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When Public Land Leaves Public Hands: Values Embedded in Municipal Land Disposition Law

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In the wake of multiple economic crises, many local governments across the country have resorted to selling off their real property. At the same time, advocates and social movements are increasingly calling for municipalities to use publicly-owned land to advance spatial justice in cities—for instance, to develop affordable housing, parks, and other public resources. Brewing conflicts over local land suggest the need to better understand the law that underlies municipal land disposition. In this Note, I survey the tapestry of state and local laws that govern land disposition in fifteen large American cities, and catalogue the values embedded within these laws. I conclude by proposing a pair of new and potentially overriding “stewardship” values that should guide the disposition process, in an effort to countervail privatization and urban inequality in the country’s major metropolitan areas.

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INTRODUCTION

On September 17, 2021, the Los Angeles Clippers celebrated the groundbreaking of their new stadium—the Intuit Dome—in Inglewood, California. The event involved musical performances, speeches by local elected officials, and an address by Clippers’ owner and multi-billionaire Steve Ballmer, who presented several key features of the \$1.8 billion, 18,000-seat arena that he had privately financed. The Dome would be a

basketball “mecca” with an acre-large halo scoreboard, cashier-less food stands, an 80,000 square foot outdoor plaza, and other amenities.¹

Outside, a crowd of tenants, organizers, and Inglewood community members gathered to protest the groundbreaking. They picketed the entrance to the planned stadium grounds, calling for “Homes Not Domes.”² A majority Black and Latinx city, Inglewood had experienced rapid gentrification over the last decade; the city had courted major commercial development but failed to produce any new affordable housing since 2013.³ As home prices, rents, and evictions skyrocketed, many long-time Inglewood residents had come to see large commercial developments like Intuit Dome as more of a threat than an economic boon.⁴

City-owned land is at the heart of the tug of war over Inglewood’s built environment. In 2018, Ballmer and the Dome’s developers bought twenty-two acres of city-owned land to form the twenty-eight-acre parcel that would house the arena. Uplift Inglewood, a coalition of tenants and housing activists, sued to void the sale, arguing that the government had failed to prioritize affordable housing for the site as required by California’s Surplus Land Act. The case was allowed to proceed to trial, but a Los Angeles

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1. Matthew Scammahorn, *Clippers’ New Arena Officially Begins Construction in Groundbreaking Ceremony*, L.A. CLIPPERS NEWS (Sept. 17, 2021, 4:29 PM), <https://www.clipsnation.com/2021/9/17/22680095/clippers-new-arena-officially-begins-construction-in-groundbreaking-ceremony-inglewood-intuit-dome> [<https://perma.cc/5BLD-8BJZ>].
 2. Kameron Hurt, *Inglewood Tenants Fight the Clippers Stadium, Displacement*, LIBERATION (Sept. 28, 2021), <https://www.liberationnews.org/inglewood-tenants-fight-the-clippers-stadium-displacement> [<https://perma.cc/7WHN-BZJR>].
 3. Angel Jennings, *One of California’s Last Black Enclaves Threatened by Inglewood’s Stadium Deal*, L.A. TIMES (Apr. 10, 2019), <https://www.latimes.com/local/lanow/la-me-inglewood-gentrification-rent-crenshaw-rams-stadium-20190410-htmlstory.html> [<https://perma.cc/H39W-SPKE>].
 4. Jonny Coleman, *The Struggle Against a Stadium’s Construction Became a Battle for the Soul of Los Angeles*, THE APPEAL (Sept. 10, 2020), <https://theappeal.org/sofi-stadium-gentrification-displacement-lennox-inglewood-tenants-union> [<https://perma.cc/APA8-UJLD>]; see Tim Arango, *Inglewood Has Experienced Dramatic Change. The Super Bowl is Proof of That*, N.Y. TIMES (Feb. 13, 2022), <https://www.nytimes.com/2022/02/13/us/super-bowl-inglewood-los-angeles.html> [<https://perma.cc/YS44-LK5G>].

Superior Court judge ultimately ruled against Uplift, persuaded by the City's argument that the land was not surplus.⁵

The clash over Intuit Dome represents both the importance⁶ and contentiousness⁷ of public land at the local level. In recent decades, local

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5. Jason Henry, *LA Clippers Arena Clears Major Hurdle as Judge Throws Out Lawsuit by Inglewood Residents Group*, DAILY BREEZE (Nov. 6, 2019), <https://www.dailybreeze.com/2019/11/06/la-clippers-arena-clears-major-hurdle-as-judge-throws-out-lawsuit-by-inglewood-residents-group> [<https://perma.cc/GK9U-3JR9>].
 6. Cities across the country have been contemplating, debating, and experimenting with the uses of urban public land. *See, e.g.*, Matt Goodman, *The City of Dallas Owns Over 2,800 Parcels of Land. It Has a Bold Plan for 5 of Them*, D MAGAZINE (Jan. 9, 2024, 3:42 PM), <https://www.dmagazine.com/frontburner/2024/01/the-city-of-dallas-owns-over-2800-parcels-of-land-it-has-a-bold-plan-for-5-of-them> [<https://perma.cc/682B-QX7K>]; Kyle Brown, *Minneapolis Officials Transfer Land to Red Lake Nation*, KSTP-TV (updated Sept. 21, 2023, 11:56 PM), <https://kstp.com/kstp-news/local-news/minneapolis-officials-to-transfer-land-to-red-lake-nation> [<https://perma.cc/XP8H-FFR2>]; Roshan Abraham, *New Yorkers Need Land. The NYPD Is Sitting on Nearly 150 Lots.*, NEXT CITY (May 11, 2023), <https://nextcity.org/urbanist-news/new-yorkers-need-land.-the-nypd-is-sitting-on-nearly-150-lots> [<https://perma.cc/937X-TU2J>]; Chad Swiatecki, *Austin Wants More Community Benefits from Projects on City-Owned Land*, AUSTIN MONITOR (Apr. 24, 2023), <https://www.austinmonitor.com/stories/2023/04/austin-wants-more-community-benefits-from-projects-on-city-owned-land> [<https://perma.cc/47UB-CS3Y>]; Chris Nichols, *Unhoused Residents at Sacramento's 'Camp Resolution' Reach First-of-Its-Kind Lease to Remain on City-Owned Property*, CAPRADIO (Apr. 10, 2023), <https://www.capradio.org/articles/2023/04/10/unhoused-residents-at-sacramentos-camp-resolution-reach-first-of-its-kind-lease-to-remain-on-city-owned-property> [<https://perma.cc/HJ3J-5UUW>]; Caitlin Dewey, *Buffalo has 7,700 Vacant Lots. One Idea: Give Some of Them to Nearby Homeowners*, THE BUFFALO NEWS (Mar. 7, 2023), https://buffalonews.com/news/local/buffalo-has-7-700-vacant-lots-one-idea-give-some-of-them-to-nearby-homeowners/article_b7cdd0da-b83b-11ed-8211-63c7b95d1fae.html [<https://perma.cc/PR37-TKBL>]; Esteban L. Hernandez, *Denver is Selling Five Pieces of Land—for \$10 Each—in the Name of Affordable Housing*, DENVERITE (Mar. 22, 2022, 2:52 PM), <https://denverite.com/2022/03/22/denver-is-selling-five-pieces-of-land-for-10-each-in-the-name-of-affordable-housing> [<https://perma.cc/3JBE-5A4V>].
 7. Like Inglewood, some cities have drawn scrutiny for their allegedly hasty or ill-advised disposition deals, while others have drawn attention for their

governments have increasingly opted to privatize their real property and infrastructure in order to plug budget holes and “revitalize” long-held assets.⁸ Meanwhile, local land activists, movement lawyers, and policy experts are increasingly calling for the use of public land “as an anti-displacement and anti-gentrification strategy in response to the failure of the private land market to meet affordable housing needs.”⁹ Other

failure to dispose of city-owned land quickly enough. *Compare* Roshan Abraham, *NYC Is Giving Public Lands to For-Profit Developers That Price Out Locals, Report Finds*, VICE (Nov. 2, 2023, 1:11 PM), <https://www.vice.com/en/article/xgw79q/nyc-is-giving-public-lands-to-for-profit-developers-that-price-out-locals-report-finds> [https://perma.cc/JMG7-CS5M], and Mal Meyer, *Portland Agreement to Sell \$4M City-Owned Lot for \$1.15M Draws Scrutiny for Price, Use*, WGME (Mar. 8, 2023), <https://wgme.com/news/local/agreement-sell-city-owned-lot-draws-scrutiny-price-use-portland-maine-wex> [https://perma.cc/929W-VGTE], and Rachel Holliday Smith, *City Planning Approves Bedford-Union Armory Plan as 2 Protestors Arrested*, DNAINFO (Oct. 30, 2017, 3:18 PM), <https://www.dnainfo.com/new-york/20171030/crown-heights/city-planning-commission-vote-approves-bedford-union-armory-development> [https://perma.cc/DP7P-NFUP], with Neena Hagen, *Empowered Land Bank Battles Pittsburgh’s Blight*, PITTSBURGH POST-GAZETTE (Dec. 18, 2023, 1:09 PM), <https://www.post-gazette.com/local/city/2023/12/17/pittsburgh-land-bank-battle-blight/stories/202312170077> [https://perma.cc/Q7C4-J6JP], and Christian MilNeil, *What’s Somerville Doing With a City-Owned Empty Lot Next to a New Light Rail Station?*, STREETS BLOG MASS (Dec. 4, 2023, 10:13 AM), <https://mass.streetsblog.org/2023/12/04/whats-somerville-doing-with-its-city-owned-empty-lot-next-to-a-new-light-rail-station> [https://perma.cc/5V]L-C6A2].

8. See STEVEN DAVIS, IN DEFENSE OF PUBLIC LANDS: THE CASE AGAINST PRIVATIZATION AND TRANSFER (2018).
9. Doug Smith & Katie McKeon, *Public Land for Public Good: How Community Groups Are Influencing the Disposition of Public Land to Help Address the Affordable Housing Crisis*, UCLA L. REV. (Sept. 25, 2018), <https://www.uclalawreview.org/public-land-for-public-good> [https://perma.cc/UGL6-S8CV]; see, e.g., Sheila R. Foster, *Infrastructure Sharing in Cities*, 132 YALE L.J.F. 440, 458-68 (2022); Brianna Soleyn, *Opinion: Taking Vacant Land and Power Back from the NYPD*, CITY LIMITS (May 3, 2023), <https://citylimits.org/2023/05/03/opinion-taking-vacant-land-and-power-back-from-the-nypd> [https://perma.cc/5RXR-V95C]; U.S. Department of Housing and Urban Development, *Using Public Land to Defray the Cost of Affordable Housing* (accessed Dec. 30, 2021), https://www.huduser.gov/portal/pdredge/pdr_edge_trending_091415.html [https://perma.cc/3]LX-HQ3R]; Josh Cohen, *Why Selling Land to the Highest Bidder Might Not be the City’s Best Bet*,

advocates have pushed for the use of government-owned land to increase the provision of public goods like recreational space, child care facilities, and community centers.¹⁰

Legal scholars and policy commentators tend to focus on how local governments can *acquire* more land, as this process may involve controversial uses of eminent domain or the significant expenditure of taxpayer dollars. However, the *disposition* of government-owned land is just as fraught—and just as important a subject for scholarly inquiry. Disposition concerns how governments make use of the land resources they already have. Depending on its design, the disposition process may hasten privatization, encourage public land retention, or promote particular urban policy goals, such as the construction of affordable housing. In any case, as the struggle over Intuit Dome indicates, the disposition process creates space for political contestation over land use and urban futures. Yet there have been precious few legal or empirical investigations into how the municipal land disposition process unfolds.

In this Note, I review the laws and policies that guide public land disposition in fifteen large American cities. Municipal land disposition law turns out to be a tapestry of state constitutional provisions, state statutes, and local law (itself a composite of charter provisions, city ordinances, executive orders, and administrative guidelines). Together, this tapestry establishes a set of default rules for the disposition of “surplus” city-owned real property—that is, land no longer necessary for government use.

This Note creates neither a comprehensive compendium of disposition laws on the books nor evaluates how precisely these laws work in practice. Instead, it catalogues the *values* embedded in municipal disposition law. I identify at least five: (1) transparency, (2) democratic checks and balances, (3) efficiency, (4) anti-corruption, and (5) public use. These values sometimes dovetail with one another: for instance, procedural guardrails that promote transparency in public land sales also serve an anti-corruption purpose. At other times, the values work at cross purposes: an efficiency approach to disposition focuses on selling off unneeded parcels for the highest possible price, at the potential expense of prioritizing less lucrative

CROSSCUT (Oct. 24, 2018, 3:30 PM), <https://crosscut.com/2018/10/why-selling-land-highest-bidder-might-not-be-citys-best-bet> [<https://perma.cc/3JLX-HQ3R>].

10. See, e.g., THE TRUST FOR PUBLIC LAND, *The Power of Land for People, 2020-2025* (2020), https://www.tpl.org/wp-content/uploads/2022/07/Strategic_Plan_12.23.pdf [<https://perma.cc/37CQ-696C>]; CENTER FOR COMMUNITY PROGRESS, *Tackling Vacancy and Abandonment* (2021), <https://communityprogress.org/publications/ccpfrbvolume> [<https://perma.cc/2PND-FC7E>].

but more publicly-beneficial uses (e.g., affordable housing). Retention, for its own sake, is rarely a strong animating value: except in a few cities, once the disposition process is initiated, privatization is essentially a foregone conclusion. All that remains to be resolved is how the land will be disposed of, to whom, and on what terms.

This Note also contemplates what values *should* animate the disposition process. I suggest the need for a pair of new “stewardship” values, which would encourage either continued government land ownership or decommodified, community-based ownership. Armed with these values, I argue, local governments would be better equipped to prevent the ills associated with urban land privatization.

The Note proceeds as follows. Part I provides historical background on municipal land disposition as a longstanding tool of local governance and discusses how legal scholars have tended to view the process—namely, as one marked by immense legislative and administrative discretion, with limited judicial review. Although some scholars have characterized the process as entirely lacking in regulatory guardrails, I suggest that we do not have enough cross-cutting empirical work to conclude this with confidence. Part II describes the principal values that animate disposition law and policy in my sample of fifteen cities. Part III addresses the normative stakes of surplus land disposition and suggests the need for a new, potentially overriding set of values—government stewardship and community stewardship—that local governments should incorporate into the disposition process.

I. HISTORICAL AND LEGAL BACKGROUND ON MUNICIPAL LAND DISPOSITION

While it is difficult to quantify the scope of local public landownership, local governments in the United States reportedly own “vast amounts of land.”¹¹ The New York City government owns several times more land than the biggest private property owners in the city.¹² The City of Los Angeles

11. Daniel B. Rosenbaum, *Confronting the Local Land Checkerboard*, 56 U. RICH. L. REV. 665, 668-69 (2021); see also Gabriel Eidelman, *Failure When Fragmented: Public Land Ownership and Waterfront Redevelopment in Chicago, Vancouver, and Toronto*, 54 URB. AFF. REV. 697, 702 (2018) (noting that municipal governments in the United States “own extensive land portfolios in urban areas, and have long intervened in urban property markets”).

12. Tanay Warerkar, *New York’s 10 Biggest Property Owners*, CURBED NEW YORK (Sept. 14, 2018), <https://ny.curbed.com/2018/9/14/17860172/new-york-10-biggest-property-owners> [<https://perma.cc/RHP3-3UVR>].

owns over 7,500 properties and roughly 10% of the city's vacant lots.¹³ Local governments in legacy industrial cities own an especially notable share of urban property: local government entities own 5% of all property in Baltimore; 7% of Youngstown, Ohio; 10% of St. Louis; and 28% of Flint, Michigan.¹⁴ Although public ownership is less prevalent in southern and western regions, government entities own significant property in cities like Miami, Phoenix, Houston, and San Diego.¹⁵ Small municipalities in the Northeast have also joined the ranks of landowning local governments: Nantucket, Block Island, and several Cape Cod towns have acquired thousands of acres of town land in recent years.¹⁶

Many parcels of local government-owned land are actively used for government or other public purposes; they contain agency offices, parks, schools, transit centers, and other similar facilities. Other parcels lie vacant or underutilized; such land is often described as “surplus.”¹⁷ Local governments may look to repurpose, transfer, lease, or sell their property to achieve administrative goals—for instance, realizing a specific public policy or urban planning objective, filling budget holes, or increasing the investment value of their real estate portfolios.

Today, as local governments deal with both acute and long-term fiscal crises, “a wave” of asset privatization “is sweeping the nation’s cities.”¹⁸ Local governments are selling and leasing their infrastructure (waterworks, airports, bridges, etc.) and their real property. And private developers continue to encroach on and enclose public spaces such as parks, plazas, and

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13. Alissa Walker, *This Interactive Map Shows LA's Publicly Owned Properties*, CURBED L.A. (Jul. 3, 2019), <https://la.curbed.com/2019/7/3/20681291/map-public-property-los-angeles> [<https://perma.cc/UJ8E-QSE6>].
 14. Rosenbaum, *supra* note 11, at 669 n.18.
 15. *Id.* at 669 n.19.
 16. ROBERT C. ELLICKSON ET AL., *LAND USE CONTROLS: CASES AND MATERIALS* 766-67 (2020); Patricia Daley, *Preserving Open Space on Cape Cod: Public and Private Mechanisms for Open Space Protection*, 73 ST. JOHN'S L. REV. 1091 (1999).
 17. Rosenbaum, *supra* note 11, at 670. Rosenbaum observes that “in some jurisdictions, ‘surplus property’ is a technical term,” designated as such by administrators and policymakers. However, in academic usage, it is often used as a “purely descriptive term for public property, often vacant, that is unused or underutilized and in either case is not being committed to an active purpose.” *Id.* at 670, n.23.
 18. Max Schanzenbach & Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 STAN. L. REV. 565, 570-72 (2018).

streets—for example, through the formation of business improvement districts and other “privately owned open spaces.”¹⁹

As I discuss later in this Note, privatization has negative implications for democratic accountability and the distribution of political power and material resources in cities.²⁰ When it comes to disposing of public land, however, privatization can have especially entrenching consequences.²¹ In a groundbreaking book on land privatization in the United Kingdom, critical geographer Brett Christophers explains,

Those concerned by the disposal of public land often warn that it is an “irreplaceable asset” with which we would do well to be much more careful. And they are right to do so. But the land itself is not the only such asset. Also irreplaceable, and arguably more significant, is the particular capacity for public self-determination conferred by state ownership and control of the land—even if only “potentially.”²²

Scholars of property and local government law have understandably dedicated countless articles, casebooks, and courses to studying how local governments *regulate* private land use.²³ In addition, legal scholars have extensively studied how local governments *acquire* the real property they

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19. See, e.g., Sarah Schindler, *The Publicization of Private Space*, 103 IOWA L. REV. 1093 (2017); Timothy Weaver, *The Privatization of Public Space: The New Enclosures*, 2014 ANN. MEETING OF THE AM. POL. SCI. ASS'N, <https://papers.ssrn.com/abstract=2454138> [<https://perma.cc/HY25-RGRS>].
 20. See *infra* Section III.A; see, e.g., David A. Super, *Privatization, Policy Paralysis, and the Poor*, 96 CALIF. L. REV. 393 (2008); Jack M. Beermann, *Privatization and Political Accountability*, 28 FORDHAM URB. L.J. 1507 (2000); Frank I. Michelman, *Conceptions of Democracy in American Constitutional Argument: Voting Rights*, 41 FLA. L. REV. 443 (1989).
 21. Christopher Serkin, *Public Entrenchment Through Private Law: Binding Local Governments*, 78 U. CHI. L. REV. 879, 903-04 (2011).
 22. BRETT CHRISTOPHERS, *THE NEW ENCLOSURE* 57 (2019).
 23. It would be impossible to cover even the tip of this iceberg in a single footnote. For a few touchstone examples, see ELLICKSON ET AL., *supra* note 16; David Schleicher, *City Unplanning*, 122 YALE L.J. 1670 (2012); Vicki Been, *Exit as a Constraint on Land Use Exactions: Rethinking the Unconstitutional Conditions Doctrine*, 91 COLUM. L. REV. 473 (1991); WILLIAM A. FISCHER, *THE ECONOMICS OF ZONING LAWS* (1985); Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CALIF. L. REV. 837 (1983); and Robert C. Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681 (1972).

own.²⁴ The lion's share of this literature focuses on the use of eminent domain and its impact on constitutional property rights (though some scholars have analyzed how local governments creatively wield public rights of first refusal²⁵ and land banking²⁶ to acquire land).

Less scholarly attention is paid to the process by which local governments *dispose* of the property they already own. In the early 1970s, an urban planning historian described the disposition of municipal land as "strangely overlooked."²⁷ Today, studies examining how and why public real estate assets are "developed, divested, or protected" remain "scant at best."²⁸ To the extent that disposition has been an object of investigation, such analysis has focused largely on federal government land ownership,²⁹

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24. It is equally impossible to cover the tip of *this* iceberg in a single footnote. But for a few examples, see Daniel B. Kelly, *Acquiring Land Through Eminent Domain: Justifications, Limitations, and Alternatives*, in RESEARCH HANDBOOK ON THE ECONOMICS OF PROPERTY LAW 344 (Kenneth Ayotte & Henry E. Smith eds., 2011); Ilya Somin, *Introduction to Symposium on Post-Kelo Reform*, 17 SUP. CT. ECON. REV. 1 (2009); Wendell E. Pritchett, *The Public Menace of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1 (2003); Thomas W. Merrill, *Economics of Public Use*, 72 CORNELL L. REV. 61 (1986); and Tony Freyer, *Reassessing the Impact of Eminent Domain in Early American Economic Development*, 1981 WIS. L. REV. 1263 (1981).
25. See, e.g., Peter Damrosch, *Public Rights of First Refusal*, 129 YALE L.J. 812 (2019).
26. See, e.g., Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFFORD. HOUS. & COMM'Y DEV. L. 140 (2005).
27. John W. Reps, *Public Land, Urban Development Policy, and the American Planning Tradition*, in MODERNIZING URBAN LAND POLICY 28 (Marion Clawson ed., 1972).
28. Gabriel E. Eidelman, *Landlocked: Politics, Property, and the Toronto Waterfront, 1960-2000* at 174 (2013) (Ph.D. dissertation, University of Toronto), https://tspace.library.utoronto.ca/bitstream/1807/35812/6/Eidelman_Gabriel_E_201306_PhD_Thesis.pdf [<https://perma.cc/E6C6-LA2U>].
29. Rosenbaum, *supra* note 11, at 668 n.15 ("The academic literature's engagement with fragmented public land has occurred almost exclusively at the federal level . . . This imbalance mirrors larger trends in the field of public land management, where scholarship focuses overwhelmingly on federal public land."); Steven M. Davis, *The Politics of Urban Natural Areas Management at the Local Level: A Case Study*, 2 KY. J. EQUINE AGRIC. & NAT. RES. L. 127, 127 (2009) ("The centrality of local conservation lands in peoples'

but even at that level, the sale and lease of government assets “occupy one of the dustiest corners of public law,” as “the sales of land parcels, auctions of apartment buildings, and the lease of mineral rights are [simply] not the stuff of which headlines (or law reviews) are made.”³⁰

A small subset of scholars has nevertheless made key observations about the municipal land disposition process. First, disposition has long served as a potent tool of local governance, rather than a mundane bureaucratic decision. Second, municipal land disposition decisions are highly discretionary, particularly because judicial review is limited where there are no public trust or eminent domain issues at play. And finally, some scholars have characterized local land disposition as entirely lacking in legislative or regulatory frameworks—though I observe that there exist essentially no cross-cutting empirical or legal studies about how this administrative process works. This Note seeks to fill a portion of this knowledge gap.

A. Historical Perspectives on Land Disposition as a Tool of Local Governance

Public land disposition has been a core issue of local governance since the colonial period and early republic. Contrary to perceptions that public ownership is incompatible with American private property regimes, early planned communities in the United States were “acquired by the public, surveyed into streets, blocks, and lots, and disposed of by auction or sale, often with conditions governing the use of the land.”³¹ Often, land sale proceeds were used to erect public buildings, make community improvements, and maintain open spaces that would remain in public ownership for future generations.³²

In the eighteenth and nineteenth centuries, local governments timed the disposition of public land strategically,³³ orchestrating land sales and

everyday lives is certainly not mirrored in public lands literature, which is disproportionately focused on federal lands.”).

30. Harold J. Krent & Nicholas S. Zeppos, *Monitoring Governmental Disposition of Assets: Fashioning Regulatory Substitutes for Market Controls*, 52 VAND. L. REV. 1705, 1707 (1999).

31. Reps, *supra* note 27, at 15, 22, 24-25.

32. *Id.* at 25.

33. For instance, until 1844, New York City government “pursued a general policy of leasing rather than selling land, wisely taking advantage of relatively short

leases not only to generate revenue, but also to control spatial development. After its incorporation in 1790, for example, the city of Savannah, Georgia “us[ed] its ownership of the common and employ[ed] a system of regulated sales and leases” to “guid[e] growth” and “avoid sprawl and speculation” for more than half a century.³⁴ Legal historian Hendrik Hartog has characterized New York City’s management of its corporate estate as a “mode of public planning and governance.”³⁵ In addition, public land grants held profound political significance. New York City’s estate, for instance, enabled it to consolidate power in a world where “instrumental public action was inherently suspect.”³⁶ As Hartog argues, “[t]he property rights granted [the city] through its charters allowed it to achieve governmental objectives that were beyond the reach of unpropertied local governments. Instead of sanctions against failures of performance, the city could offer leases, licenses, and grants to private individuals willing to implement various city-defined goals.”³⁷

In early American history, public land ownership and strategic disposition were critical stages in the life cycle of local property. But by the late nineteenth and early twentieth centuries, private landownership had eclipsed public landownership in most urban and peri-urban areas. Plots of land that had served as commons were largely sold off, the land retained by government was committed to a narrow set of public purposes, and local governments no longer needed municipal real estate to exercise their political power.³⁸ It became a “given that absent special circumstances or

leases to capture increments in land values.” *Id.* at 38. It discontinued this policy in the mid-nineteenth century and sold off the bulk of its property holdings in northern Manhattan in order to reduce city debt and subsidize critical infrastructure projects. *Id.* at 39.

34. *Id.* at 43.

35. HENDRIK HARTOG, PUBLIC PROPERTY AND PRIVATE POWER: THE CORPORATION OF THE CITY OF NEW YORK IN AMERICAN LAW, 1730-1870, at 43 (1989). For instance, when the city sold waterfront lots in the late eighteenth century, it imposed restrictive covenants requiring grantees to pave streets and build wharves dedicated to public use, thereby allowing the city to “shape, control, and profit from the development of its waterfront.” *Id.* at 50, 53.

36. *Id.* at 66.

37. *Id.*

38. *Id.* at 240, 259-64.

uses for which public ownership might be appropriate (like parks), the proper destination of publicly owned land [was] into private hands.”³⁹

Despite dwindling public ownership, planners and urban policy experts identified public land retention and management as the solution to challenges that attended rapid urbanization in the twentieth century.⁴⁰ Perversely, however, many of these same planners advocated for one of the most devastating efforts by local governments to acquire and dispose of urban land: urban renewal, an initiative that resulted in the systematic displacement of communities of color in major American cities under the guise of “blight removal” and “slum clearance.”⁴¹ Urban renewal led to what Samuel Stein and Oksana Mironova have termed “municipalization by dispossession”⁴²—that is, local government’s strategic acquisition and management of land formerly occupied by residents of color, followed by large-scale disposition of cleared land to for-profit developers.

39. *Id.* at 8.

40. For instance, in 1937, the National Resources Committee, an advisory body to President Roosevelt on issues of land use and planning, issued a landmark report entitled *Our Cities—Their Role in the National Economy*. The report described how “in the past, urban communities frequently chose or were forced by law to acquire land at excessive cost and dispose of their holdings in haste and at a loss.” NATIONAL RESOURCES COMMITTEE, *OUR CITIES—THEIR ROLE IN THE NATIONAL ECONOMY* 76 (1937). “Better to control urban development, to combat land speculation, and to have land available for low-rent housing, recreational, educational and other public facilities likely to be increasingly required in the future,” the Committee advocated “a more liberal policy of land acquisition by municipalities,” and the liberalization of state law “to permit urban authorities to acquire, hold, and dispose of land.” *Id.* at 76-77.

41. For more on the drivers and impacts of urban renewal, see Digital Scholarship Lab, *Renewing Inequality: Family Displacements through Urban Renewal, 1950-1966* (eds. Robert K. Nelson and Edward L. Ayers), <https://dsl.richmond.edu/panorama/renewal/#view=0/0/1&viz=cartogram&text=about> [<https://perma.cc/4KAA-T89H>]; RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2018); MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT* (2005); Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 *FORDHAM URB. L.J.* 305 (2004); and CRAIG STEVEN WILDER, *A COVENANT WITH COLOR: RACE AND SOCIAL POWER IN BROOKLYN* (2001).

42. Samuel Stein & Oksana Mironova, *Public Land Revisited: Municipalization and Privatization in Newark and New York City*, 25 *INT’L PLANNING STUDIES* 247, 249 (2020).

Ultimately, while urban renewal led to major government intervention in local land markets, it was the kind of intervention that wielded state power for private, market-oriented ends.⁴³ As Keeanga-Yamahtta Taylor describes, “instead of rebuilding urban communities and allowing for the return of those who had been displaced by . . . bulldozers, private developers built condominiums and apartments and refurbished shopping districts for a middle-class clientele while ignoring the housing needs of those who had been displaced.”⁴⁴

Local governments have also wielded their power to acquire and dispose of land during periods of acute economic distress, such as the urban fiscal crises of the 1970s and, more recently, the Great Recession. In the mid-to-late twentieth century, deindustrialization—coupled with urban sprawl and white flight—led to an increase in vacant, abandoned, or tax-delinquent properties that cities then acquired through tax foreclosure or condemnation. Many cities have and continue to dispose of these properties through land banks, special governmental entities that “acquire surplus properties and convert them to productive use.”⁴⁵ While land banks may

43. Legal historian Wendell Pritchett has characterized the vision of renewal advocates this way: “An effort to revitalize the city through the private redevelopment of publicly condemned land, urban renewal was promoted by elites as the answer to city decline. Renewal advocates envisioned the creation of a futuristic metropolis, organized according to modern principles of planning. Building this new city required the clearance and redevelopment of large areas of the city. In European cities, such efforts were undertaken by government, but American renewal advocates opposed such centralized power. Instead, they argued that cities could be rebuilt privately . . .” Pritchett, *supra* note 24, at 2-3. Ultimately, as Pritchett explains, renewal advocates mobilized the discourse of “blight” to “secure government assistance while retaining private control over urban redevelopment and to achieve urban redevelopment without drastically altering legal protections for private property in general.” *Id.* at 13.

44. KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* 41 (2019).

45. FRANK S. ALEXANDER, *Land Banks and Land Banking* 23 (2d ed. 2015), <https://communityprogress.org/wp-content/uploads/2021/08/2015-06-Land-Banks-and-Land-Banking-2-Publication.pdf> [<https://perma.cc/L6KX-NXZ6>].

hold land strategically, local officials often use them to flexibly transfer real estate to private parties.⁴⁶

This brief historical survey, while far from comprehensive, serves to illustrate that the disposition of public land is a tool of local governance. For centuries, local governments have acquired and distributed local land to raise revenue, guide spatial development, and bolster their own political legitimacy. This history also provides a crucial reminder that the power associated with public land management has often been co-opted and wielded for private, commodified, and racially discriminatory ends. In short, the disposition of public land is far from a value-neutral or mundane administrative decision.

B. Limited Judicial Review of Disposition Decisions

Legal scholars characterize municipal land disposition as a process in which a local government's policy discretion is "at its height."⁴⁷ A government's power as a landowner is greater than its power as a land use regulator, both because government frees itself from certain legal constraints, like constitutional takings clauses, and because it has more than veto power over private owners' land use decisions: "a government that owns can affirmatively decide the nature and timing of land use."⁴⁸

Limited judicial review facilitates municipal discretion in the disposal of real property. Municipalities enjoy "broad deference when selling public property," especially where property has been designated as surplus to

46. Frank S. Alexander, *Land Bank Strategies for Renewing Urban Land*, 14 J. AFF. HOUSING & COMM'Y DEV. 140, 143-50 (2005); see also LOCAL HOUSING SOLUTIONS, *Land Banks*, <https://localhousingsolutions.org/housing-policy-library/land-banks> [<https://perma.cc/37V9-LW4Z>] ("While land banks can hold properties, they typically seek to sell the properties to new owners. With the right enabling legislation, a land bank can clear the title and any liens against a tax delinquent property it owns so it can be sold with a clean title to the next owner. Land banks sell to developers and management companies, as well as to individuals and families.").

47. RICHARD SCHRAGGER, *CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE* 151 (2016); see also Noah M. Kazis, *Public Actors, Private Law: Local Governments' Use of Covenants to Regulate Land Use Notes*, 124 YALE L.J. 1790, 1796-97 (2014).

48. ELLICKSON ET AL., *supra* note 16, at 766-67 (2020); see also Kazis, *supra* note 47, at 1798 (noting that local governments make use of covenants when they sell public land to actively "support particular developments," otherwise they will simply use zoning law to "deny the approvals or land transfers").

government needs.⁴⁹ Scholars explain this deference in different ways. Richard Schragger, for instance, notes that cities have enhanced power to negotiate over land use deals when they act in their proprietary capacity—that is, when they exercise their spending and contracting powers rather than their regulatory power.⁵⁰ While unconstitutional conditions doctrines place an “outer limit” on the exercise of the city’s contracting authority, these formal constitutional constraints are less important than the space opened up through individualized transactions over municipal real estate.⁵¹ Relatedly, Noah Kazis has observed that when local governments convey publicly owned land to private developers, they tend to use covenants instead of zoning law to set conditions on development.⁵² Governments do so at least in part because a covenant—a tool of private law—limits which parties can enforce land use controls in court, whereas zoning—a tool of public law—increases the likelihood of judicial intervention through citizen enforcement provisions.⁵³

Other scholars agree that municipal disposition decisions are, as a descriptive matter, proprietary, but attribute light judicial oversight to the public nature of local government power. Historically, a city’s decision to dispose of its assets meant that it was acting in its “private” capacity.⁵⁴ Given that municipalities were traditionally thought of as corporations,⁵⁵ courts

49. Rosenbaum, *supra* note 11, at 675.

50. SCHRAGGER, *supra* note 47, at 151.

51. *Id.* at 154.

52. Kazis, *supra* note 47, at 1797.

53. *Id.* at 1793.

54. Schanzenbach & Shoked, *supra* note 18, 582-85.

55. As John Dillon recognized in his seminal treatise on municipal corporations, eighteenth-century courts recognized that the city played both a “governmental, legislative, or public” role and a “proprietary or private” role in urban life. JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 39 (1911). When a city acted in its proprietary/private capacity, its power was derived not from the state but from the “compact community which is incorporated as a distinct *legal personality* or *corporate individual*.” Consequently, “as to such powers, and to property acquired thereunder, and contracts made with reference thereto, the [municipal] corporation [was] to be regarded *quo ad hoc* as a private corporation, or at least not public in the sense that the power of the legislature over it or the rights represented by it, is omnipotent.” See, e.g., *Audit Co. of New York v. City of Louisville*, 185 F. 349, 352 (6th Cir. 1911) (“[W]hen [a city] is exercising the right of a proprietor in

scrutinized municipal transactions through the lens of corporate fiduciary law.⁵⁶ But today, Max Schanzenbach and Nadav Shoked argue, courts tend to characterize cities as exclusively “public”:

[They are] creatures of the state set up primarily to tax, regulate, and provide services. Accordingly, modern courts reckon that the only relevant legal question when a city acts is whether the state empowered it to act. The question, prevalent in private law, is whether the entity’s act lived up to any obligations toward members, is irrelevant.⁵⁷

To demonstrate that “tools of public law” offer city residents “little relief” from potentially unwise transactions in city-owned property,⁵⁸ Schanzenbach and Shoked highlight the City of Chicago’s decision to sell its metered parking system to a private company for \$1.1 billion. Taxpayers challenged the sale, but because the city was authorized to sell the asset so long as it retained related governmental powers,⁵⁹ the reviewing court refused to second-guess the city’s decision-making process or the quality of the deal it had struck.⁶⁰

the management of its property, its council and officers resemble the directors and officers of a private corporation, and, in large degree, the powers of these agents and the responsibility of the city for their acts are governed by the rules applicable to private corporations.”).

56. In a notable case from the mid-1800s, for instance, New York City’s board of aldermen resolved to allow a private entity to operate a passenger railway on Broadway, a city street held in public trust. Plaintiffs challenged the grant, arguing that even though the street remained open to the public, the city had conveyed the operating privilege for a “trifling sum,” amounting to a “palpable breach of trust.” The court held that because the city council had been acting “in reference to the private property of the corporation,” it would “stand upon the same footing as if [it] were the representative[] of a private individual, or of a private corporation.” Applying private law fiduciary duties to the city council, the court found that it had violated its obligation to city residents in a “gross and unwarrantable” fashion by granting the privilege at low cost. *Milbau v. Sharp*, 15 Barb. 193, 206-07 (N.Y. Gen. Term. 1853) (Edwards, P.J.).
57. Schanzenbach & Shoked, *supra* note 18, at 572.
58. *Id.*
59. These government powers were “wide discretion in the matter of the location, regulation, and control of the metered parking spaces.” *Id.* at 570.
60. *Id.* at 568-69.

Whether judicial review in this context is light *because* local governments are acting in their proprietary capacity or *in spite* of them doing so, the consensus is that courts do not meaningfully oversee municipal land disposition decisions. There are two important exceptions. The first is when a city uses eminent domain to acquire land that it subsequently sells or conveys to a private owner. In this subset of cases, the public use requirement enshrined in federal and state takings clauses constrains municipal discretion.⁶¹ The second exception is where the public trust doctrine (PTD) applies.⁶² The PTD protects land underneath and abutting navigable waters from being alienated by state and local government.⁶³ Scholars and advocates have pushed for a broader conceptualization of PTD as encompassing all kinds of natural resources lands, “following terrestrial wildlife wherever it migrates” inland, upland, and into the atmosphere.⁶⁴ Courts in some states have embraced the PTD

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61. Although the U.S. Supreme Court has adopted a (controversially) broad interpretation of “public use,” many states have responded by strengthening their own eminent domain laws, thereby opening the door for increased state-level judicial enforcement. *See* ELLICKSON ET AL., *supra* note 16, at 778-79. Both Minnesota and Arizona, for instance, clarify that eminent domain may only be used to take land for specified “public uses”: (i) possession, occupation, and enjoyment of the land by the general public or public agencies; (ii) the creation of utilities or public service corporations; (iii) the elimination of threats to public health or safety or; (iv) the acquisition of abandoned property. In other words, land taken by eminent domain may not be transferred to a private owner unless it fulfills one of these conditions. *See* ARIZ. REV. STAT. ANN. § 12-1136 (2022); MINN. STAT. § 117.025(11) (2019). Florida’s statute is even stricter: property condemned through state or local governments’ use of eminent domain may not be conveyed to an individual or private entity unless it will be used as a common carrier or for public infrastructure, or after ten years. FLA. STAT. §§ 73.013, 163.335 (2019).
62. The public trust doctrine is discussed further *infra* at Part III.
63. MICHAEL C. BLUMM & MARY C. WOOD, *THE PUBLIC TRUST DOCTRINE IN ENVIRONMENTAL AND NATURAL RESOURCES LAW* 343 (3d ed. 2021).
64. *Id.*; *see also* Gerald Torres & Nathan Bellinger, *The Public Trust: The Law’s DNA*, 4 WAKE FOREST J.L. & POL’Y 281, 283 (2014) (“The concept of the public trust doctrine is simple: certain natural resources—such as air, water, and the sea—that are essential for all humans are held in trust by government for the benefit of all people, including future generations.”).

and trust-like principles⁶⁵ when reviewing the sale or transfer of state and local park land.⁶⁶

These two exceptions are important: exercising eminent domain is one of the most politically salient decisions that local governments make, and local governments likely own “significant amounts of land that contains or abuts public trust resources.”⁶⁷ Yet local governments have owned many parcels of their real property for long periods of time or acquired them through an exemption from the constraints of state eminent domain law (e.g., through condemnation for property characterized as “blighted”). And there are relatively few public trust cases that have arisen in the context of parks and urban public lands.⁶⁸

As such, judicial review of the bulk of municipal land disposition decisions remains limited, to the chagrin of concerned scholars. Schanzenbach and Shoked lament that the lack of judicial scrutiny over municipal transactions has resulted in “local governments . . . rushing, with little deliberation or expertise, into market deals of highly dubious quality . . . thoughtless[ly] transact[ing] in city assets.”⁶⁹ And Daniel

65. See, e.g., *Friends of the Parks v. Chi. Park Dist.*, 160 F. Supp. 3d 1060, 1066-69 (N.D. Ill. 2016); *Raritan Baykeeper v. City of New York*, 984 N.Y.S. 2d 634 (2013) (“The long recognized ‘Public Trust Doctrine’ prohibits the diversion of parkland to any use which is not consistent with public use and enjoyment of a park unless the use has been authorized by the State Legislature.”); *Ellington Construction Co. v. Zoning Bd. of Appeals*, 152 A.D.2d 365, 378-79 (N.Y. App. Div. 1989) (noting that “[d]edicated park areas in New York are impressed with a public trust, and their use for other than park purposes, either for a period of years or permanently, requires the direct and specific approval of the Legislature, plainly conferred”).

66. For scholarly perspectives on PTD applications in the parkland context, see Hope Babcock, *Is Using the Public Trust Doctrine to Protect Public Parkland from Visual Pollution Justifiable Doctrinal Creep*, 42 *ECOLOGY L.Q.* 1 (2015); Mackenzie S. Keith, *Judicial Protection for Beaches and Parks: The Public Trust Doctrine Above the High Water Mark*, 16 *HASTINGS W.-NW. J. ENV'T L. & POL'Y* 165 (2010); Alexandra B. Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 *NOTRE DAME L. REV.* 699, 707-708 (2006); Mary W. Blackford, *Putting the Public's Trust Back in Zoning: How the Implementation of the Public Trust Doctrine Will Benefit Land Use Regulation*, 43 *HOUS. L. REV.* 1211 (2006); Heather J. Wilson, *The Public Trust Doctrine in Massachusetts Land Law*, 11 *B.C. ENV'T L. AFF. L. REV.* 839 (1984).

67. Sean Lyness, *The Local Public Trust Doctrine*, 34 *GEO. ENV'T L. REV.* 1, 25 (2021).

68. Blumm & Wood, *supra* note 63, at 344.

69. Schanzenbach & Shoked, *supra* note 18, at 571-572.

Rosenbaum observes that “without meaningful . . . judicial parameters,” individual properties end up being “acquired and sold for shifting political reasons,” without considering the long-term implications of such decisions.⁷⁰

C. The Underexamined Nature of the Disposition Process

Beyond the light touch of the court system, scholars also explain the highly discretionary nature of municipal land disposition by reference to an apparent paucity of legislative and regulatory restrictions. Because nearly half of states do not include local agencies within the ambit of their state administrative procedure acts, it is certainly true that “many local agencies . . . operate without any . . . mandatory overarching legislative procedural guidance” on administration, leaving a “tremendous range of procedural discretion at the local level.”⁷¹ Scholars who have studied land disposition at the local level observe this kind of discretion in action. Steven Davis, for instance, notes that “land managers at the city and county level tend to be far less constrained by legislative or regulatory guidelines and requirements than federal managers,” and thus are comparatively “unfettered” in their decision-making.⁷² According to Schragger, the disposition process is “shot full of ad hoc agreements, behind the scenes deal-making, and site-specific concessions.”⁷³ Rosenbaum likewise concludes that the apparent lack of legislative and regulatory parameters for disposition enables local entities to “sell property in order to advance short-term political or fiscal goals, absent any cohesive long-term sensibility.”⁷⁴

70. Rosenbaum, *supra* note 11, at 676-77.

71. Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 605-06 (2016). Of course, it’s not clear how much a state administrative procedure act regulates property transactions of covered agencies: at the federal level, decisions about the sale and lease of government-owned property are largely exempt from the scope of the federal Administrative Procedure Act, and “Congress has excluded disposition decisions from restraints imposed on other spending and regulatory decisions.” Krent & Zeppos, *supra* note 30, at 1708.

72. Davis, *supra* note 29, at 147.

73. SCHRAGGER, *supra* note 47, at 152.

74. Rosenbaum, *supra* note 11, at 676.

At the same time, aside from a few empirical studies,⁷⁵ there have been no systematic or cross-cutting analyses of municipal land disposition as a legal process. This stands in stark contrast to the dense empirical literature on planning and zoning procedures, which are arguably characterized by just as much discretion and *ad hoc* decision-making as the disposition of government-owned land and yet have been extensively mapped out by legal scholars.⁷⁶

Understanding with some granularity how and why local governments dispose of their real property is important for a few reasons. First, such analysis will either substantiate or constructively question the idea that disposition is a lawless—even “thoughtless”—process. Second, studying the land disposition process “can add a rich dimension to the literature on local authority and identity, complicating questions of local democratic accountability” and “the valence of local community.”⁷⁷ Lastly, and perhaps most urgently, getting a thicker descriptive picture of local land disposition allows us to debate normative visions for government land ownership with greater clarity.

II. VALUES EMBEDDED IN MUNICIPAL LAND DISPOSITION LAW

Having outlined the need for more cross-cutting and empirical legal research into the municipal land disposition process, I turn now to the main thrust of this Note. Rather than comprehensively surveying disposition procedures as they operate on the ground, this Note takes on the first-order project of mapping the values embedded in disposition law, based on a sample of large American cities across geographic regions. I identify several core values: (1) transparency and (2) democratic checks and balances, values which ensure that disposition decisions are made publicly and with the approval of a city’s elected officials; (3) efficiency, a value which encourages cities to sell parcels at fair market or highest bid value; (4) anti-

75. See, e.g., Davis, *supra* note 29; Gabriel Eidelman, *Failure When Fragmented: Public Land Ownership and Waterfront Redevelopment in Chicago, Vancouver, and Toronto*, 54 URBAN AFF. REV. 697 (2018).

76. See, e.g., Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083 (2021); Schleicher, *supra* note 23; Daniel P. Selmi, *The Contract Transformation in Land Use Regulation*, 63 STAN. L. REV. 591 (2010); Jerry L. Anderson, Aaron E. Brees & Emily C. Reninger, *A Study of American Zoning Board Composition and Public Attitudes toward Zoning Issues*, 40 URB. LAW. 689 (2008).

77. Davidson, *supra* note 71, at 624.

corruption, a value which places particular constraints on the donation of municipal land to private parties; and (5) public use, which encourages cities to incentivize publicly-beneficial uses of surplus municipal land (e.g., affordable housing).

As a prefatory note, “municipal land disposition law” is really a mosaic of state constitutional law, state statutory law, and local charters, ordinances, and administrative guidelines. State *constitutions* contain provisions that directly or indirectly regulate how local governments can dispose of surplus land. For instance, many state constitutions contain gift clauses, which prohibit the state and political subdivisions from making donations or granting of “things of value” to individuals, associations, or corporations. State constitutions may also provide for the management of state-owned land within municipal boundaries, such as property possessed by state universities,⁷⁸ natural resources land,⁷⁹ or property acquired by state tax foreclosure.⁸⁰ State *statutes*—in particular, local government codes—authorize jurisdictions to acquire, manage, and dispose of real property.⁸¹ States typically impose a few procedural requirements on local government but otherwise permit local customization.⁸²

78. *See, e.g.*, CAL. CONST. art. IX, § 9(f) (“The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit . . . provided, however, that sales of university real property shall be subject to such competitive bidding procedures as may be provided by statute.”).

79. *See, e.g.*, HAW. CONST. art. XI, §§ 1-2 (“For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources All public natural resources are held in trust by the State for the benefit of the people The legislature shall vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be provided by law . . .”).

80. *See, e.g.*, ILL. CONST. art. IX, § 8 “(a) Real property shall not be sold for the nonpayment of taxes or special assessments without judicial proceedings. (b) The right of redemption from all sales of real estate for the nonpayment of taxes or special assessments . . . shall exist in favor of owners and persons interested in such real estate for not less than 2 years following such sales.”).

81. *See infra* pp. 692-693 tb. 1.

82. For example, the Illinois Municipal Code authorizes local governments to accept land bids that are “determined to be in the best interest of the city or village,” and gives local authorities the latitude to sell real estate for less than the highest proposed price. *See* 65 ILL. COMP. STAT. 5/11-76-2; 65 ILL. COMP. STAT. 5/11-76-4.1.

Even under the most rigid state statutory regimes, there is room for variation at the level of *local law and policy*: city charters, codes of ordinances, mayoral executive orders, and administrative regulations promulgated by municipal agencies are tools that cities use to tailor the disposition process to local needs. Appendix, Table 2 provides an overview of local land disposition provisions that govern in fifteen large American cities, which were selected to represent prominent, populous metropolitan areas in geographic regions across the country.

Before cataloging the values embedded in these cities' disposition laws and policies, it is worth making an overarching observation about the nature of this body of authority. In many cities, the legal process of disposition engages multiple administrative and elected officials, as well as the general public; on paper, then, disposition is far from a "thoughtless" decision. At the same time, disposition laws and policies tend to be full of default rules that can be adjusted or set aside, based both on the intended use for and recipient of city-owned land. In other words, disposition law permits local governments to engage in idiosyncratic, site-specific deal-making with potential buyers. My preliminary empirical analysis is thus consistent with, but also complicates, the story that legal scholars tell about local land disposition: cities enjoy a good deal of discretion in disposing of the real property they own, but there are legal and policy guardrails that shape the exercise of that discretion.

A. Transparency & Democratic Checks and Balances

One key value reflected in local land disposition laws and policies is procedural transparency: that is, the sale of city-owned land should not take place clandestinely or behind closed doors. The preference for transparency is manifested in several ways. Almost all of the surveyed disposition statutes require public notice well in advance of land disposal, whether the requirement is enshrined at the state or local level,⁸³ and some cities also

83. See, e.g., TEX. CODE ANN. § 272.001 (“[B]efore land owned by a political subdivision of the state may be sold or exchanged for other land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted”); DALL. CODE OF ORDINANCES Sec. 2-24(c) (“In order to publicize the availability of property for sale and to attract the attention of all potential buyers, at least 60 days before initiation of formal bid procedures, the city

require at least one public hearing before the local executive or city council can authorize disposition.⁸⁴ Moreover, the standard procedure for acquiring city-owned real estate in many jurisdictions is competitive bidding or public auction, rather than private or direct negotiated sale, which further illuminates the importance of transparency in real estate transactions.⁸⁵

Disposition laws also promote checks and balances, as they tend to preclude unilateral disposal by whatever agency, board, or local government entity holds formal title to the parcel. To be sure, the decision to designate a parcel as surplus typically belongs to the municipal agency that holds title. And many disposition laws do not provide a formal opportunity for other agencies, city legislators, or the general public to

manager shall: (1) prepare a notice of the contemplated offer for sale and send it [to surrounding property owners, real estate brokers, neighborhood associations], (2) place a 'for sale' sign or signs on the property, and (3) [if the estimated value is more than \$100,000 and the property is independently developable], place display advertising giving notice of availability of the property in appropriate newspapers or periodicals.”).

84. *See, e.g.*, IND. CODE § 36-1-11-3(b) (“The executive or fiscal body may not approve a disposal of property without conducting a public hearing . . .”); D.C. CODE § 10-801(b-2) (“Before proceeding to negotiate the disposition of real property . . . the Mayor shall hold at least one public hearing to obtain community comment and suggestions on the proposed use of the property. The hearing shall be held at an accessible evening or weekend time and in an accessible location in the vicinity of the real property.”). Seattle mandates that the city’s Real Estate Services Division prepare a public involvement plan, which details how the division will notify the public about a parcel’s availability for purchase. City of Seattle, *Procedures for Evaluation of Reuse and Disposal of the City’s Real Property*, Sec. 8.1.1 (Sept. 6, 2018), <http://seattle.legistar.com/View.ashx?M=F&ID=6655201&GUID=6399F6D4-6302-4211-BBF9-979EEA9D7415> [<https://perma.cc/YS5A-M3S7>]. A more substantial public engagement process may be required for “complex” disposition decisions, measured by the potential for conflicting proposals, the estimated fair market value of the property, the potential need for a zoning change, and community interest in the property, among other factors. *Id.* at §§ 8.3.3, 8.4.2.
85. *See, e.g.*, JACKSONVILLE, FLA., MUNI. CODE, Sec. 122.425 (describing public auction and sealed bid procedures for disposing of real property); City of Charlotte Engineering & Property Management Department, *Purchasing Real Estate Owned by The City of Charlotte Using the Upset Bid Process* (July 9, 2015), https://www.charlottenc.gov/files/sharedassets/city/v/1/streets-and-neighborhoods/housing/documents/purchasing-city-real-estate_revised07-09-2015.pdf [<https://perma.cc/2FGY-UW52>].

contest a surplus designation.⁸⁶ In other words, once one local agency has decided it no longer has use for a particular parcel it owns, public retention becomes rather unlikely.

However, there is almost always some democratic check on local agency action, requiring either the city's executive or legislative body to formally approve the conveyance of city-owned property. A common arrangement is for the city executive to prepare a proposal for the disposal of a parcel to a particular buyer, which the city council then accepts or rejects by resolution.⁸⁷ Precisely what the council votes on may vary. In some cities, legislators themselves determine concrete terms of sale. In others, a city manager or real estate division negotiates terms with individual buyers, and the city council has veto power at the end of the deal-making process. The latter is the case in Denver, where the Division of Real Estate, which is responsible to the city's mayor-appointed Chief Financial Officer, works with city agencies and negotiates with potential buyers regarding the intricacies of the sale or lease. However, any resulting contract or deed must be authorized by City Council ordinance or resolution.⁸⁸

The fact that each individual municipal land disposition decision must enjoy the imprimatur of a city's elected officials is consistent with the

86. There are, however, a handful of exceptions. In Los Angeles, San Francisco, and Denver, for example, city departments must have a chance to review the proposed surplus parcel to confirm that the property is no longer needed; only after this additional review process may City Council declare the property "surplus." In Washington, D.C., the mayor's office must submit a separate resolution for each parcel of real property that it wishes to be declared surplus, accompanied by a detailed explanation weighing alternative government uses of the property against the proposed private use. The City Council subsequently decides whether the parcel should be declared surplus. In California cities, the Surplus Land Act additionally requires that potential surplus property be assessed for its use as affordable housing and, if appropriate, for recreational, educational, or public transportation purposes. See Appendix, Tables 1 and 2.

87. See, e.g., DALL., TEX., CITY CODE § 2-26.1 (requiring the city manager to "make a recommendation to the city council" after a formal bid procedure regarding a negotiated sale of city-owned land); D.C. CODE §§ 10-801(a-1); 10-801(b) (requiring the mayor to provide a detailed resolution to city council at both the surplus designation and proposed sale stages of the disposition process).

88. Mayor Michael B. Hancock, Executive Order No. 100: *City Owned and Leased Real Estate: Acquisition, Disposition, Leasing, and Facility Management, Space Planning, and Programming* (Oct. 5, 2016), <https://www.denvergov.org/files/assets/public/v/2/executive-orders/documents/100-city-owned-leased-real-estate.pdf> [<https://perma.cc/9KP9-5Z68>].

observation that “the functional distinction between legislative and administrative entities [at the local level] can blend.”⁸⁹ This fact also lends support to the observation that disposition decisions can be highly politicized. Of course, the political nature of disposition is neither novel, as the historical overview in Part I of this Note makes clear, nor surprising: “eliminating political influence from government real estate decisions is like removing sand from a beach.”⁹⁰ Nor is a politically-inflected disposition process necessarily undesirable.⁹¹ Benjamin Sachs has shed light on the ways in which labor unions strategically use the disposition process to bring employers to the bargaining table: when the Yale-New Haven Hospital needed a parcel of land owned by the City of New Haven to construct its new cancer center, Service Employee International Union District 1199 and then-Mayor John DeStefano leveraged that need to secure a favorable organizing agreement for the union.⁹² Like other land use regulatory processes, disposition may be “criticized as unprincipled and extralegal,” but “it is precisely the fact” that it “provides room for political considerations” that gives community-based groups like unions and anti-poverty organizations the traction they need to negotiate for their needs.⁹³

B. Efficiency

Another value that animates municipal land disposition law and policy is efficiency. In this context, efficiency entails *maximizing* city government’s financial resources and *minimizing* the costs associated with property maintenance.

89. Davidson, *supra* note 71, at 603. And in the land use context, “it is common for local legislative bodies to make highly individualized determinations about particular parcels, rather than jurisdiction-wide rules.” *Id.*

90. John Hentschel & Marilee Utter, *U.S. Cities—An Entrepreneurial Approach to Municipal Real Estate Asset Management*, in *MANAGING GOVERNMENT PROPERTY ASSETS* 176 (Olga Kaganova & James McKellar, eds. 2006).

91. See K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 684 (2020) (“[B]uilding genuine power . . . may require . . . a power-oriented view of participation that focuses on the ability of historically disempowered groups to engage in forms of contestation that move beyond oppositional politics to institutionalize power.”).

92. Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153, 1174-80 (2010).

93. SCHRAGGER, *supra* note 47, at 152.

The clearest manifestation of the efficiency value in local disposition law is that the default price for surplus government-owned land is often fair market value or the value of the highest bid on the property in a competitive bidding process. For instance, in Chicago, when a city council committee has not taken action on a proposed sale of surplus city-owned land after sixty days, “the highest bid shall be deemed recommended” for the council’s consideration.⁹⁴ Vacant land in Chicago can be disposed of by an expedited process; for these properties, the parcel must be awarded to the “highest bidder whose submission package is timely and complete.”⁹⁵ In Houston, subject to Texas local government law, the selling price for developable land “shall never be . . . less than the market value fixed by city council.”⁹⁶

To be sure, efficiency does not have a totalizing hold on the disposition process. In almost every city surveyed, state and/or local statutes authorize the sale of city-owned land at below-market rates where the property will serve a qualifying public purpose⁹⁷ or be sold to a qualifying purchaser.⁹⁸ However, efficiency is a powerful consideration: unless a competing value supersedes efficiency on a case-by-case basis, cities are typically looking to maximize the financial return on their “assets.”

Efficiency values are also on full display when it comes to disposition law’s treatment of land that is not readily “developable” (e.g., because it is smaller than the buildable lot size, oddly shaped, or topographically ill-suited for certain types of construction). Here, the goal is not necessarily to

94. CHI., ILL., MUN. CODE § 2-158-020. A member of city council may recommend acceptance of a bid other than the highest, but only if the recommendation is made timely, in writing, and explains why the proposed purpose is “in the best interest of the city”; if a city councilor so recommends, other bidders must be notified and have an opportunity to be heard by the relevant committee before it takes a final decision. Chicago, Illinois, Municipal Code § 2-158-030.

95. CHI., ILL., MUN. CODE § 2-158-090(i).

96. CITY OF HOUS., TEX., CODE OF ORDINANCES, Sec. 2-236(a)N.

97. *See, e.g.*, TEX. CODE ANN. § 272.001(g) (“A political subdivision may . . . sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate-income housing . . . If conveyance of land under this subsection serves a public purpose, the land may be conveyed for less than its fair market value.”); WASH. REV. CODE. § 39.33.015(1) (“Any . . . municipality . . . may transfer [or] lease . . . property for a public benefit purpose . . . on any mutually agreeable terms and conditions, including a no cost transfer.”).

98. *See, e.g.*, INDIANAPOLIS-MARION CNTY REV. CODE Sec. 186-3 (permitting the below-market-rate sale of certain city-owned real property to non-profit corporations).

maximize sale proceeds, though that may also be a city's objective, but instead to minimize the cost of maintaining a parcel that the city suspects will be undesirable on the market. Local governments are often authorized to dispose of so-called "remnant" parcels through a streamlined process—for instance, through negotiated private sale with a neighboring landowner.⁹⁹

Even though efficiency may be superseded by other values, it is the most important governing principle for many city officials. Indeed, practitioners in the municipal asset management field view efficiency as the *sine qua non* of their work: "under the right institutional arrangement," one analyst observes, "the most attractive asset on the municipal balance sheet for maximizing economic returns is municipally owned land."¹⁰⁰ When practitioners take a "balance sheet" approach to the assets and liabilities of local government, they adopt a "deliberate strategy to treat a certain asset class, such as land, as an investment instrument whose economic value is to be extracted, to finance other assets, such as basic infrastructure, that are needed for service provision but cannot readily be financed."¹⁰¹ Similarly, municipal real estate services providers note that "the optimum [municipal real estate] portfolio would eliminate properties with no or incomplete [value] information and maximize those whose market value equals or exceeds use value."¹⁰²

Given the orientation of practitioners in the field, it is unsurprising that where law and policy do not provide to the contrary, efficiency concerns drive disposition decisions. A recent flood of city-owned property sales in Phoenix serves to illustrate this point. Under Arizona state law, "a city or town may sell and convey all or any part of its real or personal property, whether or not the property is devoted exclusively to public use," as long as

99. See, e.g., L.A. ADMIN. CODE § 7.27.1 (allowing city-owned "remnant" parcels to be sold by private sale to an owner of adjoining property for fair market value); HOUS. CODE § 2-239 (providing for streamlined disposition process for land "incapable of being used independently," at a price of at least appraised fair market value).

100. George Peterson, *Municipal Asset Management: A Balance Sheet Perspective*, in MANAGING GOVERNMENT PROPERTY ASSETS 154 (Olga Kaganova & James McKellar, eds. 2006).

101. *Id.* at 155.

102. John Hentschel & Marilee Utter, *U.S. Cities—An Entrepreneurial Approach to Municipal Real Estate Asset Management*, in MANAGING GOVERNMENT PROPERTY ASSETS 196 (Olga Kaganova, James McKellar, eds. 2006).

it invites public bids.¹⁰³ Despite Phoenix's sprawling growth and hot real estate market,¹⁰⁴ there are relatively few constraints on the sale of non-park real property.¹⁰⁵ All the city charter requires is that sales of city-owned property are approved by city council ordinance.¹⁰⁶ In 2013, the City Council approved an Excess City-Owned Property Policy, which stipulated that parcels with no planned use within the next five years and/or for which the "long term maintenance costs exceed the value of holding the property" would be preliminarily designated as "excess property."¹⁰⁷ Once a parcel was designated as "excess," the city's Finance Department would circulate a list of identified properties to other city agencies for possible transfer;¹⁰⁸ those not transferred would be recommended for sale or use for other "revenue generating" purposes, and a private real estate broker would facilitate the disposal process.¹⁰⁹ In presenting the policy to the City Council, the city's Chief Financial Officer underscored that bids for city-owned parcels would "need to at least equal the appraised value and anything less would need to come back to Council for approval."¹¹⁰

103. ARIZ. REV. STAT. Sec. 9-402.

104. Jack Healy, *No Large City Grew Faster than Phoenix*, N.Y. TIMES (Aug. 12, 2021), <https://www.nytimes.com/2021/08/12/us/phoenix-census-fastest-growing-city.html> [<https://perma.cc/2ZU9-Y3T6>].

105. The sale or disposition of city park land is governed by a separate administrative regulation that seems to require some effort on the part of the Parks and Recreation Board to prioritize public recreational use and open space. City of Phoenix, Administrative Regulation 3.9 (revised July 25, 2019) (on file with author).

106. Phoenix City Charter IV, Section 2.42 ("All such sales of real property shall be approved by ordinance of the City Council.").

107. Phoenix City Council Report, Policy Agenda: Excess City-Owned Property (Sept. 24, 2013) (on file with author); *see* City of Phoenix, City Council Policy Session (Sept. 24, 2013) (on file with author).

108. Per a 2006 Inter-Department Land Purchase Policy, property sold between city departments must be sold at either fair market value or "book value" (i.e., the original purchase price). 2006 Citizens Bond Executive Committee, Inter-Department Land Purchase Policy (Apr. 20, 2006), <https://www.phoenix.gov/citymanagersite/Documents/098007.pdf> [<https://perma.cc/39BQ-NGE4>].

109. Phoenix City Council Report, Policy Agenda: Excess City-Owned Property (Sept. 24, 2013) (on file with author).

110. City of Phoenix, City Council Policy Session (Sept. 24, 2013) (on file with author). In July 2023, the city promulgated a new administrative regulation

By the mid-2010s, Phoenix had accumulated a substantial portfolio of government-owned real estate: an estimated 5,530 parcels covering about 90 square miles of the city.¹¹¹ Around the same time, *The Arizona Republic* broke a series of stories cataloguing complaints from “residents, business people, and city leaders who were frustrated that Phoenix owned significant amounts of *vacant* land”—by the newspaper’s estimate, around 1,400 properties.¹¹² The newspaper charged that the city did not keep track of how much vacant land it owned, and that “hundreds of [vacant] lots ha[d] sat idle for more than a decade, some with no use planned for the near future.”¹¹³ The outlet collected accusations from several stakeholders, including two city councilors: one who called Phoenix a “bad neighbor,” and another who opined, “The status quo I can’t see benefits anybody . . . This is actually a pretty good market. People are interested in building things now. They may not be interested in two years.”¹¹⁴ A former mayor of the city said, “In my experience, they’re not good buyers, they’re not good sellers. They’re better off not to be in that business. They’re terrible landowners.”¹¹⁵ And a real estate trade representative accused the city’s

that memorialized its disposition policy. The regulation is largely consistent with the 2013 policy, and specifically states that the “negotiated contract price” for a city-owned parcel “will be no less than market value determined by an appraisal or other valuation method acceptable by the Real Estate Division” of the city, except that the price “may be offset to include other public consideration,” such as “contributions to the community,” as long as the public purpose “can be quantified in terms of dollars.” City of Phoenix, Administrative Regulation 5.44, Disposition of City-Owned Real Property (eff. July 1, 2023) (on file with author).

111. Dustin Gardiner, “*Bad Neighbor*”: Phoenix Struggles to Manage Its Vacant City-Owned Lots, *THE ARIZ. REPUBLIC* (Nov. 25, 2016, 10:55 AM), <https://www.azcentral.com/story/news/local/phoenix/2016/11/24/phoenix-struggles-manage-city-real-estate/86875408/> [<https://perma.cc/MBM7-5KMR>].

112. Dustin Gardiner, *How We Got the Data on Phoenix’s Real-Estate Struggles*, *THE ARIZ. REPUBLIC* (Nov. 24, 2016), <https://www.azcentral.com/story/news/local/phoenix/2016/11/24/how-we-got-data-phoenix-vacant-lots/93948022/> [<https://perma.cc/C4JY-QBBT>] (emphasis added).

113. Gardiner, *supra* note 111.

114. *Id.*

115. *Id.*

“government bureaucracy” of “dabbling in what the private sector does well.”¹¹⁶

In response to *The Arizona Republic’s* investigation, the city began logging all government-owned properties up for sale on a public website and took steps to dramatically shrink its real estate portfolio.¹¹⁷ According to the city manager, this effort built on a culture shift at City Hall, “from viewing land as an asset that we count like desks and cars . . . to actually items that have a potential for possible income to the city.”¹¹⁸ Between August 2016 and December 2021, the City sold over 400 excess properties, generating roughly \$77 million in revenue.¹¹⁹

Residents and elected officials began to change their tune about Phoenix’s public land management. According to a retired real estate agent testifying before the city council, “The city has sat with this plethora of land since point of beginning and it’s just grown like mold. I’m glad we’re finally addressing this situation.” A former city councilor who led the campaign to sell city land explained, “I don’t think it should have taken this much time. Hey, when you’re dealing with an aircraft carrier, it takes a long time to turn it around. But I’m very encouraged.”¹²⁰ A real estate attorney summarized the “four-fold” benefits to the Phoenix community this way:

First, the City is recouping funds from an initial acquisition; these sales proceeds are then generally returned to the original source of funding to offset the costs arising from the original investment. Second, the City is reducing the costs of maintenance derived from the upkeep of these properties. Third, the City is reducing its potential liabilities as a real property owner. Fourth, once in private ownership, these properties are returned to the tax rolls for

116. *Id.*

117. Dustin Gardiner, *Phoenix Unloading Hundreds of City-Owned Properties Following Republic Report*, THE ARIZONA REPUBLIC (Mar. 29, 2017 11:29 AM), <https://www.azcentral.com/story/news/local/phoenix/2017/03/29/phoenix-unloading-hundreds-city-owned-properties-following-republic-report/99418622/> [<https://perma.cc/U5CS-7RXU>].

118. Gardiner, *supra* note 111.

119. City of Phoenix, *City Parcels for Sale, Sold, and Under Review*, <https://phoenix.maps.arcgis.com/apps/webappviewer/index.html?id=6a7b8c6662a249efa93f36a6e94d3498> [<https://perma.cc/L2YR-WAGV>].

120. Gardiner, *supra* note 117.

payment of real property taxes, which means tax dollars to support public works in the Community.¹²¹

Phoenix's five-year fire sale demonstrates that where a city's regulatory framework is lean and focused on maximizing returns to the municipal coffers, it is capable of selling public property at breakneck speed, justifying its clip in the name of efficiency. Of course, not only is maximizing returns far from the only value that matters, but it's also unclear whether such harried transactions achieve their desired effects. For instance, sale-leaseback transactions—whereby local governments sell public buildings to private owners only to rent the space from the buyer—may “plug [immediate] budget holes but often make very little long-term financial sense.”¹²² To some observers, these seemingly efficient decisions are “tantamount to selling the family china only to have to rent it back in order to eat dinner.”¹²³

C. Anti-Corruption

A third value enshrined in municipal disposition law is anti-corruption in local government. The default rule that city-owned property should be sold at fair market value or to the highest bidder serves anti-corruption purposes as much as it does efficiency purposes, as it prevents the appearance of favoritism or bias in government contracting. Disclosure requirements, which occasionally crop up in disposition law, also reflect an anti-corruption sentiment. For instance, when a Chicago city councilor wants to recommend accepting a bid below the highest for a parcel of surplus land, the member must submit a sworn statement that they have no economic interest in the proposed sale and declare whether they have accepted a campaign contribution of more than \$50 from the recommended bidder.¹²⁴

121. *Phoenix is Selling Off Surplus Real Estate . . . What Are the Deals?*, AZ BIG MEDIA (Apr. 26, 2017), <https://azbigmedia.com/real-estate/phoenix-selling-excess-land-heres-buying-process-looks-like/> [https://perma.cc/Z5P9-SNVR].

122. Schanzenbach & Shoked, *supra* note 18, at 572.

123. Michelle Conlin, *Strapped Cities Selling Property*, SARASOTA HERALD-TRIBUNE (May 13, 2011, 7:57 PM), <https://www.heraldtribune.com/story/news/2011/05/14/strapped-cities-selling-property/29017002007/> [https://perma.cc/7DLF-3QBP] (quoting Yves Smith, of *Naked Capitalism* blog).

124. CHI., ILL., MUN. CODE § 2-158-030(d).

State constitutional gift clauses may pose a more serious obstacle to public land conveyances. The vast majority of states have some constitutional prohibition on public spending by state and local governments for non-public purposes,¹²⁵ and a subset of these prohibitions are broad enough to cover the transfer of public property.¹²⁶ Gift clauses are traceable to a particular moment in American history: the Panic of 1837, which left states who had invested public capital in private railroad companies to absorb large financial losses.¹²⁷ In order to prevent state governments—and later on, municipal and county governments—from engaging in private speculation, state legislatures passed constitutional amendments to bar spending, lending, and the conveyance of public property for private purposes.¹²⁸ Over the course of the twentieth century, most state courts narrowed the scope of gift clauses by recognizing a broad range of public purposes to which government property could be dedicated. Still, roughly one-third of states have “strict” gift clauses without broad, judge-forged public purpose exceptions, meaning that courts may still use these clauses to strike down state and local government expenditures and conveyances of property.¹²⁹

Though there is little scholarship examining the interaction between gift clauses and surplus land disposition, gift clauses may explain why states and municipalities are careful about authorizing the donation of government-owned land to private recipients. Where such donations are

125. Nicholas J. Houpt, *Shopping for State Constitutions: Gift Clauses as Obstacles to State Encouragement of Carbon Sequestration*, 36 COLUM. J. ENV'T'L. L. 359 (2011).

126. *See, e.g.*, ARIZ. CONST. art. IX, § 7 (“[n]either the [S]tate, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation”); WASH. CONST. art. VIII, § 7 (“No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm . . .”); ALA. CONST., art. IV, § 99 (“Lands belonging to or under the control of the state shall never be donated, directly or indirectly to private corporations, associations, or individuals or railroad companies; nor shall such lands be sold to corporations or associations for a less price than that which they are subject to sale to individuals . . .”).

127. Houpt, *supra* note 125, at 364.

128. *Id.* at 381.

129. *Id.* at 381-83.

authorized, they are typically conditioned on the identity of the recipient (i.e., a qualified non-profit or charitable organization), tied to a specifically-articulated public purpose, and constrained by particular statutory procedures.¹³⁰

D. Public Use

If the municipal disposition process unfolds against a backdrop of permissive guidelines—as scholars like Schanzenbach, Shoked, and Rosenbaum have contended—we may wonder to what extent disposition laws and policies promote the continued public use of public land. On one hand, it is often unclear how or why a particular city-owned parcel becomes “surplus,” and in many surveyed cities, there is no formal process by which government officials, let alone the general public, can question a surplus designation—except for local legislators to simply veto proposed transactions that come across their desks.¹³¹ Thus, to the extent that public use assumes or necessitates continued public ownership,¹³² the municipal land disposition process leaves much to be desired. As a legal matter, privatization is often a foregone conclusion.

On the other hand, almost all surveyed cities either have an explicitly-articulated preference for the continued public use of city-owned land after disposition¹³³ or relax procedural and financial requirements associated

130. For example, in North Carolina, local governments must follow specific statutory procedures for disposing of surplus property at below-market rate so as not to run afoul of the state’s relatively stringent gift clause. See Frayda Bluestein, *Donating Property: Beware of Constitutional Constraints*, COATES’ CANONS N.C. LOCAL GOV’T L. (2015), <https://canons.sog.unc.edu/2015/04/donating-property-beware-of-constitutional-constraints/> [<https://perma.cc/Q726-ZJWZ>].

131. As noted *supra* note 85, there are some exceptions to this general observation which model how cities might more rigorously evaluate whether a parcel of city-owned land is really “surplus.”

132. I explore this premise in greater depth *infra* in Part III.

133. Seattle, for example, has explicitly announced its intent to prioritize the use of available property for affordable housing. See Seattle City Council, Resolution 31837 (2018).

with disposition where a city-owned parcel will be used for a public purpose or by a nonprofit entity.¹³⁴

Cities with public use preferences operationalize this priority in different ways. Some cities require that all surplus property is evaluated for a particular public use at some stage in the disposition process. For instance, all California cities are subject to the state's Surplus Land Act (SLA), which requires local administrative agencies to alert the state Department of Housing and Community Development and local housing developers if any parcel of surplus government-owned land is potentially developable as affordable housing; alerts must also be sent to parks departments, school districts, and transit agencies if the land is instead suitable for recreational, educational, or public transportation purposes.¹³⁵ Noticed parties have sixty days to express interest in acquiring the land for a public use, and local governments must negotiate in good faith for ninety days with interested parties.¹³⁶ If multiple notices of interest are received, local governments must prioritize affordable housing development and maximize the number of deeply affordable residential units.¹³⁷ In so requiring, the SLA is one of the most substantive and public use-oriented laws governing municipal land disposition.

Even where a statute does not establish a public use priority, several cities have adopted official policies articulating their preferences. In Denver, for example, an executive order requires that the disposition of city-owned real estate should prioritize "affordable housing and community serving development opportunities where appropriate,"¹³⁸ and a policy established by the Charlotte City Council memorializes "the City's intent to prioritize use

134. *See, e.g.*, JACKSONVILLE, FLA, MUN. CODE § 122.423 (authorizing the donation of surplus property for the development of affordable housing); PHILA, PA, MUN. CODE § 16-404(2)(d) (allowing city agencies to dispose of surplus property to a qualified applicant without a competitive process if the land has limited independent development potential, would promote local business, or would be developed as affordable housing or a community-based facility, such as a daycare or senior center); *see also* TEX. CODE ANN. § 272.001 (allowing local governments to sell or convey real property at below-market rate to effectuate public purpose).

135. CAL. GOV'T CODE § 54222.

136. *Id.* at §§ 54222, 54223.

137. *Id.* at § 54227.

138. *Supra* note 87, at 15-16 (Memorandum No. 100B).

of available City-owned Real Property for development of Affordable Housing whenever possible.”¹³⁹

Still other cities structure their disposition processes to favor public use projects. For example, in Philadelphia’s competitive bidding process for city-owned land, the city advantages bids that will promote economic opportunity, inclusion, and social impact.¹⁴⁰ Alternatively, some cities forego a competitive bidding process altogether and negotiate direct sales with public interest buyers (typically, non-profit organizations and affordable housing developers).¹⁴¹

Two brief case studies illustrate how public use preferences operate in practice. In both of these cities—Seattle and Washington, D.C.—local governments concerned about a dearth of affordable housing enacted laws aimed at increasing housing production on formerly government-owned land.

1. Case Study: Seattle, Washington

Seattle has faced an escalating affordable housing crisis for decades as tech giants have “remade the city,”¹⁴² and the forces of gentrification have pushed low-income families and households of color farther to its periphery.¹⁴³ The cost of land in Seattle has “spiked to dizzying heights,”

139. City of Charlotte, *Guidelines for Evaluation and Disposition of City Owned Land for Affordable Housing* (2019), <https://www.charlottenc.gov/files/shared/assets/city/v/1/streets-and-neighborhoods/housing/documents/guidelines-for-evaluation-and-disposition-of-city-owned-land-for-affordable-housing.pdf> [<https://perma.cc/G43D-YRGP>].

140. PHILA, PA., MUN. CODE § 16-404(2)(c.2).

141. *See, e.g.*, INDIANAPOLIS/MARION COUNTY, IND., REV. CODE § 186-3 (authorizing negotiation of private sale of government-owned land to nonprofit corporations); DALL., TEX., CITY CODE § 2-26.9 (allowing sale of real property acquired by tax foreclosure to nonprofit organizations—at a fixed, discounted price—for the development of affordable housing).

142. Noah Buhayar & Dina Bass, *How Big Tech Swallowed Seattle*, BLOOMBERG BUSINESSWEEK (Aug. 30, 2018), <https://www.bloomberg.com/news/features/2018-08-30/how-big-tech-swallowed-seattle> [<https://perma.cc/WQ6U-BDE3>].

143. *See* Yijin Kim, *Disappearing Affordable Housing in a High-Tech Town*, THE SEATTLE GLOBALIST (Feb. 24, 2020), <https://seattleglobalist.com/2020/02/24/affordable-housing-seattle-disappearing-amazon-lihi-tech4housing/89275> [<https://perma.cc/87E6-NQ4G>]; David Hyde, *Seattle’s Hidden Housing Crisis:*

leaving affordable developers and community organizations hamstrung in their efforts to construct housing in centrally-located areas with good access to transit, jobs, schools, and food.¹⁴⁴ Meanwhile, the demand for local housing funding far outstrips availability: in 2018, the Seattle Office of Housing had just \$70 million in funding to disburse to affordable projects but received funding requests that totaled to \$245 million.¹⁴⁵

State and city adjustments in disposition law have enabled Seattle to respond to its housing crisis through the disposal of surplus land, which in turn enables the city to stretch its limited housing subsidy to cover more projects. The city has been developing this strategy since at least the early 2010s, when the Mayor's Office and City Council convened a "Housing Affordability and Livability Advisory" (HALA) Committee tasked with developing policies for increasing Seattle's affordable housing stock.¹⁴⁶ According to the HALA Committee, the city could make creative use of its surplus property to address rising housing costs and the patterned displacement of low-income households.

Seattle city government's interest in surplus properties was also spurred by the success of the Central Puget Sound Regional Transit Authority (Sound Transit)'s donation and sale of its surplus land to affordable housing developers. In 2015, the Washington State Legislature passed a law requiring that regional transit authorities donate, sell, or lease their surplus property for the purpose of affordable housing development.¹⁴⁷ Sound Transit has since made several high-profile donations and below-market sales of its surplus property: for example, in 2017, the authority donated a half-acre of land to two housing nonprofits,

Middle-Class Workers Forced out of the City, KUOW (Jan. 22, 2020), <https://www.kuow.org/stories/seattle-s-hidden-housing-crisis-middle-class-workers-forced-out> [<https://perma.cc/NQH7-9UW4>].

144. Josh Cohen, *Seattle Wants to Give Away Land for Affordable Housing*, CROSSCUT (Oct. 3, 2018), <https://crosscut.com/2018/10/seattle-wants-give-away-land-affordable-housing> [<https://perma.cc/Y3GH-NSZX>].

145. *Id.*

146. *Seattle Housing Affordability and Livability Agenda Final Advisory Committee Recommendations*, Seattle.gov (July 13, 2015), https://www.seattle.gov/documents/departments/hala/policy/hala_report_2015.pdf [<https://perma.cc/322F-AMN3>].

147. WASH. REV. CODE 81.112.350 § 1(b)(i).

who are constructing a 13-story complex with over 300 affordable units for low-income households and seniors transitioning out of homelessness.¹⁴⁸

Around the same time, Seattle and King County administrators identified hundreds of vacant or underutilized government-owned lots within the city's limits.¹⁴⁹ Local administrators, however, encountered a problem as they brainstormed ways of using this land for the public good: by law, surplus city land could only be sold at market rate prices, which created a barrier to developing low-cost rental housing. King County Assessor John Wilson explained, "I've become more and more convinced that we have adequate land capacity to solve the housing problem in this county. It's a question of 'Do we have the will?'"¹⁵⁰

By March 2018, sufficient political pressure had mounted, and the Washington State Legislature voted to authorize cities to sell or donate their property for the publicly beneficial purpose of housing affordable to households earning at or below 80% AMI.¹⁵¹ In July of that year, the Seattle City Council passed a resolution that allowed the city's electric utility—Seattle City Light—to sell its surplus property at below-market rates.¹⁵² By the fall of 2018, the City Council passed another resolution, requiring that all city agencies prioritize affordable development when disposing of their surplus property and that 80% of net proceeds from land sold for non-affordable housing purposes must be donated to the city's Low-Income Housing or Equitable Development Funds.¹⁵³ Although Seattle had already

148. Sound Transit, *Sound Transit selects Bellwether Housing, Plymouth Housing Group to Negotiate on Mixed-Use, High-Rise Affordable Housing Transit-Oriented Development on First Hill* <https://www.soundtransit.org/get-to-know-us/news-events/news-releases/sound-transit-selects-bellwether-housing-plymouth-housing> [https://perma.cc/LY5Y-MW3C].

149. David Kroman, *Got Land? Seattle Does and Assessor Says it Should House the Homeless*, CROSSCUT (Oct. 25, 2017), <https://crosscut.com/2017/10/homelessness-vacant-land-seattle-king-county-assessor> [https://perma.cc/5569-P8WL].

150. *Id.*

151. Washington State Legislature, 3HB 2382 (2018).

152. Seattle City Council, A RESOLUTION related to the City Light Department, Res 31829 (2018), <https://seattle.legistar.com/View.ashx?M=F&ID=6463279&GUID=BCA47B8C-78AD-4269-9B8C-EFD5CAD4F00C> [https://perma.cc/246V-JWXF].

153. *Id.*

adopted a detailed disposition policy in 1998,¹⁵⁴ the 2018 reforms clearly established affordable housing as the primary goal of surplus land disposition.

This cascade of legislative changes at the state and local level has begun to produce results. For instance, in 2019, the city announced that it would donate two parcels of surplus City Light land to the Homestead Community Land Trust and Habitat for Humanity Seattle-King County for the development of permanently affordable, owner-occupied homes in Northwest Seattle.¹⁵⁵ Although the long-term impact on affordability remains to be seen, these initial donations signal the city's decision to prioritize public use through land disposition.

2. Case Study: Washington, D.C.

Like Seattle, Washington, D.C. has experienced rapid growth, rising home values, and increased housing prices over the last two decades. According to the National Community Reinvestment Coalition, the District had the highest percentage of gentrifying neighborhoods in the country between 2000 and 2013.¹⁵⁶ Gentrification has had a racially-disparate

154. In Resolution 29799, adopted in 1998, the City Council laid out a multi-pronged set of considerations for the Executive to consider when making recommendations for the reuse or disposal of surplus property. These considerations include: (1) consistency with the purpose for which the property was originally acquired, (2) compatibility with public needs, and (3) other facts including but not limited to the "highest and best use of the property," timing and term of the proposed use, and unique attributes that make the property hard to replace. Seattle City Council, A Resolution Adopting Policies and Procedures to Govern the Acquisition, Reuse, or Disposal of City Real Property (1998), <http://clerk.seattle.gov/search/resolutions/29799> [<https://perma.cc/4TT8-7CQ7>].

155. Kamaria Hightower, *Mayor Durkan Announces New Permanently Affordable Homeownership Investments at Two Seattle City Light Public Properties in Northwest Seattle*, OFFICE OF THE MAYOR (Sep. 5, 2019), <https://durkan.seattle.gov/2019/09/mayor-durkan-announces-new-permanently-affordable-homeownership-investments-at-two-seattle-city-light-public-properties-in-northwest-seattle/> [<https://perma.cc/2NLD-VCQL>].

156. Jason Richardson, Bruce Mitchell, and Juan Franco, *Shifting Neighborhoods: Gentrification and Cultural Displacement in American Cities*, NAT'L Cmty. REINVESTMENT COALITION (2019), <https://ncrc.org/wp-content/uploads/2019/03/NCRC-Research-Gentrification-FINAL.pdf> [<https://perma.cc/USB3-Q5HZ>].

impact as well as an economic one. Nearly one in five lower-income neighborhoods in the city gentrified during the time period in question,¹⁵⁷ and more than 20,000 Black residents are estimated to have been displaced from their neighborhoods as a result.¹⁵⁸

By the mid-2010s, over 50,000 families in the District faced a severe housing cost burden (i.e., spent more than half their household income on housing). Public housing in the city had a waitlist of roughly 70,000 people, and homelessness was on the rise.¹⁵⁹ Early on in the administration of Mayor Vincent Gray, a citizen task force advised that affordable housing should become a top policy priority for city government and set a target for the District: create or preserve 10,000 affordable housing units in the city by 2020.¹⁶⁰

To help the city reach this goal, the Council of the District of Columbia passed the 2014 Disposition of District Land for Affordable Housing Amendment Act, which established affordable housing set-aside requirements for any surplus District-owned land earmarked for private multifamily residential development; the law requires that 20% to 30% of housing units in a proposed residential development be permanently affordable to low- and very low-income households.¹⁶¹ The Mayor may transfer property at less than its appraised value or provide additional subsidies to the developer to ensure that affordable housing requirements can be met.¹⁶²

157. Gabriella Velasco & Oriya Cohen, *Three Ways Local Policymakers Can Confront Development-Directed Policing in Washington, DC*, HOUS. MATTERS: AN URB. INST. INITIATIVE (Mar. 17, 2021), <https://housingmatters.urban.org/articles/three-ways-local-policymakers-can-confront-development-directed-policing-washington-dc> [<https://perma.cc/7NR2-LB24>].

158. *Id.*

159. Muriel Bowser, COUNCIL OF THE DISTRICT OF COLUMBIA COMMITTEE ON ECONOMIC DEVELOPMENT COMMITTEE REPORT, REPORT ON BILL 20-594 “DISPOSITION OF DISTRICT LAND FOR AFFORDABLE HOUSING AMENDMENT ACT OF 2014” at 2 (July 8, 2014), https://lms.dccouncil.gov/downloads/LIMS/30743/Committee_Report/B20-0594-CommitteeReport1.pdf?Id=60954 [<https://perma.cc/93GL-EA5Q>].

160. Mike DeBonis, *D.C. Affordable Housing Plan Proposed by Gray’s Task Force*, WASH. POST (Mar. 12, 2013), https://www.washingtonpost.com/local/dc-politics/dc-affordable-housing-plan-proposed-by-grays-task-force/2013/03/12/859f84d8-8ab4-11e2-98d9-3012c1cd8d1e_story.html [<https://perma.cc/FU93-24CG>].

161. D.C. Act 20-485 (Nov. 27, 2014).

162. *Id.*

To the dismay of some advocates,¹⁶³ the law allows the Mayor to waive affordable housing requirements when (i) the appraised value of the property is deemed insufficient to support affordable requirements, (ii) the “terms and conditions under which the real property is to be disposed satisfy the housing requirements to the maximum extent possible,” and (iii) the Chief Financial Officer has substantiated the financial status of the disposed land.¹⁶⁴ In addition, the law permits the Mayor to reduce affordable requirements if the sale of a particular parcel can finance the development of a “significant public facility,” such as a fire station, public library, school, stadium, or homeless shelter.¹⁶⁵ These provisions reflected a compromise between the Council and Mayor Gray, who—despite his administration’s commitment to affordable housing—had expressed concern that reducing mayoral discretion would hinder the District’s flexibility in developing public lands and securing future property taxes.¹⁶⁶

Since the law went into effect in early 2015, several land dispositions have been approved with moderate to significant affordable housing set-asides.¹⁶⁷ According to disposition agreements for at least some of these projects, the residential development may not have “penciled out” without the District’s flexibility on pricing (as well as its investment of housing subsidy).¹⁶⁸ Evidence also suggests that the 2014 law is forcing market rate

163. COUNCILMEMBER MURIEL BOWSER, FILING OF HEARING RECORD ACCORDING TO COUNCIL RULE 531 (2014).

164. D.C. Act 20-485, *supra* note 161.

165. *Id.*

166. Bowser, *supra* note 159.

167. My review of the District’s land disposition deals since 2015 suggests a substantial amount of affordable housing has or will be produced: 965 Florida Ave NW (353 residential units, 107 affordable); Capitol Vista, 2nd & H St., NW (100 residential units, 100 affordable); Fort Totten Triangle (180 residential units, 30% affordable); Grimke Redevelopment (25 residential units, 16 affordable); New Communities Initiative (273 residential units, 201 affordable—90 replacement public housing units and 111 newly affordable); St. Elizabeth’s East Campus—Phase I (250 residential units, 80% affordable); Truxton Circle Parcel (15 residential units, 15 affordable). See Office of the Deputy Mayor for Planning and Economic Development, *Land Surplus and Disposition Agreements*, DC.GOV <https://dmped.dc.gov/page/land-surplus-and-disposition-agreements> [<https://perma.cc/B5L3-469Q>].

168. For example, in 2017, the City Council approved the development of a 15-unit housing project at the surplus Truxton Circle Parcel; all units will be

developments to include affordable units where they might not otherwise have done so. For instance, the District was in the process of negotiating the disposition of the Grimke School, a former D.C. public school facility, when the Council enacted its 2014 reform of the city's disposition process. Based on the new law, the District returned what had been the developer's "best and final offer" on the property and asked the bidder to submit a new offer that would fulfill the new 30% affordable housing set-aside requirement.¹⁶⁹

Whether or not the 2014 reform consistently catalyzes affordable housing development is difficult to ascertain, especially in the relative short-term. Nevertheless, the District's adaptive adjustments to the disposition process give legal force to affordable housing as a policy priority.

E. Values Embedded in Disposition Law: Mutual Reinforcement and Conflict

Transparency, democratic checks and balances, efficiency, anti-corruption, and public use are all animating values in municipal land disposition law. As the foregoing analysis has shown, transparency and democratic checks and balances are perhaps the most consistently-enshrined values across major American cities: when a local government seeks to dispose of a parcel of land it owns, it must usually provide advance

affordable to households earning at or below 60% AMI. The finalized disposition agreement required the developer to pay the District \$530,000 at closing, but the District agreed to lease the property to the developer under a 99-year ground lease for a nominal \$1 annually. Jeffrey S. DeWitt, *Fiscal Impact Statement—Truxton Circle Parcel Disposition Approval Resolution of 2017* (Oct. 13, 2017) (on file with author). An all-affordable development may not have been financially workable without this ground lease arrangement.

169. Phil Mendelson, *Disposition Analysis in Support of Disposition of Real Property: The Grimke School* (2017), <https://dmped.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Grimke%20Disposition%20Approval%20Resolution%20of%202017%20.pdf> [https://perma.cc/K8ZV-9G66]. See also Jeffrey S. DeWitt, *Fiscal Impact Statement—South Dakota Avenue Riggs Road Excess Property Disposition Approval Resolution of 2016* (Dec. 19, 2016) ("The developer will include 31 affordable units to meet the 30 percent affordability requirement. The developer agreement includes a minimum of at least 29 affordable units . . ."), http://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/FIS%20South%20Dakota%20Riggs%20Road%20Exc%20ess.pdf [https://perma.cc/Q68S-UFL7].

public notice and seek executive or legislative permission to do so.¹⁷⁰ Anti-corruption measures reinforce the goal of transparency by preventing local officials from transacting in city property *sub rosa* or for their own financial or political interest. Aside from the potential hurdles thrown up by state constitutional gift clauses, the transparency, checks and balances, and anti-corruption values do not seem to have generated particular controversy in disposition transactions.

By contrast, efficiency and public use are more politically salient in debates over the future of city-owned land.¹⁷¹ By default, surplus parcels are usually sold at fair market value or to the highest bidder—reflecting the importance of maximizing financial returns to local government. However, almost all surveyed cities have crafted disposition laws that either favor or indirectly facilitate public use; in this way, the disposition of city-owned land becomes a vehicle for promoting urban policy goals like increased affordable housing development.

The tension between an efficiency approach and public use approach to land disposition is self-evident: when a city conveys the land it owns to a nonprofit organization or affordable housing developer at a below-market rate, it likely forgoes the opportunity to maximize sales and future tax revenue. Ultimately, in the words of Seattle Councilmember Teresa Mosqueda, “public land can be used for the best value, which is not necessarily the highest market value.”¹⁷² For example, in one of Seattle’s first disposition deals following the passage of its 2018 surplus land resolution, the city sold 2.86 acres of land to a life sciences campus developer for \$143.5 million; this price reportedly represented a \$38 million discount to the buyer, who promised to develop almost 200 units of low-income housing on-site.¹⁷³ The popularity of the public use value

170. See *supra* pp. 647-650.

171. These values often operate in tension within a single disposition policy. Mayor Hancock’s Executive Order No. 100 (2016), *supra* note 87, which governs public land management in Denver, declares both that “[i]t is in the best interest of the City and its citizens that . . . real property and other space is . . . managed in an *effective and efficient manner giving due consideration to the use and cost of such real property and space*,” and that disposition should “include *prioritization of affordable housing and community serving development opportunities* where appropriate” (emphasis added).

172. Cohen, *supra* note 144.

173. Josh Cohen, *\$143.5M ‘Mercer Megablock’ Deal Will Bring Science Campus, Affordable Housing to South Lake Union*, CROSSCUT (Aug. 15, 2019),

demonstrates that market-based efficiency does not always win out in the struggle over city-owned land.

III. TOWARD A NORMATIVE VISION FOR PUBLIC LAND

This Note has identified several key values that drive the municipal land disposition process. My findings support other scholars' characterization of the process as discretionary: instead of facing hard-and-fast requirements, cities have flexibility to adapt the process based on the nature of the parcel, the identity of the potential buyer, and the future use of the property. But my survey also suggests that, at least on paper, disposition is not necessarily the "thoughtless" or "unfettered" process that it may seem to be at first glance. This is not to say that cities don't sometimes enter into ill-advised or short-sighted real estate transactions, as Schanzenbach, Shoked, and Rosenbaum persuasively argue. My findings simply demonstrate that there are both overarching values and specific policy parameters that purport to govern the disposition process—even if city officials ultimately hash out the details of property deals on a case-by-case basis.

This preliminary empirical analysis leaves many questions unanswered, especially the kinds of normative questions raised by the struggle over Intuit Dome and similarly flashy urban development projects. Is continued government ownership the optimal way to ensure that municipal land benefits both the general public and historically-marginalized communities? Are there other ways of keeping "public land in public hands"¹⁷⁴ without local government holding formal title?

In this final Section, I consider theoretical and grounded approaches to these questions. First, I weigh the arguments for and against market-based land privatization, concluding that the problems associated with relinquishing public control over city-owned urban land outweigh the alleged benefits of privatization. Next, I explore the multiplicity of public landownership, which encompasses both state ownership and social/communal forms of ownership. Drawing on this multiplicity, I

<https://crosscut.com/2019/08/1435m-mercer-megablock-deal-will-bring-science-campus-affordable-housing-south-lake-union>
[<https://perma.cc/CGE4-RBZZ>].

174. This slogan is associated with federal struggles to maintain public ownership over natural resource lands but has more recently become a rallying cry for land activists in cities. *See, e.g.*, NYC Community Land Initiative, *Tell New York City: Keep Public Land in Public Hands*, <https://nyccli.org/public-land/> [<https://perma.cc/7FE3-B2TB>].

propose two novel values that should infuse the local land disposition process: *government stewardship* and *community stewardship*.

A. The Problem with Privatization

Disposition law typically takes as its starting point that a particular parcel of city-owned land is “surplus”—i.e., no longer necessary for government purposes—and thus best suited for private ownership. In other words, once a parcel is designated as surplus, privatization is often a foregone conclusion.

To diagnose the problems associated with the privatization of public land, it is first necessary to understand the arguments of its proponents, most of whom have focused their attention on the privatization of federally-owned public lands. In his recent book *In Defense of Public Lands*, political scientist Steven Davis outlines the typical defenses for federal land privatization, several of which apply to local urban land as well.¹⁷⁵ First, privatization theorists rely on tenets of classical economics to argue that “public land short-circuits the whole process by which a rational market can determine the best use of a given resource and thereby maximize productivity.”¹⁷⁶ Because the *users* of public land do not have secure, transferable property rights in public land, the cost of maintaining the land lies with government, and, by extension, a host of *non-user* taxpayers, which in turn creates inefficiency.¹⁷⁷ Proponents also argue that state ownership leads to undisciplined land management: “no one takes care of public land because it does not really belong to them.”¹⁷⁸ Invoking Garrett Hardin’s “tragedy of the commons” theory, proponents of privatization contend that “good intentions and moral righteousness rarely deliver the goods; the only factors that can produce good environmental behavior are market incentives.”¹⁷⁹

Second, privatizers argue that interest-group competition for access to public land leads to a system of informal private rights that are unequally distributed: public resource allocation becomes “a process of ‘public bickering over entitlements and influence peddling,’ degenerating

175. DAVIS, *supra* note 8, at 30-49.

176. *Id.* at 31.

177. *Id.*

178. *Id.* at 33.

179. *Id.* at 34.

ultimately into a ‘rent-seeking frenzy.’”¹⁸⁰ As Davis summarizes, the impulse to privatize derives from an aversion to “‘politics’ in practically any form.”¹⁸¹

In short, proponents of land privatization contend that public landownership is (1) economically *inefficient* and (2) politically *unfair*. At the local government level, there is also a more pragmatic defense of privatization: cash-strapped governments view selling city-owned land as a mechanism for generating revenue (both through the sale itself and through long-term tax revenue generation) and relinquishing long-term managerial obligations. For instance, the mayor of Trenton, one of New Jersey’s lowest-income cities, described real estate auctions as “key to [the city’s] redevelopment efforts, especially when they get promising properties in the hands of taxpaying residents who can renovate them for the benefit of the surrounding community.”¹⁸² Capital gains from the sale of public lands can also help fund new public facilities and initiatives, and “the sale and redevelopment of public land as a financing tool has increased in popularity in recent years” due to persistent debt crises and an era of fiscal austerity.¹⁸³ In other words, many local governments would also argue that public ownership is (3) *unwise*.

In response to these three arguments, critical geographers and political economists have diagnosed a plethora of problems associated with privatization, problems that call into question the supposed benefits of market-based land distribution.

First, rather than avoiding *inefficiency*, privatization actually raises the more dire challenge of market failure. As environmental economist John V. Krutilla explains, the private land market is predicated on the “ration[ing of] scarce resources to their highest valued uses by excluding all the bidders who were unwilling or unable to pay the market price.”¹⁸⁴ A focus on this kind of price efficiency tends to ignore the value of features that private

180. *Id.* at 37.

181. *Id.*

182. *GovPilot Helps City of Trenton Net \$4.15M in Auctioned Properties*, MANN REPORT (Dec. 17, 2020), <https://www.mannpublications.com/mannreport/2020/12/17/govpilot-helps-city-of-trenton-net-4-15m-in-auctioned-properties/> [<https://perma.cc/TH74-2765>].

183. Francesca Artioli, *Sale of Public Land as a Financing Instrument. The Unspoken Political Choices and Distributional Effects of Land-Based Solutions*, 104 LAND USE POL’Y 105, 199 (2021).

184. John V. Krutilla et al., *Public versus Private Ownership: The Federal Lands Case*, 2 J. POL’Y ANALYSIS & MGMT. 548, 551 (1983).

landowners cannot appropriate.¹⁸⁵ Framed differently, the private market almost definitionally emphasizes the “exchange value” of land—that is, its value as a commoditized asset that generates or has the potential to generate rent—over its “use value,” or the idiosyncratic “preciousness” of land to its users.¹⁸⁶ In the words of sociologists John R. Logan and Harvey Molotch, “the pursuit of exchange values in the city does not *necessarily* result in the maximization of use values”—in fact, “the simultaneous push for both goals is inherently contradictory.”¹⁸⁷

The commodification of urban land not only tends to sideline its use value, but also fuels speculation.¹⁸⁸ A “fundamental ‘curiosity’” of land markets is that they are “inherently monopolistic, providing owners, as a class, with complete control over the total commodity supply.”¹⁸⁹ This characteristic of land markets places excessive pressure on land values, especially in dense urban areas—a pressure that is only exacerbated by the manner in which urban land, buildings, and infrastructure are traded on global capital markets as assets¹⁹⁰ and targeted for speculation by foreign and national corporations,¹⁹¹ private equity funds, and other opportunistic investors.¹⁹² “Speculation in land may be necessary to capitalism,” geographer David Harvey has argued, but excessive bouts of speculation “periodically become a quagmire of destruction for capital itself.”¹⁹³

185. *Id.* at 552.

186. JOHN R. LOGAN & HARVEY MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 1* (1987).

187. *Id.* at 2.

188. CHRISTOPHERS, *supra* note 22, at 57.

189. LOGAN & MOLOTCH, *supra* note 186, at 23.

190. Martine Drozd, Antoine Guironnet & Ludovic Halbert, *Cities in the Age of Financialization*, METROPOLITICS (June 18, 2021), <https://metropolitics.org/Cities-in-the-Age-of-Financialization.html> [<https://perma.cc/DD4E-S4R7>].

191. Saskia Sassen, *Who Owns Our Cities—and Why This Urban Takeover Should Concern Us All*, THE GUARDIAN, (Nov. 24, 2015) <https://www.theguardian.com/cities/2015/nov/24/who-owns-our-cities-and-why-this-urban-takeover-should-concern-us-all> [<https://perma.cc/AK79-ZYGB>].

192. Manuel B. Aalbers, *Financial Geography II: Financial Geographies of Housing and Real Estate*, 43 *PROG. IN HUM. GEOGRAPHY* 376 (2019).

193. The 2008 global financial crisis, brought about at least in part by extreme speculation in the housing market, is just one example. See CHRISTOPHERS, *supra* note 22, at 63, 48.

Second, while supporters of privatization argue that government management is *unfair*, public ownership proponents stress that the market-based distribution of land is itself distressingly unequal and a driver of larger structural inequality. On a theoretical note, according to thinkers as different as Adam Smith, John Stuart Mill, and Karl Marx, the manner in which private landowners earn rents (i.e., the income they generate from selling their land's "use-rights") represents a basic injustice:¹⁹⁴ in general, private landowners accrue rent passively and generate capital gains (i.e., the increase in land value over time) due not just to the improvements they make on land, but instead to wider macro-economic development.¹⁹⁵ This arrangement is unjust in many senses, but particularly in that it deprives non-landowning society of the economic gains that it has helped to create.¹⁹⁶

On a more concrete note, urban land and home ownership are concentrated not only among white wealthy residents¹⁹⁷ but also increasingly among foreign corporate landlords, both in global metropolises like New York City¹⁹⁸ and in small to mid-sized American cities (such as Newark,¹⁹⁹ Milwaukee,²⁰⁰ and Baltimore²⁰¹). Concentrated land ownership creates power imbalances between landowning and non-

194. *Id.* at 48.

195. *Id.*

196. See, e.g., PHILIP KIVELL, *LAND AND THE CITY: PATTERNS AND PROCESSES OF URBAN CHANGE* 109-110 (2002).

197. See, e.g., Rashawn Ray, et al., *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, THE BROOKINGS INST. (Sept. 1, 2021), <https://www.brookings.edu/articles/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/> [<https://perma.cc/9WRP-AQM5>].

198. Sassen, *supra* note 191.

199. See David D. Troutt & Katharine Nelson, *Who Owns Newark? Transferring Wealth from Newark Homeowners to Corporate Buyers*, RUTGERS CTR ON L., INEQ. AND METRO. EQUITY (May 2, 2022), <https://www.clime.rutgers.edu/publications-filtered/who-owns-newark> [<https://perma.cc/84VT-Y37E>].

200. See John D. Johnson, *The Rise and Impact of Corporate Landlords*, MARQUETTE LAWYER (Summer 2023).

201. See Jon Gorey, *Who Owns America: The Geospatial Mapping Technology That Could Help Cities Beat Predatory Investors at Their Own Game*, LINCOLN INST. OF LAND POL'Y (July 18, 2023), <https://www.lincolninst.edu/publications/article/2023-07-who-owns-america-mapping-technology-property-ownership-center-for-geospatial-solutions> [<https://perma.cc/2LSL-Z72D>].

landowning classes of urban residents within cities and also contributes to nationwide income and wealth inequality.²⁰²

In addition, while supporters of privatization argue that the private, market-based distribution of land appropriately sidesteps the thorniness of politics, supporters of public ownership stress that political contestation is precisely the point. As Brett Christophers asserts, land ownership confers particular powers, including the power to “play a meaningful part” in shaping how a community develops.²⁰³ When public assets are sold off, “the particular capacity for public self-determination conferred by state ownership and control of the land” is also lost.²⁰⁴ In other words, if the possibility of political self-determination is uniquely preserved through continued public ownership, “the ‘open processes’ of politics, whether of the ‘high’ or ‘low’ variety . . . are actually nothing to apologize for.”²⁰⁵ Indeed, “to give up on politics, as privatizers urge, is to permanently privilege individually held preferences while essentially ignoring collective ones”—an especially threatening proposition when “some values, by their very nature, can be realized only collectively.”²⁰⁶ To the extent that particular private actors enjoy privilege in access to or use of public lands, the solution is greater procedural transparency—not privatization, which only threatens to make access to resources more opaque.

The third and perhaps most grounded justification for privatization—that it provides a pragmatic solution to local budget shortfalls, alleviates government of administrative burdens, and is thus the *wisest* outcome—also falters upon closer scrutiny. At best, rapidly selling off public property plugs immediate budget holes and improves short-term liquidity, but it does not address structural drivers and magnifiers of municipal fiscal crisis—

202. See Gianni La Cava, *Piketty's Rising Share of Capital Income and the US Housing Market*, CEPR (Oct. 8, 2016), <https://cepr.org/voxeu/columns/pikettys-rising-share-capital-income-and-us-housing-market> [<https://perma.cc/W2NL-KJRH>].

203. CHRISTOPHERS, *supra* note 22, at 56.

204. *Id.* at 57.

205. Davis, *supra* note 8, at 140.

206. *Id.* at 142.

including racial segregation,²⁰⁷ regional inequality,²⁰⁸ and predatory financing,²⁰⁹ among other things. And at worst, rapidly selling off public property may not even solve shorter-term liquidity problems where local governments must make more costly arrangements (e.g., sale-leaseback transactions described *infra* at 655) to adapt to the loss.²¹⁰ Finally, the managerial shortcomings of absentee corporate landowners—“content to sit on the land while property values rise”²¹¹—call into question whether private investment necessarily leads to better management in the short-term or reduced management obligations for local governments in the long-term. In short, privatization may very well be the *unwise* option, even from the perspective of a fiscally-pressed city.

The problems associated with land privatization suggest the need for local governments to rethink the starting premise of the disposition process—i.e., that land that the government is not currently using (or even land that it is) should be destined for private, for-profit development.

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207. See, e.g., Jake Bittle & Chilukuri Siri, *Why It's More Expensive for Black Towns to Borrow Money*, GRIST (Aug. 18, 2023), <https://grist.org/accountability/why-its-more-expensive-for-black-towns-to-borrow-money/> [<https://perma.cc/7PQY-GU52>].
208. See, e.g., Brian Highsmith, *The Structural Violence of Municipal Hoarding*, AM. PROSPECT (2020), <https://prospect.org/api/content/111183a6-bca6-11ea-9cf6-1244d5f7c7c6/> [<https://perma.cc/LK38-G79>]; Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 TEMP. L. REV. 49 (2012).
209. See, e.g., Saqib Bhatti, *Dirty Deals: How Wall Street's Predatory Deals Hurt Taxpayers and What We Can Do About It*, ROOSEVELT INST. (Nov. 18, 2014).
210. Schanzenbach & Shoked, *supra* note 18, at 571-72.
211. Sean Keenan, *Atlanta Aches for Crackdown on Absentee Property Owners, Blight Contributors*, ATLANTA CIVIC CIRCLE (Apr. 6, 2021), <http://atlantaciviccircle.org/2021/04/06/atlanta-aches-for-crackdown-on-absentee-property-owners-blight-contributors> [<https://perma.cc/AJN4-WMQR>]; see, e.g., Jasmine Cui, *Absentee Owners are Crowding the Housing Market, Data Shows*, NBC NEWS (Feb. 24, 2023), <https://www.nbcnews.com/data-graphics/absentee-homeowners-crowding-housing-market-data-rcna69828> [<https://perma.cc/A77V-QPDS>]; Alexander Ferrer, *The Real Problem With Corporate Landlords*, THE ATLANTIC (June 21, 2021), <https://www.theatlantic.com/ideas/archive/2021/06/real-problem-corporate-landlords/619244> [<https://perma.cc/CYR7-3C7A>]; Alana Semuels, *When Wall Street Is Your Landlord*, THE ATLANTIC (Feb. 13, 2019), <https://www.theatlantic.com/technology/archive/2019/02/single-family-landlords-wall-street/582394> [<https://perma.cc/M6FB-35Q9>].

B. The Multiplicity of Public Ownership

If the privatization of public land has problematic effects, then a normative vision for local land disposition should incorporate a slant in favor of public ownership. But teasing out precisely what public ownership entails is trickier than it seems on first blush. As geographer Doreen Massey has put it, “there are two distinct aspects . . . to [the] issue of landownership. It is a question not just of *who owns*, but also of *what that ownership actually means*.”²¹² Luckily, scholars and advocates have provided the insights necessary to design a disposition process that promotes public ownership in its most meaningful sense.

Property theorists have long acknowledged that the concept of public property contains multitudes.²¹³ Indeed, “public ownership can take as many forms as can private.”²¹⁴ Political scientist C.B. Macpherson distinguished between two kinds of public property: state property, which “consists of rights which the state has not only created but has kept for itself or has taken over from private individuals or corporations,” and common property, which is property that belongs to society at large and, in a sense, “guarantee[s] to each individual that he will not be excluded from the use or benefit of something.”²¹⁵ State property is not the same as common property, Macpherson insists; state property conveys something like a “corporate right to exclude,” belonging to the government as a legal body that has been authorized to rule, rather than to a broader public.²¹⁶

Carol Rose has made a similar point: “there lies outside purely private property and government-controlled ‘public property’ a distinct class of ‘inherently public property,’” Rose observes, “which is fully controlled by neither government nor private agents.”²¹⁷ While government-controlled public property is “‘owned’ and actively managed by a governmental body,” inherently public property is “collectively ‘owned’ and ‘managed’ by society at large, with claims independent of and indeed superior to the claims of any

212. Doreen Massey, *The Pattern of Landownership and Its Implications for Policy*, 6 BUILT ENV'T 263, 268 (1980) (emphasis added).

213. CHRISTOPHERS, *supra* note 22, at 37.

214. Massey, *supra* note 212, at 270.

215. PROPERTY: MAINSTREAM AND CRITICAL POSITIONS 5 (C.B. MacPherson ed., 2013).

216. *Id.*

217. Carol Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711, 720 (1986).

purported governmental manager.”²¹⁸ Implicit in the notion of inherently public property is that “even if a property should be open to the public, it does not follow that public rights should necessarily vest in an active governmental manager.”²¹⁹

Macpherson and Rose’s theoretical work makes clear that public ownership includes more than just government ownership: it also encompasses forms of *social* or *communal* ownership that operate parallel to, but separately from, the state.

The multiplicity of public ownership has direct consequences for a normative, values-based theory of local land disposition. On the one hand, local laws could combat the ills of privatization by promoting state land retention and relegating disposition to the margins of the decision-tree that city government uses to manage its landholdings. As a value animating disposition, we might call this *government stewardship*. On the other hand, disposition law could instead foster forms of non-state, community-based ownership, serving to transfer land from the city’s portfolio to collectives of residents who promise to tend to it as a decommodified urban commons resource. We might call this *community stewardship*.

These values—*government stewardship* and *community stewardship*—are complementary and necessary to maintain city-owned land as a truly public good, even when local governments perceive no immediate use for a parcel.

C. The Value of Government Stewardship

One avenue for avoiding the ills of urban land privatization would be to instill a new value in the local land disposition process: the value of government stewardship. To prioritize this value would mean encouraging the government retention of public land. In other words, just because land lacks a current government *use* does not mean that title should be permanently transferred to a non-governmental actor or entity.

The justifications for continued government land ownership are multiple and interrelated. First, state retention of public land helps local governments avoid entrenchment. Governments are not supposed to be able to bind future governments through unrepealable legislation or irrevocable executive action (though exceptions to this general principle are

218. *Id.*

219. *Id.*

admittedly “widespread”).²²⁰ As property scholar Christopher Serkin explains, “the simple act of alienating property can be entrenching,” as it “removes from public control a resource that otherwise would have been available to future governments.”²²¹ Although certain parcels of land may have less constraining impacts than others, disposing “some kinds of resources might: water systems, developable property, natural habitats, parking meters, municipal buildings, airports, highway infrastructure—the list goes on.”²²² Ultimately, Serkin suggests, “[i]f a government relinquishes control over a resource that will be difficult or impossible to replace, and that is required for some other public goal—providing recreational facilities, controlling development, preserving local wildlife—it limits the policy options available for future governments.”²²³

Second, selling state property *now* may force governments to compete in the private market *later*, in ways that they are not necessarily well-equipped to do. While local governments often sell property in a financial pinch, the decision to dispose of a parcel does not necessarily reflect a reduced need for affordable land: indeed, cities need land to carry out their most “indispensable functions”—from infrastructure development to the provision of education and healthcare.²²⁴ “[I]f the state sells a *needed* asset—such as a state office building—with the intent of leasing it back,” argues David Super, “future legislatures will have little choice but to continue to lease that or a similar asset.”²²⁵ This not only ties future government hands, but also puts the state at a disadvantage: “competing for leasehold land in a competitive tenancy market would provide no guarantees of getting the right land in the right location, and still less of securing the land on reasonable terms or of retaining the land at the end of the agreed tenure period.”²²⁶ In other words, government needs security in its assets to carry out core functions, and the private land market does not provide these kinds of guarantees.²²⁷

220. Serkin, *supra* note 21, at 881.

221. *Id.* at 903-04.

222. *Id.* at 904.

223. *Id.*

224. CHRISTOPHERS, *supra* note 22, at 40.

225. David A. Super, *Rethinking Fiscal Federalism*, 118 HARV. L. REV. 2544, 2624 (2005) (emphasis added).

226. CHRISTOPHERS, *supra* note 22, at 40.

227. *Id.*

Third, state retention of land bolsters governmental power. Although a local government has the power to control urban development through both regulation and contracting, its power is at an apex when it is exercised through property.²²⁸ Whoever owns land controls how it is accessed and used—so when land is owned by the state, the public (at least in principle) can exercise this power of determination using government as its apparatus.²²⁹

Two examples from property law reflect the importance of government land retention, though neither provides a perfect analogue to local government ownership of urban land. First, the public trust doctrine (PTD) embodies the importance of government stewardship of public lands. While a full-scale review of the doctrine is beyond the scope of this Note, the principle behind the doctrine is that the public has an interest in, and needs access to, particular kinds of land, even when that land does not serve a governmental function. While the PTD has historically only been applied to navigable waterways and adjacent land, the doctrine conceptualizes government as a “trustee” to present and future beneficiaries,²³⁰ so government land ownership is about more than active state use: it is about stewarding resources for the public.²³¹

This is not to say that the value of government stewardship would necessarily entail the application of the PTD to municipal parcels. As a purely practical matter, the PTD is only likely to affect the disposition of a small subset of navigable water-adjacent, local government-owned

228. As one former city official has explained, “when the city owns property, [it] get[s] to call the shots about how land is developed and for whom, which is why [vacant] properties are so valuable.” Jen Kinney, *NYC Comptroller Pushes Land Bank as Affordable Housing Tool*, NEXTCITY (Feb. 19, 2016) <https://nextcity.org/urbanist-news/new-york-city-land-bank-creation-vacant-properties-affordable-housing> [<https://perma.cc/5EEX-33Z5>].

229. CHRISTOPHERS, *supra* note 22, at 4-5.

230. BLUMM & WOOD, *supra* note 63, at 3.

231. The U.S. Supreme Court underscored this point in its seminal public trust decision, *Illinois Central Railroad Co. v. Illinois*: “The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. The control of the state for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.” 146 U.S. 387, 453 (1892).

properties.²³² And as a theoretical matter, even the doctrine's most ardent supporters would balk at the idea that government-owned property is *per se* part of the public trust. According to Joseph Sax, property subject to the trust must be held available for the general public's use and "maintained for particular types of uses" in perpetuity.²³³ Municipal office buildings certainly would not meet these requirements, and neither would vacant or underutilized lots that cities and urban residents adapt for different purposes as time elapses. Instead, the PTD reflects the importance of government holding land for the benefit of future generations,²³⁴ both by limiting the government's power to convey trust resources to private actors²³⁵ and by imposing on government the "affirmative, ongoing duty to safeguard the long-term preservation of those resources for the benefit of the general public."²³⁶

Second, federal public law underscores the state's crucial land stewardship role. Federal statutes such as the 1934 Taylor Grazing Act and 1976 Federal Land Policy and Management Act (FLPMA) shifted the focus of federal public lands policy from disposition (to states, settlers, miners, railroad companies, etc.) to retention.²³⁷ In particular, the FLPMA created a strong presumption in favor of continued federal government ownership: "the public lands [shall] be retained in Federal ownership, unless [...] it is determined that disposal of a particular parcel will serve the national

232. Richard M. Frank, *The Public Trust Doctrine: Assessing Its Recent Past & Charting Its Future*, 45 U.C. DAVIS L. REV. 665, 671-80 (2012). *But see* Sean Lyness, *The Local Public Trust Doctrine*, 34 GEO. ENV'T L. REV. 1, 14-16 (2021) (noting that "local governments own significant amounts of land that contains or abuts public trust resources," especially on the coasts).

233. Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 477 (1970).

234. Mary W. Blackford, Comment, *Putting the Public's Trust Back in Zoning: How the Implementation of the Public Trust Doctrine Will Benefit Land Use Regulation*, 43 HOUS. L. REV. 1211, 1236 (2006).

235. Hope Babcock, *Is Using the Public Trust Doctrine to Protect Public Parkland from Visual Pollution Justifiable Doctrinal Creep?*, 42 ECOLOGY L.Q. 1, 8 (2015).

236. Frank, *supra* note 232, at 667.

237. ROBERT L. GLICKSMAN, MODERN PUBLIC LAND LAW IN A NUTSHELL 5, 13-25 (2019); *see also* *Udall v. Tallman*, 380 U.S. 1 (1965) (discussing an executive order and a Department of Interior regulation that temporarily prohibited settlement or sale of land in the Kenai National Moose Range in Alaska during the 1940s and 50s).

interest.”²³⁸ Of course, federal government ownership has not wholesale disrupted private and industrial use of public land.²³⁹ Instead, once land comes under the protective shield of federal government ownership, re-privatization is unlikely.²⁴⁰

Most city-owned land does not contain the kinds of natural resources that the PTD and federal public lands law seek to protect. Still, municipal land disposition law should recognize that “the value of [local government-owned] land inures to the benefit of the citizens of the community regardless of whether it is dedicated to a [particular government] use or is maintained as an open parcel for potential future development.”²⁴¹ The benefit of continued public ownership is that it “does at least preserve the *possibility* of the public having some kind of say over land use. If public land is sold off to the private sector, that possibility is gone.”²⁴²

D. The Value of Community Stewardship

Although government stewardship should serve as a guiding value in local land management, “government control alone does not guarantee a democratic outcome.”²⁴³ Histories of excess condemnation, urban renewal, and “municipalization by dispossession” demonstrate that transfers of land from the private sphere to the state do not necessarily result in increased public control over land.²⁴⁴ Reflecting on changing patterns of landownership in the United Kingdom in the 1980s, Massey warned that

238. GLICKSMAN, *supra* note 237, at 31-32; 43 U.S.C. § 1701(a)(1).

239. See Jedediah Britton-Purdy, *Whose Lands? Which Public?: The Shape of Public-Lands Law and Trump’s National Monument Proclamations*, 45 *ECOLOGY L.Q.* 921, 944 (2018).

240. *Id.*

241. Paula R. Latovick, *Adverse Possession of Municipal Land: It’s Time to Protect This Valuable Asset*, 31 *U. MICH. J.L. REFORM* 475, 485-86 (1998).

242. CHRISTOPHERS, *supra* note 22, at 57. Even more optimistically, a fully public land management system could dampen the pressures of speculation and “curb spiraling prices of land.” Reys, *supra* note 27, at 20.

243. Stein & Mironova, *supra* note 42, at 10.

244. Oksana Mironova & Samuel Stein, *Where Does Public Land Come From? Municipalization and Privatization Debates*, *MÉTROPOLITIQUES* (Mar. 6, 2018), <https://metropolitiques.eu/Where-Does-Public-Land-Come-From-Municipalization-and-Privatization-Debates.html> [https://perma.cc/GV9U-GUNS].

just taking land into public ownership is not enough to counteract the problems associated with privatization: all too often, local authorities' "dominant consideration" is "more one of maximizing financial return than of maximizing social benefit."²⁴⁵ For this reason, "a change in ownership will not of itself guarantee a real change in how the market works, nor necessarily enable movement towards a system where the social goals of planning can be the dominant determinant of land use."²⁴⁶

In response to the unrealized promises of government ownership, activists and legal scholars have developed alternative frames for thinking about public land ownership—ones that emphasize community control and non-speculative, non-governmental modes of development.²⁴⁷ Sheila Foster, for example, draws attention to low-income mothers of color in Los Angeles and Philadelphia who recently occupied vacant homes owned by state and local agencies. In so doing, the mothers "call[ed] into question the state's posture of allowing idle vacant and available land and structures while so many residents lacked basic goods and necessities."²⁴⁸ Similarly, Amy Laura Cahn and Paula Segal document how communities of color in Philadelphia and New York have transformed empty city-owned lots into urban gardens "as a direct response to abandonment, filling vacancy with neighborhood life."²⁴⁹ Unfortunately, these reappropriations are tenuous at best. Even when local governments recognize neighborhood investment by granting licenses for "interim uses" of vacant property, such recognition is

245. Massey, *supra* note 212, at 269-70.

246. *Id.*

247. Stein & Mironova, *supra* note 42, at 10; *see also* Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281, 349 (2016) (describing cities as "urban commons" with many shared resources among inhabitants that require an "open governance regime"); Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245 (2015) (arguing that a constitutional right to housing exists and describing activists' attempts to reframe how housing and private property are governed).

248. Sheila Foster, *From Vacancy to Decommodification: Co-Cities and the Enabling State* (May 25, 2022), <https://lpeproject.org/blog/from-vacancy-to-decommodification-co-cities-and-the-enabling-state> [<https://perma.cc/46RQ-FX2Y>].

249. Amy Laura Cahn & Paula Z. Segal, *You Can't Common What You Can't See: Towards a Restorative Polycentrism in the Governance of Our Cities*, 43 FORDHAM URB. L.J. 195, 199 (2016).

temporary: urban garden licenses, for example, are revocable without cause at any time.²⁵⁰

These alternative frames suggest the need to incorporate an additional value into the municipal land disposition process: *community stewardship*. Community stewardship, in this context, does not necessarily include just any form of collective land ownership or management in cities. Institutions like homeowner associations,²⁵¹ park conservancies,²⁵² business improvement districts (BIDs),²⁵³ and even many housing cooperatives²⁵⁴—while collectively managed—are often fixated on increasing land value and financial return in ways that exclude and impose costs on communities with the least access to their governance structures.²⁵⁵ As Sheila R. Foster and Christian Iaione argue, shared resources can be “captured, co-opted, and enclosed in ways that undercut the very public nature of the resource”:

It is not enough . . . to enable new forms of collectively governed institutions throughout a city that manage public or shared resources. We must also be able to assess whose interests are served by those institutions and how easily they can be captured and their value extracted in ways that aggravate and deepen social and economic inequality.²⁵⁶

250. *Id.* at 216.

251. Homeowner associations are private groups of homeowners that establish rules to govern their properties and charge fees to homeowners in exchange for the provision of services.

252. A park conservancy is typically a private, non-profit organization that provides maintenance and services for public parks and is managed by a board of trustees.

253. A business improvement district is a publicly authorized entity comprised of businesses and property owners within a designated area that provide a set of services typically performed by local government (e.g., street and sidewalk maintenance, capital improvements, sanitation, and security), in exchange for an additional fee or assessment.

254. Housing cooperatives are collectively owned and governed housing organizations; in a typical coop arrangement, a corporation holds fee simple title to a housing development, and individual shareholder tenants purchase stock in the corporation in exchange for a renewable long-term lease.

255. SHEILA R. FOSTER & CHRISTIAN IAIONE, *CO-CITIES: INNOVATIVE TRANSITIONS TOWARD JUSTICE AND SELF-SUSTAINING COMMUNITIES* 46 (2022).

256. *Id.*

For this reason, I define *community stewardship* as the decommodified ownership and caretaking of land by a collectively governed, community-based entity that amplifies the voices of city residents who have been historically marginalized based on their class position, racial group, or other social or economic identity. Defined in this way, two features inhere in the concept of community stewardship: (1) community-stewarded land is removed from the speculative pressures of market and treated as a “commons” resource, and (2) community-stewarded land is governed through a representative body that equitably redistributes decision-making power.

Lurking beneath the notion of community stewardship is the concept of the “urban commons,” which has become a subject of fascination for urban studies, property, and local government law scholars in recent years. The urban commons literature often takes as its starting point economist Elinor Ostrom’s work on “common pool resource” (CPR) systems, collectively governed by communities in ways that resemble neither the state nor the market.²⁵⁷ Ostrom’s research demonstrates how, under certain circumstances, “resource users collectively decide how to produce value from the resource, enforce rules and norms of use, and avoid overconsuming or depleting the resource over time.”²⁵⁸ As such, Ostrom’s findings challenge Hardin’s characterization of the commons as susceptible to overuse and underinvestment.²⁵⁹

There is a natural harmony between cities—i.e., “site[s] where people of all sorts and classes mingle”²⁶⁰—and commons—shared resources that are “open to, shared with, and belonging to many types of people.”²⁶¹ Yet it is not as simple to adapt Ostrom’s ideas to the city as they have been applied to natural resource governance. Urban land and infrastructure are unique resource types: “cities are *already*-commodified spaces, where property

257. ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 1 (1990).

258. FOSTER & IAIONE, *supra* note 255, at 19.

259. Lee Anne Fennell, *Common Interest Tragedies*, 98 NW. U. L. REV. 907, 914 (2003).

260. DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* 67 (2012).

261. FOSTER & IAIONE, *supra* note 255, at 67.

lines have been drawn and ownership declared at a fine-grained scale.”²⁶² In addition, reclaiming an urban commons “typically requires working with strangers.”²⁶³ Intra-city diversity along lines of race, class, and other social cleavages raises unique challenges to collective governance—at least as compared to the small, homogenous communities that Ostrom describes in her work.²⁶⁴

Nevertheless, scholars have developed robust theories of urban common resources that apply elements of Ostrom’s work to city environments and modify other elements. Consistent with Ostrom’s observations about CRP systems, urban plazas, farms, parks, neighborhood amenities, and other commons resources represent sites of somewhat “loosen[ed]” local government control, insofar as “a private collective” is “provid[ing] supplementary services and good within a geographically bounded area.”²⁶⁵ But as Foster and Iaione show, the “role of central authorities or the state is even more present in the creation and sustainability of the urban commons” than it is in Ostrom’s CRP communities because “many urban resources that residents or communities want to share and manage together are, at least formally, under the control of the state.”²⁶⁶ Foster and Iaione argue that the ideal role for the state under a polycentric urban governance regime is to act as an “enabler.”²⁶⁷ On this view, public authorities do not enjoy a monopoly over

262. Amanda Huron, *Working with Strangers in Saturated Space: Reclaiming and Maintaining the Urban Commons*, 47 *ANTIPODE* 963, 969 (2015) (emphasis added). Most urban commons are thus “constructed from urban infrastructure as opposed to pre-existing resources from which users subtract (e.g., water, or fish or wood).” FOSTER & IAIONE, *supra* note 255, at 67 (emphasis added).

263. Huron, *supra* note 262, at 970.

264. Characterizing Ostrom’s findings, Foster explains that collective action is “particularly successful where there exists a resource with clearly defined boundaries and a community with stable membership and a homogenous culture, who also share beliefs, a history or expectation of continued interaction and reciprocity.” Sheila R. Foster, *Collective Action and the Urban Commons*, 87 *NOTRE DAME L. REV.* 57, 84 (2011).

265. *Id.* at 108.

266. FOSTER & IAIONE, *supra* note 255, at 66-67.

267. Foster & Iaione, *supra* note 247, at 289-90; Foster, *supra* note 248.

common assets, but instead play a catalytic role by helping to form and sustain new institutional structures.²⁶⁸

Realizing the value of *community stewardship* through the local land disposition process requires treating urban land as an urban commons resource, rather than a market commodity.²⁶⁹ Community stewardship also requires redistributing power through deliberative democratic governance institutions, and allocating rights and responsibilities in a way that deprioritizes “sole dominion and the individual exchange of property.”²⁷⁰ Finally, community stewardship does not erase the role of the state, but necessitates the “stabiliz[ing]” and “enabl[ing]” force of government.²⁷¹

Perhaps the paradigmatic example of the community stewardship of urban land is the community land trust (CLT). Though exact institutional designs may differ, CLTs are organizations that own parcels of land and sell or lease structural improvements made on those parcels—typically, houses—to low-income renters or buyers, who in turn agree to long-term affordability restrictions. The fundamental premise of the CLT is a “horizontal separation of property” to create two distinct units of real estate: a parcel of land and the structure(s) on top of it.²⁷² In the case of an affordable housing CLT, this separation allows the CLT to share equity with the homeowner. The relationship between the CLT and the homeowner is

268. Foster, *supra* note 248. For example, community gardens—“one of the most ubiquitous kinds of urban commons” that are typically constructed on underutilized abandoned or city-owned lots—can operate “long term . . . only with the implicit or explicit consent of the local government,” as city officials either passively refrain from interfering with the group’s efforts or actively transfer land, materials, and financial resources to encourage the practice. FOSTER & IAIONE, *supra* note 255, at 72-73.

269. As David Harvey notes, “At the heart of the practice of commoning lies the principle that the relationship between the social group and that aspect of the environment being treated as a common shall be both collective and non-commodified—off-limits to the logic of market exchange and market valuations.” HARVEY, *supra* note 260, at 73.

270. FOSTER & IAIONE, *supra* note 255, at 93, 100.

271. *Id.* at 101.

272. Kristin King-Ries, *Advocating for Community Land Trusts*, 31 J. AFFORDABLE HOUS. & CMTY. DEV. L. 365, 371 (2023).

cemented through a long-term, renewable ground lease—typically 99 years in length—that include pertinent use and affordability restrictions.²⁷³

Two features of CLTs qualify them as urban commons institutions. First, CLTs create an alternative ownership structure that disrupts market forces by “offer[ing] an intermediate form of land ownership and control between the speculative market and the State.”²⁷⁴ “In separating land ownership from homeownership, the CLT model isolates land’s use value from its exchange value via the ground lease mechanism” because the affordable land rent and restricted resale price subdue the land’s exchange value.²⁷⁵ Second, at least in theory, CLTs promote community control of urban land. In its classic form,²⁷⁶ a CLT is “more than a deed and a ground lease”: it is an organization that governs through a tripartite board with different stakeholder representatives—residents and leaseholders, non-resident community residents, and other members of the public.²⁷⁷ CLTs are urban commons institutions not simply because they promote a public good (e.g., affordable housing), but also because they promote collective, representative governance.²⁷⁸

Critics of professionalized CLTs have trenchantly argued that “the ideal of community control” has largely “faded from CLT practice,” with many trusts focused primarily on winning grant funding for affordable housing

273. A lease may include, for instance, provisions requiring that improvements are used for residential purposes, that a CLT home be the owner’s primary residence, and that improvement(s) are eventually sold at below-market price to an income-qualified buyer; the lease may also include right of first refusal for the CLT in the case that the home is threatened with foreclosure. *Id.* at 372.

274. Barbara L. Bezdek, *To Have and To Hold? Community Land Trust as Commons*, in *THE CAMBRIDGE HANDBOOK OF COMMONS RESEARCH INNOVATIONS* 164, 164 (Chrystie F. Swiney & Sheila R. Foster eds., 2021).

275. *Id.* In so doing, CLTs not only represent an alternative to large-scale government ownership, but also challenge growth-oriented logics by “removing land from the tax rolls and trying to depress local land values through expanded presence in areas otherwise ripe for speculation and reinvestment.” John Krinsky & Paula Z. Segal, *Stewarding the City as Commons: Parks Conservancies and Community Land Trusts*, 22 *CUNY L. REV.* 270, 303 (2019).

276. Bezdek, *supra* note 274, at 165.

277. Krinsky & Segal, *supra* note 275, at 282.

278. Bezdek, *supra* note 274, at 165.

through generic and regimented objectives, budgets, and record-keeping.²⁷⁹ Without a collective self-management structure that empowers marginalized groups,²⁸⁰ a CLT loses its character as a commons institution, simply becoming another “tool for providing affordable housing” that “downplay[s its] role in empowering poorer people to control land in perpetuity.”²⁸¹

In its fullest sense, however, CLTs represent community stewardship of a commons resource: urban land. And as Foster and Iaione stress, even though local communities exercise control over the resource, the state is never far away: local government enables CLTs to “function” and to “thrive.”²⁸² For example, in 1989, the city of Boston facilitated the creation of the famed Dudley Street Neighborhood CLT by granting the trust eminent domain authority over an array of vacant lots in the distressed neighborhood and allowing the CLT to acquire over fifteen acres of city-

279. As CLTs funnel their energy into grant applications and administration, “many organizations find their goals totally transformed to meet the goal of their funders and their energy for grassroots organizing channeled into bureaucratic work.” Olivia R. Williams, *The Problem With Community Land Trusts*, JACOBIN (July 7, 2019), <https://jacobin.com/2019/07/community-land-trusts-clts-problems> [<https://perma.cc/4U8Y-NXXV>]; see also James DeFilippis, Brian Stromberg & Olivia R. Williams, *W(h)ither the Community in Community Land Trusts?*, 40 J. URB. AFFS. 755, 764 (2018) (“The trajectory of the community land trust movement has been clear: There is strong momentum pushing practitioners and advocates away from the movement’s formative ideas and toward the more technically practical (and less politically challenging or transformative) aspects of the model itself.”).

280. DeFilippis et al., *supra* note 279.

281. Bezdek, *supra* note 274, at 173.

“While in a narrow property-holding sense, a CLT is similar to other existing forms of dual ownership that combine collective ownership of the land and individuated rights in homes on the shared real property, such as condominiums, co-operatives, or mutual housing, the CLT is distinct in its design purpose, governance theory and structure of community control to secure transgenerational resource benefits. From the governance process perspective, this entails communication in a democratically controlled organization of co-equal trustees, which are not confined to the legal title holders of CLT residents, all jointly focused on the CLT’s success within a broader community.”

Id. at 169-70.

282. King-Ries, *supra* note 272, at 374.

owned vacant lots.²⁸³ Governments can also ease regulatory barriers to CLT funding and improve tax assessment and treatment of CLTs.²⁸⁴

E. Operationalizing Stewardship Values

The foregoing sections have justified the introduction of two new values in the local land disposition process: government stewardship and community stewardship. Both of these stewardship-focused values promote the public character of urban land by insulating it from the vicissitudes of the private market and placing decision-making power into governance vessels that are, at least in principle, accessible to otherwise marginalized communities.

In so doing, these principles add to the mix of values identified earlier in this Note. The stewardship values are not only about procedural transparency and good government, nor are they concerned with maximizing financial gain from land sales to achieve economic “efficiency.” Stewardship values are also distinct from the public use value in that the goal is not so much to promote particular policy objectives (e.g., affordable housing, green space, community economic development)—even if they have such an ancillary effect. Instead, the stewardship values endorse *public ownership for its own sake*, where public ownership entails (a) the decommmodification of urban land and (b) the institution of democratic governance structures poised to redistribute decision-making power.

In closing, I note a few ways in which cities might begin to operationalize stewardship values in the local land disposition process. First, to promote government stewardship, cities could focus upstream on the decision to designate a particular parcel of government-owned land as “surplus.” Cities should engage in a comprehensive analysis of the parcel’s potential uses and long-term social and political value before deciding it is no longer necessary for government purposes.²⁸⁵ At this comprehensive review stage, disposition law could impose a presumption that government should retain the land it owns—unless, for example, the circumstances suggest that a community steward is better-situated to manage the parcel.

283. *Id.* at 366-67; FOSTER & IAIONE, *supra* note 255, at 49.

284. King-Ries, *supra* note 272, at 389.

285. As noted in prior sections of this Note, *see supra* notes 86, 131-135 and accompanying text, some cities (as well as the California Surplus Land Act) already require that local agencies get a chance to re-purpose land parcels for government use before they can be declared “surplus” by an executive office or the city council.

If it becomes apparent that transfer makes sense after this comprehensive parcel-by-parcel review, cities should also consider alternatives to permanent disposition that would allow government to hold long-term title to urban property. For instance, city agencies could consider using long-term ground leases or rights of first refusal as legal tools to secure or option title to public land.

Second, to promote community stewardship, cities should “sensitively gear[]” their disposition “criteria”²⁸⁶ to reward nonprofit community institutions that promise to treat city-owned land as a decommodified, democratically-governed commons resource. An example serves to illustrate the need for more sensitive criteria. For decades, New York City’s Department of Housing Preservation and Development (HPD) has had a “tradition of selling unused property for one dollar to incentivize development, encourage nonprofit developers to apply for the lots, and free the city of maintenance costs.”²⁸⁷ While some of these lots have gone to community-based organizations, others have been claimed by market-rate developers.²⁸⁸ Between 2014 and 2018, data suggests that 78 percent of city-owned lots in HPD’s jurisdiction were transferred to for-profit development entities.²⁸⁹ More recently, the city announced that a for-profit/non-profit development partnership would develop a property owned by the Metropolitan Transportation Authority New York City Transit into a mixed-income project with 75% luxury, market-rate units.²⁹⁰ As for-

286. Massey, *supra* note 212, at 269.

287. *CoreData.nyc Directory of NYC Housing Programs: One Dollar Lot Sales*, NYU FURMAN CTR. (2024), <https://furmancenter.org/coredata/directory/entry/one-dollar-lot-sales> [<https://perma.cc/A4Y9-ESGE>].

288. Michelle Cohen, *This Map Shows You the Vacant Lots in NYC that Were Sold by The City for \$1, 6SQFT* (Mar. 12, 2018), <https://www.6sqft.com/this-map-shows-you-the-vacant-lots-in-nyc-that-were-sold-by-the-city-for-1> [<https://perma.cc/LW7U-5VWZ>].

289. City of New York, City Council, *Transcript of the Minutes of the Committee on Housing and Buildings* 54 (Feb. 23, 2023), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=11702340&GUID=0269232B-818E-4BD6-BF9E-07A8FF5F4C92> [<https://perma.cc/9QAT-UWYG>].

290. *Id.* at 79; *MTA Unveils Monitor Point Proposal to Redevelop 40 Quay Street into Mixed-Income Housing, Retail and Commercial Space Including a Permanent Home for The Greenpoint Monitor Museum*, METRO. TRANSIT AUTH. (Oct. 20, 2021), <https://new.mta.info/press-release/mta-unveils-monitor-point-proposal-redevelop-40-quay-street-mixed-income-housing> [<https://perma.cc/Y2Q3-W2GL>].

profit companies have capitalized on the sale of city-owned lots, the New York City Community Land Initiative has spearheaded a legislative campaign to prevent the mayor and city agencies from disposing of municipal land to for-profit developers unless no qualified CLT or nonprofit organization makes an offer.²⁹¹ This proposal not only rejects market-based efficiency as a governing value for disposition decisions, but also embraces a community stewardship value that is conceptually distinct from “public use”: the goal is not just to create more affordable housing units, but to actively prioritize local CLTs and nonprofit organizations that have a less commodified and more democratic vision for urban land.

This initial exploration of the law undergirding municipal land disposition elicits more questions than answers. While this Note has mapped out the values embedded in the disposition process, there is far more to learn about how disposition unfolds on the ground, how it interacts with local planning and zoning processes, and what kinds of long-term distributional and development impacts it has on cities. And while this Note has proposed a pair of new values that ought to inform disposition, there are perhaps many more considerations worth entertaining, depending on the physical, political, and demographic features of a particular city.

Though the disposition process may strike some as arcane or small-bore, the stakes are ultimately high: “If the government disposes of public land, it disposes of the public power associated with it. There surely cannot be many government decisions that matter more in a democratic society.”²⁹²

291. David Brand, *Legislation Would Give Nonprofits First Crack at Developing NYC-Owned Land*, CITY LIMITS (Aug. 11, 2022), <https://citylimits.org/2022/08/11/legislation-would-give-nonprofits-first-crack-at-developing-nyc-owned-land> [<https://perma.cc/4T2G-UDA5>].

292. CHRISTOPHERS, *supra* note 22, at 5.

APPENDIX

Table 1. Sample of State Statutes Governing the Disposition of Local Government-Owned Land

State	Summary of Key Statutory Provisions
California	<p><i>Surplus Designation:</i> A local governing body must take “formal action” to declare that a parcel of public land is surplus and not necessary for an agency’s use before it can be disposed of. CAL. GOV’T CODE § 54221(b)(1). Land necessary for agency use includes, but is not limited to, “land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency’s governing board, for agency work or operations,” but agency use generally does “not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development.” <i>Id.</i> at § 54221(c)(1)-(2).</p> <p><i>Disposition of Non-Exempt Surplus Land:</i> All local government agencies are required to send a notice of availability to the Department of Housing and Community Development and housing developers before disposing of non-exempt surplus real property, or to local/regional parks and recreation departments, school districts, and transit agencies to the extent that the land in question is suitable for parks and recreational use, schools, or transit villages. <i>Id.</i> at § 54222. Parties on notice have 60 days to contact the selling agency to express interest in purchasing or leasing the land. <i>Id.</i> The disposing agency and interested parties are required to negotiate in good faith for 90 days, and disposing agencies may not attach exclusionary criteria to surplus land transactions. <i>Id.</i> at § 54223. If multiple notices of interests are received, local agencies must prioritize affordable housing development, maximize the number of available affordable residential units, and maximize the depth of affordability. <i>Id.</i> at § 54227.</p> <p><i>Exempt Surplus Land:</i> Several categories of surplus land are exempted from the disposition process outlined above, including but not limited to small-sized parcels; parcels that are intended to be exchanged for others necessary for a local agency’s use; parcels intended for transfer to another government agency; former streets, rights of way, easements, and conveyed to owners of adjacent properties; land subject to “a valid legal restriction...that makes housing prohibited” (excluding nonresidential land use designations); or land held in trust for the state. <i>Id.</i> at § 54221(f)(1). Land transferred to a community land trust may also qualify as exempt surplus land under certain circumstances. <i>Id.</i></p> <p><i>Inventory Requirement:</i> Every year, all counties and cities must prepare an inventory of surplus land within their jurisdiction and report this information to the Department of Housing and Community Development. <i>Id.</i> at § 54230.</p> <p><i>Specific Authorization for Affordable Housing:</i> Counties and cities are specifically authorized to sell, lease, exchange, convey, or otherwise dispose of their real property for the development of affordable housing at less than fair market value. <i>Id.</i> at § 54226.</p>
Florida	<p><i>Inventory Requirement:</i> Every three years, all counties and municipalities must prepare and publicize an inventory of all government-owned real property that is appropriate for use as affordable housing. FLA. STAT. §§ 125.379, 166.0451 (2023).</p> <p><i>Disposal of Public Property for Affordable Housing:</i> Counties and municipalities are authorized to sell properties appropriate for affordable housing development, either with deed restrictions or using proceeds for affordable development elsewhere. <i>Id.</i> Local jurisdictions are also authorized to donate identified parcels to nonprofit housing developers for the construction of permanent affordable housing. <i>Id.</i></p>
Illinois	<p><i>Disposal of Surplus Real Estate:</i> Any city or village incorporated in the state may dispose of its real estate when, “in the opinion of the corporate authorities, the real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the city or village.” 65 ILL. COMP. STAT. 5/11-76-1. This power is generally exercised through an ordinance passed by a specified majority of the corporate authorities. 65 ILL. COMP. STAT. 5/11-76-2; 65 ILL. COMP. STAT. 5/11-76-4.1.</p> <p><i>Disposition Process:</i> A notice of proposal to sell surplus property must be published not less than 30 days before the bidding process starts. The local government may accept the highest bid or another bid</p>

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	<p>determined to be “in the best interest of the city or village.” 65 ILL. COMP. STAT. 5/11-76-2; 65 ILL. COMP. STAT. 5/11-76-4.1. In some cases, the corporate authorities must not accept the sale of surplus real estate “at a price less than 80% of the appraised value.” 65 ILL. COMP. STAT. 5/11-76-4.1.</p>
Indiana	<p><i>Disposal of Local Government-Owned Land:</i> Disposal of real property owned by a political subdivision or agency is typically subject to the approval of the executive or fiscal body, after a public hearing. IND. CODE § 36-1-11-3. Parcels set for sale or transfer must generally be appraised by two appraisers, at which point the disposing agent sets a minimum bid for the property based on the appraisals and the agent’s knowledge of the property. <i>Id.</i> at § 36-1-11-4.</p> <p><i>Exempt Surplus Land:</i> The chapter does not apply to many categories of real property, including but not limited to disposal of property by redevelopment commissions and historic preservation commissions; the disposal of property to finance housing or by a housing authority; and the disposal of property for park purposes. <i>Id.</i> at § 36-1-11-1.</p>
North Carolina	<p><i>Disposal of City Property:</i> Generally, cities must dispose of real property through a sealed bid, negotiated offer process, public auction, or exchange, but may dispose of real property by private negotiation if the property is culturally, historically, or environmentally significant and sold to a nonprofit whose purpose includes preservation of such property. N.C. GEN. STAT. § 160A-266.</p> <p><i>Sale of Property to Entities Carrying Out a Public Purpose:</i> When a city or county is authorized to appropriate funds to a nonprofit public or private entity that carries out a public purpose, the local government may convey by private sale real or personal property that it owns, in lieu of or in addition to funds. No property acquired by eminent domain may be conveyed this way, and the local government can attach covenants or conditions to ensure that the property will be put to a public use. <i>Id.</i> at § 160A-279.</p>
Texas	<p><i>Sale of Municipal Real Property:</i> The governing body of a municipality may sell and convey land or an interest in land that the municipality owns by public auction or sealed bid; if sold by the former method, notice of sale must be published. TEX. LOC. GOV’T CODE ANN. §§ 253.001(a); 253.008. Under certain circumstances, when the land to be sold is a public square or park, the decision may need to be submitted to local voters. <i>Id.</i> at § 253.001(b)-(k). In certain small municipalities, a municipal governing body may donate surplus real property of negligible or negative value to a private person who owns property adjacent to the parcel in question. <i>Id.</i> at § 253.013. A home rule municipality may contract with a broker to sell tracts of municipally-owned real property, without complying with public auction requirements or notice and bidding requirements, as long as the broker lists the property for at least 30 days with a multiple-listing service and the putative buyer has submitted the “highest cash offer.” <i>Id.</i> at § 253.014.</p> <p><i>Valuation:</i> Some types of property, such as narrow strips of land or streets and alleys, must be sold at fair market value. <i>Id.</i> at § 272.001. Local governments may sell or convey real property at a below-market rate for the development of low-or moderate-income housing, to an institution of higher education, or to effectuate a public purpose at below fair market value rate. <i>Id.</i></p>
Washington	<p><i>Intergovernmental Transfer of Property:</i> State statute outlines basic requirements for selling or transferring property between local governments. Per WASH. REV. CODE §§ 39.33.010 and 43.09.210, cities, towns, and counties are authorized to sell or transfer property to other governmental entities for “full value,” but the State Attorney General has interpreted this term flexibly. Attorney General Opinion, No. 5 (1997). A political subdivision must hold a public hearing when attempting to convey surplus property with an estimated value of more than \$50,000 to another governmental entity. WASH. REV. CODE § 39.33.020.</p> <p><i>Public Disclosures:</i> A city council may discuss the minimum price at which real estate will be offered for sale or lease in executive session when public knowledge would increase the likelihood of decreased price. <i>Id.</i> at § 42.30.110(1)(c). Real estate appraisal documents are generally exempted from public inspection. <i>Id.</i> at § 42.56.260.</p> <p><i>Disposal of Public Property for Affordable Housing:</i> Cities, towns, and other political subdivisions can dispose of property at low or no cost for the purpose of developing affordable housing for low-income households. <i>Id.</i> at § 39.33.015.</p>

Table 2. Surplus Land Laws & Policies in a Sample of American Cities

City	Summary of Key Law & Policy Provisions
<i>Charlotte, NC</i>	<p><i>Disposition of City-Owned Land:</i> The city generally abides by the state laws governing the sale of locally-owned land (N.C. GEN. STAT. § 160-265 <i>et seq.</i>). Parcels with a fair market value of \$10,000 or less may be conveyed by private negotiation or sale. When the City Council determines that the disposition of property will advance a Council-adopted development or land use plan, the city may convey the property by public sale or negotiated private sale and attach conditions to the transaction, as long as a Council resolution authorizes the conveyance; in such cases, there must be public notice of the proposed transaction at least 10 days prior to the adoption of the resolution. The city manager may approve the sale of real property valued at more than \$10,000 when the manager certifies to the City Council that the property is being sold for affordable housing development. CHARLOTTE CITY CHARTER, § 8.22.</p> <p><i>Priorities for Disposition:</i> According to city policy, the goal at disposition should be to “maximize revenues and/or evaluate and target subsidies.” City of Charlotte, City-Owned Real Estate and Facilities Policy (2017). City policy also states that “[i]t is the intent of the City to utilize Real Property strategically to further the City’s goals for affordable housing by prioritizing use of available City-owned Real Property for the development of such projects.” City of Charlotte, <i>Guidelines for Evaluation and Disposition of City Owned Land for Affordable Housing</i> (2019). This policy directs city officials to review each parcel of city-owned real property regularly, “in an effort to leverage all City-owned Real Property to its fullest potential for Affordable Housing while balancing other City priorities.” <i>Id.</i> If a parcel is well-suited for affordable housing, the city should “seek to partner with an appropriate non-profit or for-profit housing entity to develop it as Affordable Housing.” <i>Id.</i> In addition, “long term lease of City-owned Real Property for Affordable Housing may often be preferred over other forms of disposition, such as the sale or donation of property.” <i>Id.</i></p>
<i>Chicago, IL</i>	<p><i>Disposition of Surplus Land:</i> The city generally adheres to procedures set forth in Article 11, Div. 76 of the Illinois Municipal Code. CHI. MUNI. CODE § 2-158-010. The commissioner of planning and development must publish a notice of the proposed sale. <i>Id.</i> A public hearing will be held when considering bids, and the committee with jurisdiction over surplus land disposition must recommend approval or disapproval of sale not later than 60 days from the date that the ordinance authorizing sale was first scheduled for hearing. <i>Id.</i> at § 2-158-020. The City Council may accept a bid for surplus land only by a $\frac{3}{4}$ vote of its members. <i>Id.</i> Bids other than the highest may be accepted, as long as the intended purpose for the purchase is in the “best interest of the city,” and the moving member swears that they have no economic interest in sale to the proposed bidder. <i>Id.</i> at § 2-158-030. “In determining the best interest of the city, the committee may consider, among other things, such public benefits as housing, economic development and recreational open space.” <i>Id.</i></p> <p><i>Expedited Procedure for Vacant Land Parcels:</i> Vacant, city-owned parcels zoned for residential multi-unit use may be sold in an expedited fashion, individually or in pools of parcels. <i>Id.</i> at § 2-158-070, <i>et seq.</i> The minimum bid price for purchase of any parcel shall be no less than 60% of its appraised value, and parcels will be typically awarded to the highest bidder whose submission package is timely and complete. <i>Id.</i> at § 2-158-090.</p> <p><i>Adjacent Neighbors Land Acquisition Program:</i> Persons who own property adjacent to a vacant city-owned parcel may bid to purchase the parcel at a potentially discounted price, though the city council must still vote on the transaction. <i>Id.</i> at § 2-159-050.</p>
<i>Columbus, OH</i>	<p><i>Sale of City-Owned Realty:</i> Generally, city agencies must seek approval of a proposed sale of surplus land from the “land review commission,” which reviews proposals for, among other things, the appropriateness of the transaction “in light of current or future city objectives or needs.” COLUMBUS CODE § 328.01, <i>et seq.</i> City-owned real property that has been declared surplus must be advertised through at least one major commercial real estate listing service for at least 14 days. <i>Id.</i> at § 329.32. City Council</p>

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	<p>must approve the conveyance and terms of sale by ordinance. <i>Id.</i>; see also <i>id.</i> at § 3513.03 (requiring city council ordinance to sell property in an urban renewal area).</p>
Dallas, TX	<p><i>Inventory Requirement:</i> The city manager must maintain a descriptive roster of real property owned by the city. DALL. CITY CODE § 2-22.</p> <p><i>Disposition Process:</i> The city must make an appraisal of the property to determine its fair market value, either through its own staff or independently based on the estimated value of the parcel. <i>Id.</i> at § 2-24(b). At least 60 days before the initiation of formal bid procedures, the city manager must advertise the sale to neighboring property owners, local real estate brokers, and neighborhood associations, and may also be required to publish a notice of availability more widely. <i>Id.</i> at § 2-24(c). Depending on the development potential of the land, the city manager may initiate formal bid procedures, start negotiations, or sell property by public auction, in accordance with state law. <i>Id.</i> at §§ 2-24, 2-24.1. After a formal bid procedure, the city manager makes a recommendation to the city council, who may act by resolution to award or reject the sale. After a public auction, the city manager may unilaterally execute the sale if the highest qualifying bid equals or exceeds the reserve amount established by the city council for the real property. If the highest qualifying bid is less than the reserve amount, city council must decide on a recommendation made by the city manager. <i>Id.</i> at § 2-26.1.</p> <p><i>Alternative Manner of Sale of Real Property to Nonprofits for Affordable Housing:</i> The city council may sell real property acquired by tax foreclosure to nonprofit organizations to develop affordable housing for low-income households at a fixed, discounted price. <i>Id.</i> at § 2-26.9. Land acquired by a nonprofit under this provision may revert to the city if the nonprofit fails to take possession of the land, fails to complete construction of affordable housing, is unable to develop the land because a request for a zoning change has been denied, has incurred a lien on the property because of a code violation, or has sold/conveyed the land without the consent of the city. <i>Id.</i> at § 2-26.12.</p>
Denver, CO	<p><i>Conveyance of Real Estate:</i> Upon the approval of the Board of Equalization, the mayor is authorized to make, execute, and deliver proper deeds to any city-owned real estate or property. REV. MUN. CODE OF DENVER, § 20-51.</p> <p><i>Disposition of City-Owned Real Estate:</i> The city's Director of Real Estate advises city agencies on proposals for real property acquisition, disposition, leases, and exchanges. Disposition of city-owned real estate is only authorized after the property is determined to be surplus to city needs based on a "Clearance and Release" analysis, in which the Division of Real Estate will evaluate whether the subject property 1) is necessary for the provision of essential government services, 2) is in a state where "ongoing facility conditions or maintenance needs make property costs prohibitive to remain in the portfolio," 3) meets an identified future needs, or 4) is suitable for affordable housing purposes. If property is authorized for disposition, the Director is responsible for negotiating for the disposition of the parcel, but the contracts for disposition must be authorized by ordinance. Mayor Michael B. Hancock, Executive Order No. 100: <i>City Owned and Leased Real Estate: Acquisition, Disposition, Leasing, and Facility Management, Space Planning, and Programming</i> (2016).</p>
Houston, TX	<p><i>Disposition of City-Owned Land:</i> Any land owned by the city determined not to be needed for city purposes—other than abandoned streets and alleys, abandoned easements, and narrow strips of land that are not independently developable—must be advertised and can be sold to the highest bidder upon authorization by the city council; the selling price may generally not be less than the market value fixed by the council. HOUST. CODE ORD. § 2-236. Streets, alleys, easements, and narrow strips of land incapable of being used independently may be sold to abutting owners for a specified price. <i>Id.</i> at §§ 2-237, 2-238, 2-239.</p>
Indianapolis, IN	<p><i>Sale of City-Owned Surplus Property Generally:</i> Local law generally follows state law, but approval of fiscal body, under Ind. Code 36-1-11-13, is only necessary for real property sales that have an appraised value greater than \$150,000. INDIANAPOLIS/MARION COUNTY REV. CODE § 186-7.</p>

	<p><i>Sale of City-Owned Real Property to Nonprofit Corporations:</i> The disposing agency may negotiate for the sale or lease of any real property to an eligible nonprofit corporation after appraisal, including for nominal compensation, as long as the disposing agent acts in the “best interests of the city or county.” However, no real property with an appraised value in excess of \$50,000 may be sold for an amount less than 90% of the fair market value, unless no public funds have been expended on improvements made to the real property, and the city/county acquired the property by donation or without the expenditure of public funds. A public hearing is required, and the proposed contract of sale must be open to public inspection. <i>Id.</i> at § 186-3.</p>
<p>Jacksonville, FL</p>	<p><i>Inventory Requirement:</i> The Real Estate Division of the city must maintain and periodically publish an inventory of its real estate interests. JACKSONVILLE CODE § 122.401(e). The city will also publish a list of surplus properties appropriate for affordable housing, pursuant to state law. <i>Id.</i> at § 122.423(b).</p> <p><i>Surplus Designation:</i> The Real Estate Division is responsible for circulating a description of the proposed surplus parcel to city departments, boards, authorities, and commissions to determine if there is any need to retain the building for public use. If the property is not needed for a public purpose, the City Council may authorize its disposal as surplus. <i>Id.</i> at § 122.422.</p> <p><i>Limitation on Alienability:</i> The city may only convey parklands if (1) the property is to be used as a civic or community center, or (2) the sale becomes “necessary for the greater public good by either local, state or federal needs,” in which case the city is obligated to compensate by developing park lands as close by as possible. <i>Id.</i> at § 122.421(b). Additionally, surplus real property that is deemed to have historical or architectural significance may only be conveyed by the city with protective covenants in place. <i>Id.</i> at § 122.421(c).</p> <p><i>Disposition of Surplus Property:</i> The Real Estate Division may conduct the sale of surplus land by direct sale under certain circumstances, but otherwise by public auction or sealed bid to the highest and best bidder for cash, or the highest bidder for cash whose bid meets or exceeds a specified minimum. <i>Id.</i> at §§ 122.424, 122.425. The City Council must approve of sales of property valued at over \$100,000. <i>Id.</i> at § 122.421(f). The Real Estate Division may sell or donate surplus property for the development of affordable housing. <i>Id.</i> at § 122.423.</p>
<p>Los Angeles, CA</p>	<p><i>Surplus Designation:</i> Before the City Council determines that a property is no longer required for the city’s use and public interest or necessity require its sale, the Department of General Services must appraise the property and recommend a minimum sale price; the Bureau of Engineering must recommend the reservation of portions of the property and easements or rights as should be retained by the city; and the Planning Department must consider the proposed sale in relation to city plans and verify with appropriate city departments that the parcel in question is not required for city use. L.A. ADMIN. CODE § 7.22.</p> <p><i>Disposition Process:</i> Once a property is declared surplus, the Council passes an ordinance to order the parcel sold. The City Clerk must advertise the availability of the parcel in a newspaper of general circulation for at least three days, and post a notice of sale on the property for at least 30 days before sale. <i>Id.</i> at § 7.23. The Council will determine the method of sale (e.g., oral or sealed bids at public auction); in bidding processes, bidders must typically put down at least 10% of the minimum price to participate. <i>Id.</i> at §§ 7.24-7.27. By default, the “high bidder” will likely acquire the parcel. <i>Id.</i> at §§ 7.28, 7.29. “Remnant” surplus property, which includes small properties, may be disposed of by private sale. <i>Id.</i> at § 7.27.1.</p> <p><i>Exceptions to the Disposition Process:</i> The Economic Development Department and the Los Angeles Housing Department are both authorized to convey any real property or property interest below its fair market value, “subject to the Council making a finding that the conveyance at the price with the terms and conditions imposed thereon serves a public purpose,” and requiring both the Council and Mayor’s approval. <i>Id.</i> at §§ 7.27.2, 7.27.3. Special disposition processes are established for REO properties (i.e.,</p>

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	properties that the Los Angeles Housing Department has acquired as a result of foreclosure), and special assessment properties. <i>Id.</i> at §§ 7.33.2; 7.34.1 <i>et seq.</i>
Philadelphia, PA	<p><i>Inventory Requirement:</i> Each city agency must maintain and make public an inventory of surplus properties. PHIL. CODE § 16-404(1).</p> <p><i>Disposition Process:</i> Agencies typically dispose of surplus properties by competitive process after a period of public advertisement. Only qualified applicants (i.e., those without city delinquencies, outstanding code violations, and no conflicts of interest, among other requirements) may acquire surplus property. <i>Id.</i> at § 16-404(2)(a). Applications to acquire the surplus property are weighted as follows: 30% based on economic opportunity and inclusion; 15% based on social impact; 20% based on development team experience and capacity; 20% for financial feasibility; 10% for project design; and 5% for offer price. <i>Id.</i> at § 16-404(2)(c). Certain applicants are exempt from a competitive disposal process, including but not limited to applicants who seek to adjoin the surplus property to their property of primary residence; applicants who seek property for use as a community garden; applicants who seek to develop the property as affordable housing; and applicants who seek to use the property for a community benefit (e.g., as daycare, senior center, etc.). <i>Id.</i> at § 16-404(2)(d)-(e). An agency may dispose of surplus property at a price that is nominal or less than fair market value when it will serve a public purpose or advance a city plan, and may accept alternative forms of payment (e.g., exchanges of real property). <i>Id.</i> at § 16-404(3). Disposition are generally approved by City Council. <i>Id.</i> at § 16-404(4).</p>
Phoenix, AZ	<p><i>Disposition of City-Owned Realty:</i> All sales of real property must be approved by ordinance of the City Council. PHOENIX CITY CHARTER, Chapter IV, Sec. 2. The Real Estate Division of the Finance Department is responsible for managing the disposition process in conjunction with the land-owning department (or “Controlling Department”) in question, although some departments are authorized to undertake that process themselves. City of Phoenix, Admin. Reg. 5.44 (2023). Once the Controlling Department has sought approval from the Finance Department and other applicable financing agencies, the Real Estate Division works with the Controlling Department to have the parcel appraised. <i>Id.</i> at III; IV.a. While the negotiated contracted price may be offset based on “public considerations” that cannot be quantified in dollars, the negotiated contract price may be no less than market value as determined by an appraisal or another approved valuation method. <i>Id.</i> at IV.c.</p>
San Antonio, TX	<p><i>Disposition of Surplus Real Property:</i> Surplus status of real property is determined only by city council. Petitions for the sale of city-owned surplus property must be submitted to a responsible director, who may contract with a broker to sell property, although only city council can authorize sales. SAN ANTONIO CODE OF ORD. § 37-12.</p>
San Francisco, CA	<p><i>Inventory Requirement:</i> Each city commission, department, and agency must compile and deliver to the City Administrator a yearly list of all real property it owns. SAN FRANCISCO ADMIN. CODE § 23A.5.</p> <p><i>Centralized Assessment Mechanism:</i> The City Administrator must review inventory to identify any property that may be surplus or underutilized. The Administrator must prepare a yearly comprehensive Surplus Property Report, detailing surplus parcels and the potential development of affordable housing at these sites. The Board of Supervisors must hold a yearly public hearing on the Surplus Property Report to determine whether any land may be transferred to the Mayor’s Office of Housing for affordable development. Real property transferred to that Office must be used to create affordable housing. <i>Id.</i> at §§ 23A.6, 23A.7, 23A.8.</p> <p><i>Disposition Process:</i> Local agencies looking to dispose of surplus property must provide advanced notice to the Executive Director of the Mayor’s Office of Housing to determine whether it is appropriate for affordable housing development and negotiate in good faith it is suitable for such purpose. <i>Id.</i> at § 23A.10. City law expressly provides for the donation or sale at less than market value if the property will be used for affordable housing, and such sale/donation requires a covenant attached to the property that prohibits the receiver from reselling, transferring, or subleasing property at a profit. <i>Id.</i> at § 23A.11.</p>

<p><i>Seattle, WA</i></p>	<p><i>Surplus Designation:</i> The city’s executive recommends reuse or disposal of real property on a case-by-case basis, but must consider consistency with purpose for which property was originally acquired, funding sources used to acquire the property, “highest and best use” of the property, unique attributes of the property, and city policy priorities (especially affordable housing, including mixed-used development projects). Seattle City Council, Resolution 31837 (2018).</p> <p><i>Priorities for Surplus Land:</i> The City’s intent is to prioritize the use of available city property for affordable housing; other priorities include parks or open space, child care and early learning facilities, education, transit, and community and economic development. <i>Id.</i></p> <p><i>Surplus Disposition Process:</i> When a city department declares that a parcel of its real property is “excess” to government needs, other city and public agencies, as well as the public, must be notified of its availability, asked to identify their interest in it, and invited to propose municipal uses. The department that owns the property must examine these responses and make a recommendation about what to do with the parcel, which it submits to the Real Estate Services team within the Finance and Administrative Services Department. Real Estate Services then evaluates potential uses for the parcel against the criteria set forth in City Council Resolution 31837, and labels the decision “simple” or “complex” based on a set of enumerated factors. “Simple” disposition decisions are ushered through legal review and sent to City Council, while “complex” decisions involve greater review and a public involvement plan before their submission to City Council. <i>Id.</i> at Attachment A, City of Seattle, Procedures for Evaluation of Reuse and Disposal of the City’s Real Property (2018).</p> <p><i>Disposition of Foreclosed Property:</i> The Director of Finance and Administrative Services is authorized to sell property acquired by the City upon foreclosure, at not less than the appraised value or a price sufficient to pay all taxes and assessments in full. SEATTLE CITY CHARTER § 20.80.010.</p>
<p><i>Washington, D.C.</i></p>	<p><i>Surplus Designation:</i> When the Mayor decides that a parcel of real property is no longer required for public purposes, they must submit to the City Council a resolution designating the parcel as surplus and include a detailed explanation as to why the real property is no longer required, weighing possible District uses for the property in question against the proposed use. D.C. CODE § 10-801(a-1). The Mayor must hold at least one public hearing to obtain community input on potential public uses of the parcel to inform their determination of whether the real property is surplus. <i>Id.</i> If the Council determines that the real property is surplus, the Mayor must attempt to dedicate the property to a use with “direct public benefit.” <i>Id.</i> at § 10-801(a-2).</p> <p><i>Sale of Public Land:</i> After a parcel is designated as surplus, the Mayor may submit to the Council a second resolution with details regarding the proposed disposition plan, along with an analysis of the economic factors considered in and benefits associated with the proposed disposition, and, among other things, an explanation of the difference between the appraised value of the property and its purchase price. <i>Id.</i> at § 10-801(b). The Mayor must hold at least one public hearing to obtain community input before proceeding to negotiate the disposition of real property. <i>Id.</i> at § 10-801(b-2). The City Council gets final approval of the proposed disposition. <i>Id.</i> at § 10-801(c). If the property is no longer used for its authorized purpose, the District retains the right to reacquire the property at the price originally conveyed plus any amounts secured by the property that have been approved by the Mayor. <i>Id.</i> at § 10-801(e).</p> <p><i>Inclusionary Requirement:</i> If the proposed disposition of real property will result in multifamily residential development, it must include a minimum number of affordable units, though this inclusionary requirement may be waived or reduced by the Mayor under certain circumstances. <i>Id.</i> at § 10-801(b-3).</p>