N	Y	Y	N	
32	Albuquerque, NM	Standard-notice	N	Y	Y	N	Also requires notice to Neighborhood Association

[198] Technically, "current residents" only receive mailed notice of the neighborhood meeting that is to be held prior to public hearings on certain land use changes, including rezones, special use permits, and subdivisions. This notice is mailed to "current residents of single-family and two-family dwellings" within the radius, as well as "all residents of multi-family dwellings within" the radius. *See* MEMPHIS & SHELBY CO., TENN., UNIFIED DEV. CODE § 9.3.2.B.1. However, "[i]f the applicant is unable to make notification to the multi-family dwellings, he or she shall provide notice to the Office of Planning and Development the reason and shall mail notification of the neighborhood meeting to the rental or management offices of all multi-family dwellings within the notification area with a request that said rental or management office" post the notice in the building. *Id.* These notices, although they are for the neighborhood meeting, also must include the date of the public hearing when the application will be heard by the board. *Id*. Thus, technically, these residents receive mailed notice of the hearing (although tenants in multi-family buildings may not receive mailed notice, as noted above). However, the section of the city code setting out notice requirements for public hearings only requires notice to be mailed to property owners within the statutorily defined radius. *Id.* at § 9.3.4.A (table).

[199] However, tenants in multifamily properties might not receive mailed notice under the Detroit ordinance: "Where a single structure contains more than four dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure who shall be requested to post the notice at the primary entrance to the structure." DETROIT, MICH., CODE OF ORDINANCES § 50-3-9 (2024).

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33	Tucson, AZ	Standard-notice	N	Y	Y	N	Also requires notice to neighborhood associations
34	Fresno, CA	Standard-notice	N	Y	Y	N	
35	Sacramento, CA	Standard-notice	N	Y	Y	N	
36	Mesa, AZ	Standard-notice	N[200]	Y	N	N	
37	Kansas City, MO	Standard-notice	N	Y	Y	N	Also requires noticed to RNOs and/or "registered civic organization[s]"
38	Atlanta, GA	Standard-notice	N	Y	N	N	
39	Colorado Springs, CO	Standard-notice	N	Y	N	N	Also requires notice to RNOs
40	Omaha, NE	Standard-notice	N	N	Y (only for historic preservation)	N	

[200] The Mesa ordinance requires compliance with Arizona's state notice provisions, which provides, in part, "[i]f the municipality issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include notice of the changes with such utility bills or other mailings." This could be a means of reaching tenants, assuming a municipality has such a practice. ARIZ. REV. STAT. § 9-462.04 (2023) (compliance with which is required by MESA, ARIZ., CODE OF ORDINANCES § 11-67-5 (2024)).

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41	Raleigh, NC	Standard-notice* (*with notice to limited sub-set of tenants – see Columns D and G)	Some (for property within radius, "[w]here the tax records reflect a mailing address for an owner of property . . . to be different than the address of the property owned, then notification shall also be mailed to the address of the property itself . . . except if the individual mailing addresses of tenants in any type multi-tenant properties are not readily available")	Y	Y	Some (for the property that is the subject of "the proposed application . . . . [w]here the tax records reflect a mailing address for an owner of property . . . to be different than the address of the property owned, then notification shall also be mailed to the address of the property itself . . . except if the individual mailing addresses of tenants in any type multi-tenant properties are not readily available")	
42	Virginia Beach, VA	Standard-notice[201]	N	Y (but mailed notice is not required for condo or coop unit owners within radius, as long as notice is mailed to condo or coop association/ board)	N	N	

[201] The Virginia Beach notice ordinance provides for notice "as set forth in § 15.2-2204 of the Code of Virginia, as amended, or any successor statute." VA. BEACH, VA., CODE OF ORDINANCES § 16-35(c)(1) (2023). The cited state statute, in turn, requires notice be mailed to "to the owners, their agent or the occupant" within the statutorily designated distance. While the reference to "occupants" might appear to indicate that tenants do receive notice, a few sentences later the same state statute continues: "Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement."

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43	Long Beach, CA	Notice-plus	Y (to "all tenants" within radius)	Y	Y	Y (to each "tenant household or to each commercial tenant as applicable, of the subject real property")	
44	Miami, FL	Standard-notice	N	Y	N	N	
45	Oakland, CA	Standard-notice	N	Y	Y	N	
46	Minneapolis, MN	Standard-notice	N	Y	Y	N	Also requires notice to RNOs
47	Tulsa, OK	Standard-notice	N	Y	Y	N	Provides for optional "Courtesy Notice" to RNOs
48	Bakersfield, CA	Standard-notice[202]	N	Y	N	Y	
49	Tampa, FL	Standard-notice	N	Y	Y	N	Also requires notice to "all participating organizations registered within the neighborhood area in which the subject property is located"
50	Wichita, KS	Standard-notice	N	Y	Y	N	
51	Arlington, TX	Standard-notice	N	Y	Y	N	
52	Aurora, CO	Standard-notice	N	Y	Y	N	Also requires notice to RNOs

CODE OF VIRGINIA § 15.2-2204 (2023). Reading the statute in its entirety, it appears that if an owner's mailing address as shown on the tax assessment record is different than the property address, notice will be sent to the owner's mailing address, making it unlikely a tenant occupant at the property would receive mailed notice.

[202] The Bakersfield ordinance articulates a standard-notice approach of no notice to tenants or occupants for major land use actions such as CUPs and zoning amendments *See* BAKERSFIELD, CAL., MUN. CODE § 17.64.050.B (2023). However, the ordinance is unclear as to whether tenants could potentially receive notice of land use actions that fall under the category of "director review and approval permits," which are defined elsewhere in the code as including more minor land use actions such as modification to parking or setback requirements. *Id.* at § 17.64.020. For this category, the ordinance provides that notice must be mailed to all "owners

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53	New Orleans, LA	Standard-notice* (*with notice to limited sub-set of tenants – see Columns D and G)	Some (to "occupants [of all properties within statutorily designated distance]. . . wherever the mailing address of the property owner . . . is different from the address of the property")	Y	Y	Some ("occupants [of the subject property]. . . wherever the mailing address of the property owner . . . is different from the address of the property")	Also requires notice to RNOs
54	Cleveland, OH	Standard-notice	N	N	Y	N	
55	Anaheim, CA	Notice-plus[203]	Y	Y	Y	Y	

and/or occupants" within the statutorily defined radius. Thus, the "and/or" wording of the ordinance makes it unclear if occupants (and thus tenants) might receive notice of such actions. *Id.* at § 17.64.050.A.

[203] Unlike other notice-plus ordinances, which generally define notice requirements in terms of public hearings for specific types of land use actions (e.g., variance, CUP, zoning amendment), Anaheim's ordinance defines notice requirements in terms of public hearings for specific types of actions under the California Environmental Quality Act ("CEQA"). *See* ANAHEIM, CAL., MUN. CODE § 18.60.100.020 (2024) ("Notice of public hearing for non-citywide projects recommended for consideration of a Statutory or Categorical Exemption, Negative Declaration or Mitigated Negative Declaration, Previously-Certified Environmental Impact Reports, Sustainable Communities Environmental Assessment, and Addendum to said documents, in accordance with the California Environmental Quality Act (CEQA) Statute and Guidelines shall be mailed to owners and tenants . . . ."). Most types of discretionary land use actions (such as variance, CUP, zoning amendment, etc.) trigger the types of CEQA actions described in the Anaheim code. *See* Kellen Zale, *Changing the Plan: The Challenge of Applying Environmental Review to Land Use Initiatives*, 40 ECOLOGY L.Q. 833, 842 (2013) (discussing the extent of CEQA's applicability to discretionary actions by local governments on land use applications). Thus, although structured somewhat unusually compared to other notice-plus ordinances, functionally, Anaheim's ordinance requires notice of most types of land use hearings to both owners and tenants within a statutorily defined radius, and thus is categorized as notice-plus.

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56	Honolulu, HI	Standard-notice	N	Y (but mailed notice is not required for condo or coop unit owners within radius, as long as notice is mailed to condo or coop association/ board)	N	N	Also requires a pre-application presentation to "neighborhood board or community association"
57	Henderson, NV	Standard-notice	N	Y	Y	N	
58	Stockton, CA	Standard-notice	N	Y	Y	N	
59	Riverside, CA	Standard-notice	N	Y	Y	N	
60	Lexington-Fayette, KY[204]	Standard-notice	N	Y	Y	N	
61	Corpus Christi, TX	Standard-notice	N	Y	N	N	
62	Orlando, FL	Ambiguous	A	A	A	A	The Orlando ordinance requires "due public notice" for land use hearings, but does not define the phrase, nor is it defined in state law that sets out notice requirements for public hearings (the Florida Sunshine Law)[205]

[204] The city of Lexington and Fayette County operate as a unified local government, the Lexington-Fayette Urban County Government. *See Organizational Structure, System, and Positions*, Lexington-Fayette Urban County Government, https://www.lexingtonky.gov/organizational-structure-system-and-positions [https://perma.cc/JM7P-MYX5] ("On Jan. 1, 1974, the city of Lexington and Fayette County became the first Kentucky communities to consolidate city and county governments into a single system.").

[205] *See Sunshine Law, Due Public Notice*, Fla. Att'y Gen. (1973), https://www.myfloridalegal.com/ag-opinions/sunshine-law-due-public-notice [https://perma.cc/LNK9-PUSJ]

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63	Irvine, CA	Notice-plus	Y (to "all property owners and apartment tenants "within radius)[206]	Y	Y	Y	
64	Cincinnati, OH	Standard-notice	N	Y	Y	N	Also requires notice to RNOs
65	Santa Ana, CA	Notice-plus	Y (to "all property owners, and at least one (1) occupant per dwelling unit having a valid United States Postal Service address" within radius)	Y	N	Y	Notice requirements apply both to required public hearings and to mandatory "community meetings," which must be held by applicant for several types of major land use changes prior to public hearings on the discretionary approval for such changes
66	Newark, NJ	Standard-notice	N	Y (but mailed notice is not required for condo or coop unit owners within radius, as long as notice is mailed to condo or coop association/ board)	N	N	
67	St. Paul, MN	Standard-notice	N	Y	N	N	
68	Pittsburgh, PA	Standard-notice	N	Y	Y	N	

("No statutory definition of the phrase 'due public notice' is given. Section 286.011, F. S., the Government in the Sunshine Law, is a policy declaration by the legislature that all meetings of public bodies at which official acts are to be taken shall be open to the public. Implicit in this policy is the requirement that the public have notice of such meetings").

[206] The word "apartment" is not defined anywhere in the Irvine city code, making it unclear whether notice is limited only to tenants who live in "apartment"-type buildings. However, other

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69	Greensboro, NC	Standard-notice	N	Y	Y	N	Also requires notice to RNOs for "all applications for a conditional rezoning . . . unless there are no residential uses within 750 feet of the property under consideration"
70	Lincoln, NE	Standard-notice	N	Y	Y	N	
71	Durham, NC	Standard-notice* (*with notice to limited sub-set of tenants – see Columns D and G)	Some ("Where the tax records reflect a different mailing address for an owner of the property and the actual property address [within statutorily defined distance], then notification shall also be mailed to the address of the property itself in addition to the property owner address")	Y	Y (mailed notice shall be sent to the "subject property")	Y (mailed notice shall be sent to the "subject property")	
72	Plano, TX	Standard-notice	N	Y	N	N	

local governments in Southern California (such as Los Angeles County) define "apartment" to mean any rented "dwelling unit." *See* Los Angeles County Code § 11.20.010 (2024). If a similar definition is ascribed to the term "apartment" in the Irvine code, then its ordinance should be read as requiring notice to tenants regardless of the type of rented dwelling unit (i.e., whether an apartment building, or a stand-alone home, or a townhouse, or ADU, etc.).

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73	Anchorage, AK	Notice-plus	Y (to "residents/ occupants" within radius)	Y	Y	A[207]	Also requires notice to RNOs for mandatory community meeting to be held prior to the public hearing for certain categories of land use changes
74	Jersey City, NJ	Standard-notice	N	Y (but mailed notice is not required for condo or coop unit owners within radius, as long as notice is mailed to condo or coop association/ board)	N	N	
75	St. Louis, MO	Standard-notice	N	N	N (but optional for historic designation hearings: notice may be mailed to "each property owner within the proposed historic district")	N	

[207] The language in the Anchorage ordinance is unclear as to whether notice is required to be mailed to tenants or occupants at the actual property that is subject to the proposed land use change. The ordinance clearly states that mailed notice is required to "all residents/occupants of land in the same area as required above, at the property addresses." *See* ANCHORAGE, AK, MUN. CODE PART II, § 21.03.020(H)(3) (2023). However, it is unclear what precisely the phrase "in the same area *as required above*" refers to, since both the subject property and properties within the statutorily designated radius from the subject property are described "above" this phrase in the ordinance (properties within the statutorily defined radius area are described directly "above" in the same sub-section of the ordinance, while the subject property is described in the immediately preceding sub-section). Id. Since the wording and structure of the ordinance is ambiguous, it cannot be conclusively determined whether residents at the subject property are required to receive notice and we have therefore coded this aspect of the Anchorage ordinance as "Ambiguous."

Appendix B: Model Ordinance

The following ordinance is taken in large part from San Diego Zoning Code section §112.0302, Notice by Mail.

(a) General Provisions. When the Zoning Code or Land Use Code requires a Notice of Public Hearing, or other mailed notice, the notice shall be postage prepaid and addressed to the persons identified in Section (b). Notice by mail shall be considered complete at the time of deposit in the United States Mail.

(b) Persons Entitled to Notice. Except as provided in Section (c), the Notice of Public Hearing shall be mailed to the following:

(1) The applicant;

(2) All tenant addresses located on the subject property and all addresses within [___][208] feet of the boundary of the real property that is the subject of the application, including each tenant address within a condominium or apartment complex;

(3) The owners of any real property, as shown on the latest equalized property tax assessment roll of the County Assessor, located within [___] feet of the boundary of the property that is the subject of the application;

(4) The officially recognized community planning group, if any, that represents the area in which the proposed development is located, and officially recognized community planning groups that represent the area within [___] feet of the location of the proposed development;

(5) Any person who has submitted a written request for notification of the proposed development;

(c) Alternative to Mailed Notice. If the number of tenants and owners to whom notice would be mailed in accordance with Section (b) is greater than [___], notice may be given by placing a display advertisement of at least one eighth page in a newspaper of general circulation within the City in lieu of mailing.[209]

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[208] The distance included here will vary by jurisdiction, and may depend in part on how large and far apart lots are. A typical range is from 300 to 600 feet, but could be up to one mile.

[209] This subpart is optional, and might be inserted if concerns are raised about costs of mailed notice in a given jurisdiction. If a municipality chooses to include it, they should understand that it means no one – neither tenants nor owners – would receive mailed notice; in such a scenario, other forms of required general public notice for the particular type of land use hearing (such as newspaper publication or posted signage) would still be applicable.

(d) Notice Address:

(1) A notice to the applicant shall be mailed to the address shown on the application or as indicated on a written change of address form filed by the applicant with the City.

(2) A notice to each owner of real property located within [___] feet of the property that is the subject of the application shall be mailed to the record owner.

(3) A notice mailed to a tenant address shall be addressed "Tenant."