

ZONING, RACE, AND MARIJUANA: THE UNINTENDED
CONSEQUENCES OF PROPOSITION 64

by
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This Article revisits the campaign to legalize cannabis in California with Proposition 64. It then dissects the localism within the new California regulations and how it conflicts with the social justice goals central to the spirit of Proposition 64's passage. With local governments retaining control over marijuana in their jurisdictions, land use takes on new importance with respect to how marijuana will be controlled. The problem is that the land use system, like the criminal law apparatus, has yet to overcome systemic racism that is inherently part of its design. Proposition 64 wrongly relied on local control to regulate marijuana and the price will be paid, once again, by minority communities who bore the brunt of the war on drugs in the first place.

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INTRODUCTION

Proposition 64 created a winning campaign by capitalizing on the *New Jim Crow* consciousness that had exposed the unjust nature of American drug laws.¹ The legalization of recreational marijuana tantalized social justice activists with the hope that the wrongs of old misguided marijuana policies might be righted in California.² Yet Proposition 64 betrays its spirit of social justice by shackling legal marijuana to a control structure lodged securely in local municipal government.³

Marijuana laws will no longer be enforced by police officers looking for a reason to stop a minority member.⁴ Nor will minor possession charges come with remarkably destructive criminal penalties.⁵ That is a victory—so what is the problem? Under Proposition 64, local governments now regulate marijuana by exercising land use controls which governments commonly use to cordon off anything associated with disorder.⁶ Cities treat marijuana as a public nuisance,⁷ and marijuana has long

¹ See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN AN AGE OF COLORBLINDNESS*, 180–87 (rev. ed. 2012) (highlighting the racial disparities in incarceration, in large part due to discriminatory enforcement of drug laws).

² *Endorsements, YES ON 64*, <http://yeson64.org/endorsements/> (last visited Feb. 26, 2019) (“Reforming our marijuana laws is an important civil rights issue. The current system is counterproductive, financially wasteful and racially biased—and the people of California want it to be fixed. This measure will ensure that California is not unjustly criminalizing responsible adults while ensuring that our children and our communities are protected and vital state and local services are funded.”).

³ Proposition 64’s amendments to the California Business and Professions Code retain local government oversight:

- (1) This division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction.
- (2) This division shall not be interpreted to supersede or limit the authority for enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements.

CAL. BUS. & PROF. CODE § 26200(a)(1)–(2) (West 2019).

⁴ See EZEKIEL EDWARDS ET AL., *AM. CIV. LIBERTIES UNION, THE WAR ON MARIJUANA IN BLACK AND WHITE* 5 (2013), <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

⁵ See *id.* at 110 (discussing the high economic and social cost to enforcement of criminal marijuana laws).

⁶ See, e.g., NICOLE STELLE GARNETT, *ORDERING THE CITY: LAND USE, POLICING, AND THE RESTORATION OF URBAN AMERICA* 3 (2010) (explaining that property regulations and building codes are commonly used to suppress disorder).

⁷ *E.g.*, *Urgent Care Med. Servs. v. City of Pasadena*, 230 Cal. Rptr. 3d 892, 894 (Cal. Ct. App. 2018) (City of Pasadena’s complaint for injunctive relief alleging that a marijuana dispensary

been maligned as a disorder in our nation's drug policy.⁸ Worse, zoning laws are systemically racist as a matter of entrenched history, rather than from selective enforcement of functionally innocuous laws.⁹ Zoning impacts neighborhoods and the people who inhabit them on a broad scale by dictating what the urban or suburban environment may consist of. Zoning ordinances are also incredibly difficult to challenge.¹⁰

This Article argues that however convenient or necessary local control seemed from an initiative standpoint, it brought unintended consequences that will ultimately undermine the social justice goals that drove California's marijuana legalization.¹¹ The new tools for implementing and enforcing marijuana laws, namely zoning regulations, will trigger unintended consequences.

First, zoning will relegate marijuana dispensaries to poor neighborhoods adjacent to industrial corridors and away from the prime real estate of suburban single-family homes.¹² Economically depressed neighborhoods tend to be marked by high-density rental housing, occupied primarily by minorities.¹³ Zoning power provides local government with the legal means to ensure that a marijuana dispensary will not be located in an affluent neighborhood by simply prohibiting dispensaries from operating in any area zoned for low-density, large-lot residential use.

Second, the cost of entry into the legal marijuana industry will exclude these same groups. Communities hosting high concentrations of marijuana dispensaries, cultivation sites, and businesses may see proceeds flow out of the communities if unable to participate in the industry.¹⁴ Finally, the new laws do not address the

is a per se public nuisance); *Kirby v. Cty. of Fresno*, 195 Cal. Rptr. 3d. 815, 819 (Cal. Ct. App. 2015) (County of Fresno classifying violations of its ban on marijuana cultivation as both public nuisances and misdemeanors).

⁸ EDWARDS ET AL., *supra* note 4, at 11 (detailing the arc of racism within the United States marijuana policy where “[c]oncentrated enforcement of marijuana laws based on a person’s race or community has not only been a central component of this country’s broader assault on drugs and drug users, it has also resulted from shifts in policing strategies, and the incentives driving such strategies”).

⁹ See *infra* Section II.A for an analysis of the racism in zoning.

¹⁰ See *infra* Sections II and II.B for a discussion of legal challenges to zoning.

¹¹ See generally YES ON 64, *supra* note 2 (discussing the goals of achieving social justice by decriminalizing marijuana).

¹² See *infra* Section III.C.

¹³ See generally KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 70 (1985) (discussing the concentration of European minorities in cities in the late 19th century); *infra* Appendix B (utilizing census data from 2010 and GIS tools, demographic data reveals how cities remain segregated by race and socioeconomic status).

¹⁴ See BLUE RIBBON COMM’N ON MARIJUANA POL’Y, PATHWAYS REPORT: POLICY OPTIONS FOR REGULATING MARIJUANA IN CALIFORNIA 54 (2015), https://www.aclunc.org/sites/default/files/20150721-brc_pathways_report.pdf (anticipating such unintended consequences if lawmakers did not properly calibrate the taxation and regulatory scheme: “Tax rates that are too

problems facing poorer individuals about where marijuana can be consumed.¹⁵ Renters in apartments and public housing are subject to different rules than homeowners with respect to marijuana consumption.¹⁶ Consequently, fines, civil penalties, and eviction are again set up to disproportionately impact communities of color.

This argument follows in five Sections. Section I unpacks Proposition 64's campaign and how local controls were built into the ballot measure to appease nervous municipalities. Section II examines the interplay between zoning, racism, and marijuana in the context of zoning power by walking through the history of zoning and California's local governments' tolerance for medical marijuana dispensaries. Section III analyzes marijuana as a social disorder from a historical perspective. Section IV analyzes how local controls have thus far been used in California since the passage of Proposition 64. Part V concludes by proposing potential solutions to effectuate the social justice goals promised in Proposition 64.

I. CALIFORNIA'S PATH TO LEGALIZATION

Since 1972, attempts to legalize marijuana in California routinely failed due to a persistent lack of widespread voter support.¹⁷ It was not until 2016 that the effort to legalize recreational marijuana gained critical momentum with the argument that

high on the production side can also force out small producers, creating a system where only interests with access to large amounts of capital would be able to afford to produce cannabis. This would undermine the ability of the state to ensure Big Tobacco or other large, corporate interests do not dominate the production market, something we believe should be a key goal of any legalization policy.”)

¹⁵ See SAN BERNARDINO, CAL., MUN. CODE § 8.99.020 (2019), <http://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=19233>. The Health and Safety Code states that it will not restrict:

- (f) The rights and obligations of public and private employers to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace, or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.
- (g) The ability of a state or local government agency to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 within a building owned, leased, or occupied by the state or local government agency.
- (h) The ability of an individual or private entity to prohibit or restrict any of the actions or conduct otherwise permitted under Section 11362.1 on the individual's or entity's privately owned property.

CAL. HEALTH & SAFETY CODE § 11362.45(f)–(h) (2019).

¹⁶ See BLUE RIBBON COMM'N, *supra* note 14, at 43–44 (noting that lease agreements, general housing laws, and landlords receiving Section 8 subsidies may restrict marijuana consumption).

¹⁷ Jessica Roy, *California's Been Rejecting Legalized Marijuana for More than a Century*, L.A. TIMES (Sept. 13, 2016, 12:05 am), <http://www.latimes.com/politics/la-pol-ca-timeline-california-recreational-marijuana-history-20160708-snap-story.html>.

legalization would heal wounds from the war on drugs.¹⁸ Many observers endorsed Proposition 64 on the basis that it would correct the social injustices from decades of disparate enforcement of marijuana laws.¹⁹ Legalizing marijuana necessarily eliminated the criminal laws and penalties that had been overwhelmingly enforced against minorities.²⁰ The initiative included specific social justice remedies such as dedicated funds for substance abuse programs and opportunities for record expungement.²¹

Opponents of Proposition 64 argued the measure did not adequately consider the external costs of legalization.²² The official “No on 64” campaign argued that the measure waged an “all-out assault on underprivileged neighborhoods.”²³ Bishop Ron Allen asked, “Why are there no limits on the number of pot shops that can be opened in poor neighborhoods? We will now have a string of pot shops to go with the two liquor stores on every block, but we still can’t get a grocery store.”²⁴

¹⁸ See *About Prop 64—The Adult Use of Marijuana Act*, YES ON 64, <http://yeson64.org/about-prop-64/> (last visited Feb. 26, 2019) (“This measure brings California’s marijuana market out into the open – much like the alcohol industry. It will be tracked, controlled, regulated and taxed, and we will no longer be criminalizing responsible adults or incarcerating children.”).

¹⁹ YES ON 64, *supra* note 2.

²⁰ See EDWARDS ET AL., *supra* note 4, at 4 (“[T]he War on Marijuana, like the larger War on Drugs of which it is a part, is a failure. It has needlessly ensnared hundreds of thousands of people in the criminal justice system, had a staggeringly disproportionate impact on African-Americans, and comes at a tremendous human and financial cost.”).

²¹ CAL. REV. & TAX. CODE § 34019(d) (2016) (allocating ten to fifty million dollars a year of cannabis tax revenue to “community-based nonprofit organizations to support job placement, mental health treatment, substance use disorder treatment, system navigation services, legal services to address barriers to reentry, and linkages to medical care for communities disproportionately affected by past federal and state drug policies”).

²² See, e.g., Thomas Fuller, *Recreational Pot Is Officially Legal in California*, N.Y. TIMES (Jan. 1, 2018), <https://www.nytimes.com/2018/01/01/us/legal-pot-california.html> (noting that opponents claim legalization will lead to an increase in traffic deaths); Christopher Ingraham, *The “Mostly False” Argument that Could Derail Legal Weed in California*, WASH. POST (Aug. 24, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/08/24/the-mostly-false-argument-that-could-derail-legal-weed-in-california/?utm_term=.0e56b798940f (analyzing opponents’ claim that legalization will lead to marijuana television advertisements); see also Paul M. Johnson, *Externality: A Glossary of Political Economy Terms*, AUBURN U., <http://www.auburn.edu/~johnspm/gloss/externality> (last visited Jan. 21, 2019) (defining “externality” with respect to government policy choices and how governments deal with potential costs to third parties through tax, subsidies, or regulations).

²³ ALEX PADILLA, CALIFORNIA GENERAL ELECTION TUESDAY NOVEMBER 8, 2016: OFFICIAL VOTER INFORMATION GUIDE 99 (2016), <http://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf>.

²⁴ *Id.*

Local governments also fought marijuana legalization.²⁵ City officials and council members representing communities that opposed Proposition 64 felt the measure allotted adequate resources to regulate marijuana at the local level.²⁶ Some municipalities assumed ancillary disorders associated with marijuana would increase beyond their enforcement capabilities.²⁷ They lobbied to maintain police power over marijuana use to address concerns unique to their constituencies.²⁸

Proposition 64's drafters sought to address these concerns with a comprehensive regulatory regime that allocated primary enforcement power to local governments within the overarching state law.²⁹ State lawmakers often delegate enforcement authority to local governments when looking to solve particularly complex intrastate political conflicts.³⁰ Recognizing the sheer volume of California's stakeholders in marijuana policy, initiative drafters looked to gain the support of local agencies by reserving certain powers for the local officials.³¹

²⁵ See, e.g., Heather Irwin, *Who's Backing Prop. 64 and Who Isn't*, EMERALD REP. (Oct. 28, 2016), <https://www.emeraldreport.com/whos-backing-prop-64-isnt/> (listing the 36 municipalities and city representatives who did not support Proposition 64); *Adult Use of Marijuana Act*, LEAGUE OF CAL. CITIES, <http://www.cacities.org/Policy-Advocacy/Hot-Issues/Adult-Use-of-Marijuana-Act> (last visited Feb. 26, 2019) (putting out sample ordinances for regulating and prohibiting marijuana uses in anticipation of the new law and noting that the "only ordinances the League has received on recreational marijuana are bans" as opposed to regulations).

²⁶ This was in large part due to Proposition 64's prohibition on state and local governments levying sales taxes of any kind on medical marijuana. See CAL. REV. & TAX. CODE § 34011(f) (2018) ("The sales and use taxes imposed by Part 1 (commencing with Section 6001) shall not apply to retail sales of medicinal cannabis . . .").

²⁷ By "ancillary disorders," I mean the byproducts of substance abuse that strain health, safety, and welfare officials and resources. In the context of this Article, I point to some ancillary disorders that stem only from unfounded assumptions but still exist in minds of many local policy makers and their constituents. See Elena Gomez, *San Diego County Board of Supervisors Oppose California Marijuana Legalization Initiative*, NBC SAN DIEGO (Oct. 4, 2016), <https://www.nbcsandiego.com/news/local/San-Diego-Leaders-Oppose-Proposition-64-California-Marijuana-Legalization-395803921.html> (reporting on the county leadership's concerns with ancillary disorders such as potential increases in driving under the influence, cartel activity, and youth use as the reasons they opposed marijuana legalization).

²⁸ Richard Miadich, who oversaw the drafting of Proposition 64, stated that many cities were engaged in the drafting process and fought to retain control over implementation and enforcement. The negotiations produced the localism structure that exists throughout the law today. Richard Miadich, *Marijuana Law Seminar Lecture: Remarks on Drafting Proposition 64* (Feb. 12, 2018) (on file with author).

²⁹ See YES ON 64, *supra* note 2.

³⁰ Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 3 (1990).

³¹ E.g., CAL. HEALTH & SAFETY CODE §§ 11362.1(a)(3), 11362.2(a)–(b) (2017) (entitling persons to grow up to six plants for personal use and cultivation as a matter of the state health and safety code but reserving power in local government to regulate that same personal use so long as the regulation was reasonable); Miadich, *supra* note 28.

This Article critiques the local control and enforcement structure as a viable policy choice for marijuana regulation because the enforcement structure ignores the practical realities of local power dynamics. Local jurisdictions rely on land use controls to regulate the use and the user, especially to regulate uses and users associated with social disorder.³² Over the course of the twentieth century, drug policies increasingly treated marijuana use as a disorder worthy of zealous policing.³³ Transitioning enforcement from beat cops to city planners, in the Proposition 64 context, seems ironic, as city officials retain their own serious interest in controlling nuisances and disorder within the city.³⁴

II. ZONING POWER

Zoning emerged as the solution to contain the environmental and social pollutants incident to the industrial revolution.³⁵ Progressive thinkers sought to distance the nuisances generated by the machinery of industrial life from residential neighborhoods.³⁶ Creating single-family home districts outside the city limits seemingly addressed the complaints about living amid the noises, smells, and busy streets.³⁷

Alfred Bettman, the leading progressive scholar on slums and city planning, advocated for concentrating single-family homes in districts through the exercise of local police power.³⁸ To Bettman, the long-term solution for keeping noises, odors,

³² See GARNETT, *supra* note 6, at 3.

³³ JONATHAN P. CAULKINS ET AL., *MARIJUANA LEGALIZATION: WHAT EVERYONE NEEDS TO KNOW* 191–92 (2d ed. 2016) (“Marijuana as a prohibited substance is largely a twentieth-century phenomenon. . . . The history of that legal change, focused around the strange character of Harry J. Anslinger of the Treasury Department’s Prohibition Bureau and around fears triggered by marijuana use among Mexican immigrants and African Americans. . . . The trend towards liberalization stalled in the late 1970s and 1980s, when first the Carter administration and then, more enthusiastically, the Reagan administration took a sharp turn toward more punitive drug policies.”).

³⁴ See Nicole Stelle Garnett, *Relocating Disorder*, 91 VA. L. REV. 1075, 1080 (2005) (providing a comprehensive review of the “order-maintenance” policies accomplished through zoning and local government).

³⁵ Releasing a “Zoning Primer” for the public, Herbert Hoover and the new Advisory Committee on Zoning of the Division of Housing and Building sought to build support for zoning as a concept. They described zoning as “the application of common sense and fairness to the public regulations governing the use of private real estate. It is a painstaking, honest effort to provide each district or neighborhood, as nearly as practicable, with just such protection and just such liberty as are sensible in that particular district.” *The Zoning Law and Its Benefits*, N.Y. TIMES, June 25, 1922, at 1, <https://timesmachine.nytimes.com/timesmachine/1922/06/25/112682591.pdf>.

³⁶ Alfred Bettman, *Housing Projects and City Planning*, 1 L. & CONTEMP. PROBS. 206, 207 (1934).

³⁷ See generally JACKSON, *supra* note 13.

³⁸ See Bettman, *supra* note 36, at 209–10.

and turmoil incident to the operation of industry, or “slum areas,” away from residential neighborhoods meant creating exclusively residential districts.³⁹ Piecemeal separation of nuisances insufficiently addresses the needs of urban families.⁴⁰ Segregating the city into districts, however, would capably, comprehensively, and systematically separate nuisances to the scale required.⁴¹ To accomplish this systematic change, Bettman suggested formalizing zoning by merging it with comprehensive city planning and the local police power.⁴²

The legality of zoning came to the courts as an issue of scope: was proactive city planning within the scope of a local jurisdiction’s police power?⁴³ In *Village of Euclid v. Ambler Realty Co.*, the U.S. Supreme Court examined Euclid’s zoning scheme, which divided land by height restrictions, use restrictions, and area restrictions.⁴⁴ The rubric functionally designated areas as commercial or residential. Single-family homes, at the time, were one story high, a certain square footage, and had a single use.⁴⁵ Commercial buildings were much larger, several stories high, and put to a variety of uses.⁴⁶ The city argued this plan cordoned off its residential space from Cleveland’s encroaching industrial growth.⁴⁷ Preserving its residential neighborhoods promoted the health and safety of its citizens by creating a boundary line that Cleveland businesses could not pass.⁴⁸ The Court, relying on an amicus brief

³⁹ *Id.*

⁴⁰ See John M. Ross, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CALIF. L. REV. 335, 344 (1972) (explaining that variances and special-use permits in zoning laws create economic uncertainty and lower property values).

⁴¹ See JACKSON, *supra* note 13, at 70.

⁴² Commentary, *Village of Euclid v. Amber: The Bettman Amicus Brief*, 58 PLAN. & ENVTL. L., Mar. 2006, at 2, 6 (2006).

⁴³ *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 384 (1926).

⁴⁴ *Id.* at 379–82 (describing, in detail, how the town zoned its districts based upon use classifications).

⁴⁵ *Id.* at 380–82.

⁴⁶ *Id.*

⁴⁷ *Id.* at 389–90.

⁴⁸ Agreeing with the Village, the Court emphatically defines the scope of municipal power with respect to land use controls in terms of municipal sovereignty:

But the village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own and authority to govern itself as it sees fit within the limits of the organic law of its creation and the State and Federal Constitutions. . . . If it be a proper exercise of the police power to relegate industrial establishments to localities separated from residential sections, it is not easy to find a sufficient reason for denying the power because the effect of its exercise is to divert an industrial flow from the course which it would follow, to the injury of the residential public if left alone, to another course where such injury will be obviated. . . . We find no difficulty in sustaining restrictions of the kind thus far reviewed.

Id.

from Bettman, agreed with the city that zoning was a proper exercise of police power.⁴⁹

In constitutional terms, municipalities exercised lawful police power by promoting the health, safety, and welfare of citizens when separating nuisances through zoning.⁵⁰ Zoning ordinances survive challenges unless proven “clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.”⁵¹ America’s vast single-family suburban landscape reveals *Euclid’s* success in securing zoning as a police power for local governments and ensuring that local governments capitalized on their new power.⁵²

A. *Racism in Zoning*

Facially, most zoning schemes look as harmless as the ordinance the Court approved in *Euclid*, where height restrictions and setback requirements maintain the single-family character of neighborhoods. Nor do use restrictions seem oppressive to those living within the municipality if they keep the smells of a sewage treatment plant away.⁵³ However, when the Court validated separation of uses it also sanctioned separating users.⁵⁴

Justice Sutherland’s now-famous description of nuisance as “merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard”⁵⁵ may in today’s context be likened to the apartment complex parasitically latched upon a residential district. Even though apartments house individuals and function as domiciles, they too could be separated out of residential neighborhoods as a nuisance.⁵⁶

⁴⁹ Commentary, *supra* note 42, at 3.

⁵⁰ *Vill. of Euclid*, 272 U.S. at 388.

⁵¹ *Id.* at 395.

⁵² See JACKSON, *supra* note 13, at 305 (“For better or worse, the American suburb is a remarkable and probably lasting achievement.”).

⁵³ See Steve Orr & Meaghan McDermott, *What’s That Smell? Homeowners Say Odor Affecting Quality of Life*, DEMOCRAT & CHRON. (Aug. 31, 2014, 12:00 AM), <https://www.democratandchronicle.com/story/news/2014/08/30/penfiled-baker-commodities-rendering-smell/14830513/>.

⁵⁴ See GARNETT, *supra* note 6, at 3.

⁵⁵ *Vill. of Euclid*, 272 U.S. at 388.

⁵⁶ According to Justice Sutherland, apartment complexes disrupt residential neighborhoods by:

interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play

Id. at 394.

Apartments often serve as a buffer for residential neighborhoods from industrial complexes, busy roads, freeways, or noisy and smelly facets of urban life.⁵⁷

The more problematic effect, then, is when designating apartment complexes as nuisances relegated apartment users to the same status. When the Supreme Court decided *Euclid*, racial minorities occupied rental dwellings at a higher rate than white individuals.⁵⁸ Thus, when cities zone residential districts for single-family homes alone, they are exiling apartment users to areas adjacent to, or within, commercial and industrial zones.⁵⁹ This secondary impact of zoning, separating users, became especially racist in design when the government deliberately interfered with who could own single family homes. In the 1930s, after the Court sanctioned zoning as constitutional, the Great Depression reduced overall home ownership to roughly 43% of Americans.⁶⁰ The Federal Housing Administration (FHA) attempted to revitalize the housing market by underwriting mortgage insurance.⁶¹ To determine who qualified for low interest mortgages backed by the federal government, the FHA assigned valuers to assess properties in terms of risk.⁶² Properties colored green indicated a low risk area that would receive mortgage assistance.⁶³ Yellow areas indicated moderate risk that would require further analysis.⁶⁴ Red areas indicated high risk that would not receive assistance.⁶⁵

Adopting a technique called “redlining,” valuers then designated African American neighborhoods red.⁶⁶ Redlining served the FHA policy to separate “incompatible racial groups” but zoning underpinned the FHA’s entire operation by sanctioning the separation of uses.⁶⁷ Without constitutional permission to separate

⁵⁷ See generally Mary McLean, *Zoning Buffers: Solution or Panacea?*, AM. SOC’Y OF PLAN. OFFICIALS, Info. Rep. No. 133, Apr. 1960 (discussing the problems and benefits of using buffers to separate different classifications of property from nuisances).

⁵⁸ See BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, FOURTEENTH CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1920, VOLUME II, POPULATION, GENERAL REPORT AND ANALYTICAL TABLES 1279–323 (1922).

⁵⁹ Stephen Clowney, *A Walk Along Willard: A Revised Look at Land Use Coordination in Pre-Zoning New Haven*, 115 YALE L.J. 116, 132 (2005).

⁶⁰ Vincent J. Cannato, *A Home of One’s Own*, 3 NAT’L AFFAIRS 69, 72 (2010).

⁶¹ RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 64 (2017).

⁶² *Id.*

⁶³ Alexis C. Madrigal, *The Racist Housing Policy that Made Your Neighborhood*, ATLANTIC (May 22, 2014), <https://www.theatlantic.com/business/archive/2014/05/the-racist-housing-policy-that-made-your-neighborhood/371439/>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ The FHA’s internal guidelines expressly lay out this discriminatory practice:

Usually the protection against adverse influences afforded by these means include prevention of the infiltration of business and industrial uses, lower-class occupancy, and inharmonious

spaces according to use, there could be no backdoor to separate users in secondary or tertiary ways, like making single-family home mortgages available only to white families.⁶⁸

Today, the equal protection doctrine would require a court to evaluate racially animated government policies, like the FHA's redlining policy, with heightened scrutiny.⁶⁹ Zoning, when motivated by racial animus, moves from deferential rational-basis judicial review to one of strict scrutiny.⁷⁰ As Professor Richards notes, a "segregation ordinance is the easy case: zoning with respect to race for purposes of segregation founders on clearly overriding constitutional protections."⁷¹ But these neighborhoods, designed by segregationist policies, have already been cemented into the American landscape. The wealth transfer that is made possible by home ownership has already excluded a generation of minorities who were barred from access to mortgages and home equity. The equal protection clause cannot mitigate these systemic realities.

New zoning ordinances do not attempt to replicate redlining or other types of segregation policies, yet they are problematic because they build off the underlying cityscape that was racist by design. Thus, new facially-neutral zoning actions that concentrate dispensaries in neighborhoods adjacent to industrial corridors compound historical inequalities. Those neighborhoods, overwhelmingly poor and diverse, must deal with the influx of anything deemed "undesirable."⁷²

For our purposes, the question then becomes whether these poorer neighborhoods could challenge the increase in marijuana business on the block. In the context of other vice regulation, courts determine limits on zoning based on the nature of the right threatened or violated (such as free speech or religion) rather than the

racial groups. . . . [N]atural and artificial barriers are of such importance that the Valuator should make a thorough study to determine their presence and reflect such conditions in the rating of this feature.

FED. HOUSING ADMIN., UNDERWRITING MANUAL § 229 (1936).

⁶⁸ *Id.* § 227 (instructing underwriters making valuations of property to rely on the "protection [of neighborhoods] in the form of zoning restrictions").

⁶⁹ *Korematsu v. United States*, 323 U.S. 214, 216 (1944) ("[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny.").

⁷⁰ J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761, 786–87 (1982).

⁷¹ *Id.* at 766 (footnote omitted).

⁷² Recall this argument in opposition to legalization: "Proposition 64 is an all-out assault on underprivileged neighborhoods already reeling from alcohol and drug addiction problems." Patrick McGreevy, *Kennedy Group Puts \$2 Million into Fight Against Pot-Legalization Measures*, L.A. TIMES (Aug. 1, 2016), <https://www.latimes.com/politics/la-pol-ca-patrick-kennedy-marijuana-legalization-opposition-20160801-snap-story.html>.

harshness of the zoning ordinance itself.⁷³ For example, ordinances banning adult businesses do not enjoy traditional deference because they implicate the First Amendment.⁷⁴ On the other hand, zoning that increases the number of liquor stores in an area does not implicate any constitutional rights in the same way.⁷⁵ Efforts to reduce alcohol-related problems and improve the quality of life in the inner city have been hampered by the disproportionately large number of liquor stores allowed within a geographically small area in inner cities.⁷⁶

Municipal officials zoning marijuana as a vice, and then concentrating dispensaries in poor areas, do not run afoul of the First Amendment because marijuana remains an illegal substance federally.⁷⁷ Statewide, many counties and cities treat marijuana civil violations as a per se public nuisance.⁷⁸ It is not exactly difficult to make the argument that zoning dispensaries into industrial corridors validly promotes the public health, safety, and welfare by strictly regulating marijuana land uses, even if it concentrates those uses in poorer communities.⁷⁹ The courts will defer to the local exercise of its land use power and analyze the case with a rational-basis standard of review.⁸⁰

Again, the challenge of central importance to this Article would be those communities objecting to an influx of pot in their neighborhoods. That is, can a community attempt to invalidate a zoning ordinance that concentrates dispensaries in its neighborhoods? The answer seems to be “no,” given marijuana’s status as a nuisance. If it is a vice, the municipality will be afforded wide discretion to zone for new marijuana uses as it sees fit. A California locality may absolutely segregate nuisances into industrial quarters.⁸¹

⁷³ *Schad v. Borough of Mount Ephraim*, 435 U.S. 61, 68 (1981).

⁷⁴ Shima Baradaran-Robison, *Viewpoint Neutral Zoning of Adult Entertainment Businesses*, 31 HASTINGS CONST. L.Q. 447, 453 (2004).

⁷⁵ Shelley Ross Saxer, “Down with Demon Drink!”: *Strategies for Resolving Liquor Outlet Overconcentration in Urban Areas*, 35 SANTA CLARA L. REV. 123, 130–31 (1994).

⁷⁶ *Id.* at 123.

⁷⁷ *Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 496–97 (1982).

⁷⁸ *See, e.g.*, SOLANA BEACH, CAL., MUN. CODE § 17.60.190 (2018) (declaring all marijuana cultivation a public nuisance); UPLAND, CAL., MUN. CODE §§ 9.48.040, 9.48.060(C) (2018) (declaring all marijuana uses not preempted by the state a violation in the City of Upland as well as making those violations a per se public nuisance).

⁷⁹ *See Urgent Care Med. Servs. v. City of Pasadena*, 230 Cal. Rptr. 3d 892, 894 (Cal. Ct. App. 2018) (City of Pasadena’s complaint for injunctive relief alleging that a marijuana dispensary is a per se public nuisance); *infra* Section II.B (discussing the problems medical marijuana business participants faced when suing hostile municipalities).

⁸⁰ *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 397 (1926) (granting deference to the police power of local jurisdictions).

⁸¹ *Cty. of Tulare v. Nunes*, 155 Cal. Rptr. 3d 781, 784 (Cal. Ct. App. 2013).

B. *The Case Study: California Zoning and Medical Marijuana (1996–2013)*

The California Constitution affirms police power for municipalities as local jurisdictions “may make and enforce . . . local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”⁸² The California Legislature codified local governments’ land use powers in the government code, granting them the power to issue ordinances relating to the health, safety, and welfare of their communities.⁸³ As in federal courts, California courts defer to local jurisdictions when evaluating the local government’s exercise of zoning power.⁸⁴

Since Proposition 215 passed in 1996, local California jurisdictions have used zoning to control marijuana. Some counties zone marijuana as a non-permitted use, effectively banning marijuana from their jurisdiction.⁸⁵ Others corral medical marijuana dispensaries in heavy industrial zones through zoning maps.⁸⁶

With respect to enforcement, if a city designated marijuana activity as a non-permitted use, the local officials could force an abatement measure or issue an injunction against the business.⁸⁷ Where the city originally permitted marijuana activity, officials pursued the businesses operating without valid permits as an illegal use.⁸⁸ For businesses, these ordinances and their enforcement could result in the loss of their entire investment.

With marijuana beached on the sands of Schedule I, dispensaries in combat with local governments resorted to filing state preemption claims.⁸⁹ These businesses argued that their compliance with state law insulated them from local jurisdictions’ outright bans on marijuana. In *City of Claremont v. Kruse*, the court did not buy this

⁸² CAL. CONST. art. XI, § 7.

⁸³ CAL. GOV’T CODE §§ 65000–66499.

⁸⁴ *Miller v. Bd. of Pub. Works of L.A.*, 234 P. 381, 385–86 (Cal. 1925); *City of Cupertino v. City of San Jose*, 40 Cal. Rptr. 2d 171, 175 (Cal. Ct. App. 1995) (noting that zoning is a valid exercise of police power so long as it is reasonably related to the public welfare).

⁸⁵ For a summary of California’s municipal ordinances on medical dispensaries circa 2010, see Patricia E. Salkin & Zachary Kansler, *Medical Marijuana Meets Zoning: Can You Grow, Smoke, and Smell That Here?*, 62 PLAN. & ENVTL. L., Aug. 2010, at 3 (2010).

⁸⁶ This Article highlights the location of medical dispensaries in Los Angeles in Appendix C. The dispensary data collection is made available by the University of Redlands in a public mapping project from its School of Business.

⁸⁷ See *City of Claremont v. Kruse*, 100 Cal. Rptr. 3d 1, 12 (Cal. Ct. App. 2009) (issuing permanent injunction against marijuana business operators in the City of Claremont because marijuana activity was a non-permitted use, making it a per se nuisance); see also *SJCBC, LLC v. Horwedel*, 135 Cal. Rptr. 3d 85, 87 (Cal. Ct. App. 2011).

⁸⁸ L.A., Cal., Ordinance No. 182580 (June 14, 2013), http://clkrep.lacity.org/onlinedocs/2013/13-1300_ord_182580.pdf. This measure came about through Proposition D, an effort to prosecute illegal dispensaries.

⁸⁹ See 21 U.S.C. § 812(b)–(c) (2012).

argument and held that the Compassionate Use Act (CUA) or the Medical Marijuana Program (MMP) did not preempt land use ordinances banning marijuana.⁹⁰ Five years later, the dispensaries lost again. In 2013, the California Supreme Court affirmed *Kruse* and upheld a complete ban on medical dispensaries for the City of Riverside.⁹¹ The court found that “[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land.”⁹² Thus, the City of Riverside successfully banned all medical marijuana dispensaries within its jurisdiction through a zoning ordinance.⁹³

Turning to the newer commercial laws of Proposition 64 briefly, those looking to challenge zoning ordinances with preemption likely fare no better. Section 26200 of the Business and Professions Code expressly reserves land use power to localities in regulating commercial cannabis.⁹⁴ Permissive to the extreme, the Business and Professions Code contemplates that a locality might ban commercial cannabis and would be within its rights to do so.⁹⁵

In the end, other litigation in the medical marijuana context reveals that cities may remove dispensaries that are non-compliant with the permit conditions without the threat of a takings claim, as marijuana remains illegal federally.⁹⁶

Marijuana use also has no foothold as a fundamental right under the Due Process Clause, meaning individuals may face more difficulty in challenging these ordinances.⁹⁷ Even with new state legal recognition, California courts refuse to recognize a “right to marijuana” that could sustain a due process claim.⁹⁸ In this sense, zoning can affect people without any meaningful constitutional review if the ordinance intersects with something seen as a nuisance.

⁹⁰ *Kruse*, 100 Cal. Rptr. 3d at 17–18; *see also* *Cty. of L.A. v. Alt. Medicinal Cannabis Collective*, 143 Cal. Rptr. 3d 716, 721 (Cal. Ct. App. 2009) (rejecting the defendants’ contention “that County’s ‘TOTAL’ ban on medical marijuana patient associations formed pursuant to Health and Safety Code section 11362.775 [was] preempted” because the local ordinance was not “consistent with the Medical Marijuana Program Act”).

⁹¹ *City of Riverside v. Inland Empire Patients Health & Wellness Ctr.*, 300 P.3d 494, 512 (Cal. 2013).

⁹² *Id.* at 496.

⁹³ *Id.*

⁹⁴ CAL. BUS. & PROF. CODE § 26200(a)(1)–(2) (2019).

⁹⁵ *Id.* § 26200(a)(1) (stating a local jurisdiction can “completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction”).

⁹⁶ 21 U.S.C. § 812(b)–(c) (2012).

⁹⁷ *Barrios v. Cty. of Tulare*, No. 1:13–CV–1665 AWI GSA, 2014 WL 2174746, at *5 (E.D. Cal. May 23, 2014) (rejecting due process claim because marijuana “is contraband per se under federal law”).

⁹⁸ *Cty. of L.A. v. Hill*, 121 Cal. Rptr. 3d 722, 731 (Cal. Ct. App. 2011) (“[M]edical marijuana dispensaries and pharmacies are not ‘similarly situated’ for public health and safety purposes and therefore need not be treated equally.”).

III. MARIJUANA AS A SOCIAL DISORDER

As discussed above, meaningful land use challenges hinge on the nature of the right threatened as opposed to how comprehensively a locality regulated something out of their jurisdiction.⁹⁹ In the eyes of many local jurisdictions, marijuana represents nothing more than a conduit to crime.¹⁰⁰ While true that majority support for legalization has reached record highs, this data should not be conflated with majority support for marijuana generally or support for all its potential uses.¹⁰¹ This is especially true since Proposition 64 left the day-to-day application and regulation of marijuana laws to each different locality across California.¹⁰² Opinions on marijuana range from full acceptance to complete rejection, much of which is informed by what is not known about marijuana or lingering perceptions about marijuana as a disorder.¹⁰³

A. *The Racism Within Marijuana Drug Policy*

Since the 1930s, proponents of criminalizing marijuana linked their arguments to the profiles of marijuana users as opposed to scientific inquiry or commissioned research.¹⁰⁴ Harry J. Anslinger's campaign relied on racist stereotypes and exaggerated anecdotes about the effects of marijuana on behavior.¹⁰⁵ Anslinger, the first commissioner of the Federal Bureau of Narcotics, openly accused Mexicans and African Americans as the degenerate users of marijuana. Marijuana, he claimed, accounted for many of the "uncivilized tendencies" found among African American

⁹⁹ *Schad v. Borough of Mount Ephraim*, 435 U.S. 61, 68 (1981); *Cty. of L.A. v. Alt. Medicinal Cannabis Collective*, 143 Cal. Rptr. 3d 716, 721 (Cal. Ct. App. 2009), *review granted and superseded by* *Cty. of L.A. v. Alt. Medicinal Cannabis Collective*, 286 P.3d 148 (Cal. 2012) (mem.) (permitting total bans of medical marijuana dispensaries).

¹⁰⁰ See Robert A. Mikos, *Marijuana Localism*, 65 CASE W. RES. L. REV. 719, 732 (2015).

¹⁰¹ Michael Vitiello, *Introduction to Symposium, Regulating Marijuana at Home and Abroad*, 49 U. PAC. L. REV. 1, 1–2 (2017).

¹⁰² *City of Claremont v. Kruse*, 100 Cal. Rptr. 3d 1, 17–18 (Cal. Ct. App. 2009) (permitting locality power in California); see also *Cty. of L.A. v. Alt. Medicinal Cannabis Collective*, 143 Cal. Rptr. 3d 716, 721 (Cal. Ct. App. 2009), *review granted and superseded by* *Alt. Medicinal Cannabis Collective*, 286 P.3d at 148. For a comparative perspective, local jurisdictions in both Washington and Colorado have banned marijuana after voters legalized marijuana statewide. See, e.g., John Aguilar & Jon Murray, *Colorado Cities and Towns Take Diverging Paths on Recreational Pot*, DENVER POST (Dec. 19, 2014), <https://www.denverpost.com/2014/12/19/colorado-cities-and-towns-take-diverging-paths-on-recreational-pot-2/>; Jake Thomas, *Clark County Council Delves into Marijuana*, COLUMBIAN (Apr. 3, 2019, 8:36 PM), <https://www.columbian.com/news/2019/apr/03/clark-county-council-delves-into-marijuana/>.

¹⁰³ CAULKINS ET AL., *supra* note 33, at 194.

¹⁰⁴ *Id.* at 21.

¹⁰⁵ *Id.*

jazz musicians and Mexican immigrants importing marijuana.¹⁰⁶ Culturally, films of the 1930s like *Reefer Madness* depicted marijuana users as deranged, violent, and uncontrollable.¹⁰⁷

Before Anslinger, marijuana went virtually unregulated. Scholars mark Anslinger's Marijuana Tax Act of 1937 as the first law characterizing marijuana as an illegal intoxicant. After the U.S. Supreme Court invalidated that law in 1969, President Nixon convened a commission to reexamine the nation's drug laws.¹⁰⁸ In 1972, the Shafer Commission concluded that, "[n]either the marijuana user nor the drug itself can be said to constitute a danger to public safety."¹⁰⁹

Still, resentment for marijuana users came to dominate marijuana policy even though it seemed a minority position among policy experts.¹¹⁰ President Nixon's staunch opposition to marijuana was fueled by his dislike of anti-war protestors associated with the drug and he ultimately rejected his own commission's findings. Instead, marijuana landed on the Schedule I list within the newly enacted Controlled Substance Act (CSA), which branded marijuana as highly dangerous and highly addictive.¹¹¹ That designation led to increased criminal penalties for marijuana use, possession, and distribution; it blocked research about marijuana as a drug, and it reignited the negative racial stereotypes around marijuana users.¹¹²

The racist effects of the new drug policy emerged in more quantifiable terms with President Reagan's expansion of the "War on Drugs."¹¹³ Beginning with the cocaine crackdown, racial targeting of black Americans devastated their communities and neighborhoods.¹¹⁴ In the 1990s, enforcement efforts turned to the marijuana misdemeanor. Linked to "order-policing" tactics in cities in the South and New

¹⁰⁶ H.F. Anslinger & Courtney Riley Cooper, *Marijuana—Assassin of Youth*, SHAFER LIBR. OF DRUG POL'Y (Feb. 1938), <http://www.druglibrary.org/schaffer/history/e1930/mjassassinrd.htm>.

¹⁰⁷ REEFER MADNESS (Motion Picture Ventures 1936).

¹⁰⁸ *Leary v. United States*, 395 U.S. 6, 23–24 (1969); CAULKINS ET AL., *supra* note 33, at 22.

¹⁰⁹ CAULKINS ET AL., *supra* note 33, at 22.

¹¹⁰ *Id.*

¹¹¹ 21 U.S.C. § 812(b)–(c) (2012).

¹¹² EDWARDS ET AL., *supra* note 4, at 88–89 (summarizing the effects of Ronald Reagan's Anti-Drug Abuse Act of 1986, which imposed mandatory minimums for drug crimes, shifted government funding to penalization of drug offenses, and sustained a campaign of the War on Drugs that disproportionately impacted the African American community).

¹¹³ *A Brief History of the Drug War*, DRUG POL'Y ALLIANCE, <http://www.drugpolicy.org/issues/brief-history-drug-war> (last visited Mar.12, 2019).

¹¹⁴ EDWARDS ET AL., *supra* note 4, at 88.

York, misdemeanor marijuana possession arrests of African Americans increased dramatically.¹¹⁵

An ACLU report from 2013 describes the disparate enforcement against African Americans.¹¹⁶ By the numbers, black and white users of marijuana consume roughly the same amount of marijuana.¹¹⁷ However, young black consumers are roughly 235% more likely to be arrested than their white counterparts.¹¹⁸ Many researchers in the 1980s pointed to the increased beat-cop patrols in predominantly black neighborhoods.¹¹⁹ The increase in patrol foot traffic, together with aggressive stop and frisk tactics, increased the number of misdemeanor marijuana-possession charges.¹²⁰ One study has concluded “that police tactics effectuating a high volume of arrests for minor offenses has been a major contributor to the 51% rise in marijuana arrests between 1995 and 2010.”¹²¹

This rise is not just from police officers deciding that they had enough with the weed—the marijuana misdemeanor arrests trace back to civic-minded politician directives rather than law enforcement running out of cocaine rings to bust. Rudolph Giuliani, for example, ran on a famous “quality of life campaign.”¹²² He issued numerous ordinances targeting perceived disorders like gangs, squeegee men, turnstile jumpers, and dope smokers.¹²³ Called “community policing,” officers moved to the streets to maintain the order prioritized by Mayor Giuliani.¹²⁴ What this policing did not account for, however, was racial bias in law enforcement and the disregard for civil liberties once cops walked the streets. Racial bias in enforcers and enforcement policies account for much of the severe racial disparities in drug arrests.¹²⁵ Specifically, the report found that 87% of blacks’ higher probability of drug arrests

¹¹⁵ Bernard E. Harcourt & Jens Ludwig, *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000*, 6 CRIMINOLOGY & PUB. POL’Y 165, 165 (2007).

¹¹⁶ EDWARDS ET AL., *supra* note 4, at 21.

¹¹⁷ HUM. RTS. WATCH, *DECADES OF DISPARITY: DRUG ARRESTS AND RACE IN THE UNITED STATES* 1 (Mar. 2009), http://www.hrw.org/sites/default/files/reports/us0309web_1.pdf.

¹¹⁸ See Ojmarh Mitchell & Michael S. Caudy, *Examining Racial Disparities in Drug Arrests*, JUST. Q. 1, 19–20 (2013).

¹¹⁹ George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

¹²⁰ EDWARDS ET AL., *supra* note 4, at 91.

¹²¹ *Id.* at 11.

¹²² Norimitsu Onishi, *Police Announce Crackdown on Quality-of-Life Offenses*, N.Y. TIMES (Mar. 13, 1994), <https://www.nytimes.com/1994/03/13/nyregion/police-announce-crackdown-on-quality-of-life-offenses.html>.

¹²³ See GARNETT, *supra* note 6, at 16.

¹²⁴ See Kelling & Wilson, *supra* note 119.

¹²⁵ EDWARDS ET AL., *supra* note 4, at 17–20.

was directly a result of racial bias in law enforcement.¹²⁶ Cops simply arrested more black people for marijuana possession and the marijuana misdemeanor became synonymous with racist law enforcement.

B. The New Regime: Land Use Controls and Marijuana Reconsidered

Moving marijuana away from law enforcement still uniquely implicates the neighborhoods where cities concentrate dispensaries. If the pot is centralized in one location, even with law enforcement out of the picture, code enforcement and public citations will follow the disorder.¹²⁷ Over the past 20 years, various policing models rooted in order-maintenance and zero-tolerance policing meant to root disorder out of neighborhoods.¹²⁸ Eliminating the cadre of racially biased law enforcement, however, does not guarantee equitable laws.

In the legal realm, marijuana users entering the legitimate public space must contend with the deep scars of racism that run through cities because of early zoning policies. More problematically, studies have shown that an increase in the number of minorities in a neighborhood correlates to an increase in the perceived level of disorder present in that neighborhood.¹²⁹

At the intersection of land use and marijuana policies, local control will undo the social justice “correction” Proposition 64 sought to achieve. This is crucially important because social justice concerns drove the legalization campaign. Express endorsements from civil liberties groups and newspapers rallied around eradicating injustice surrounding marijuana criminal penalties.¹³⁰ One such endorsement from *The San Francisco Examiner* noted that “Prop. 64 would also potentially save thousands of people from the criminal justice system It had never made sense why marijuana was criminalized while alcohol wasn’t. Prop. 64 would correct that injustice.”¹³¹

¹²⁶ *Id.* at 8 n.7.

¹²⁷ For a look at the dispensary concentration in Los Angeles, see *infra* Appendix C. For evidence supporting the idea that communities of color will not benefit from legalization, see German Lopez, *After Legalization, Black People Are Still Arrested at Higher Rates for Marijuana than White People*, VOX (Jan. 29, 2018, 8:50 AM), <https://www.vox.com/policy-and-politics/2018/1/29/16936908/marijuana-legalization-racial-disparities-arrests> (arguing that Colorado communities of color still face greater punishment for marijuana-related offenses even after several years of legalization).

¹²⁸ *Supra* Section III.A.

¹²⁹ Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of “Broken Windows,”* 67 SOC’L PSYCHOL. Q. 319, 320 (2004).

¹³⁰ See YES ON 64, *supra* note 2.

¹³¹ *Examiner Endorsements: Statewide Ballot Measures*, S.F. EXAM’R (Oct. 23, 2016, 1:00 AM), <http://www.sfexaminer.com/examiner-endorsements-statewide-ballot-measures/>.

Alice Huffman, the president of the California NAACP, wrote that the measure would eliminate unjust criminalization.¹³² Nonprofit groups like “Break the Chains: Communities of Color and the War on Drugs,” “Justice Not Jails,” and the “Los Angeles Reentry Partnership Program” supported the measure to legalize given the years of over-policing of minorities. Even representatives of ethnic minority law enforcement officers joined the cause.¹³³

Proposition 64, for its part, announced that 10 million dollars per year from marijuana revenue would go to communities affected by past drug policies, with 10 million added each year up to a cap of 50 million.¹³⁴ Criminal record expungement of marijuana-related crimes became available and San Francisco readily announced it would proactively expunge records.¹³⁵ These goals, however, conflict with the realities of the new regulatory structure. Proposition 64, for all its merits, relies on the same local control that proved to be problematic in the medical use context.

C. *The Case for Localism Reconsidered*

In theory, the normative case for localism depends on two competing considerations. First, policy makers consider the level of disagreement between local communities about how to regulate a given activity.¹³⁶ Second, they analyze the degree to which local communities absorb the full costs and benefits of the regulated activity.¹³⁷

Step one: Considering that marijuana generates deep disagreement among cities and counties, localism makes sense for an initiative in need of broader buy-in. The proponents learned from the widely divergent paths that California cities and counties took when regulating medical marijuana.¹³⁸ Compared to the CUA or the MMP, Proposition 64 made the authority of local jurisdictions far clearer. Both the commercial regulations and personal use restrictions explicitly account for local power in decision making around marijuana.¹³⁹

Step two: The cost-benefit analysis. The Blue Ribbon Commission on California Marijuana Policy argued that legalization depended on the balance of taxes and

¹³² YES ON 64, *supra* note 2.

¹³³ *Id.*

¹³⁴ OFFICIAL VOTER INFORMATION GUIDE, *supra* note 23, at 94.

¹³⁵ Matthew S. Schwartz, *San Francisco to Expunge Thousands of Marijuana Convictions*, NPR (Feb. 26, 2019, 7:27 AM), <https://www.rt.com/usa/417543-san-francisco-expunge-marijuana>.

¹³⁶ Mikos, *supra* note 100, at 730.

¹³⁷ *Id.*

¹³⁸ Sam Kamin, *What California Can Learn from Colorado's Marijuana Regulations*, 49 U. PAC. L. REV. 13, 16–17 (2017).

¹³⁹ *See supra* Part I.

regulatory latitude.¹⁴⁰ For example, a county eager to gain marijuana tax revenue or cater to pro-marijuana constituents likely shows an equal willingness to address potential increases in crime around dispensaries.¹⁴¹ On the other hand, localities that are unwilling to host potential increases of disorder may ban marijuana but must also accept increasing enforcement costs without additional tax revenue. If the locality can choose, it accepts these costs more willingly in terms of the benefits it values or prioritizes.

Broadly, the compromise looked something like this: Proposition 64 delegated licensing control to state agencies for all commercial marijuana participants while retaining rulemaking authority to govern industry practices.¹⁴² The industry secured full legalization for both recreational and medical marijuana. Localities obtained final say over which marijuana uses occur in their jurisdiction and could add additional taxes and pocket fines collected from enforcing infractions.¹⁴³

Unsurprisingly, in counties and cities where marijuana is unpopular, these jurisdictions have taken advantage of their land use powers to regulate.¹⁴⁴ Kern County prohibits “commercial medicinal and recreational cannabis businesses and activities of all kinds that are, [sic] the subject of the Medicinal and Adult-Use Cannabis Regulation and Safety Act.”¹⁴⁵ San Bernardino County banned every manner of cultivation it could.¹⁴⁶ The County now faces backlash from industry participants

¹⁴⁰ See BLUE RIBBON COMM’N, *supra* note 14, at 24–25.

¹⁴¹ *Id.* at 57.

¹⁴² CAL. BUS. & PROF. CODE § 26012(a) (2019) (“The bureau shall have the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis and cannabis products within the state.”).

¹⁴³ The locality controls the day-to-day operations and where marijuana dispensaries will end up. The Business and Professions Code states that no state regulation can supersede or limit “the authority of a local jurisdiction to adopt and enforce local ordinances to regulate business licensed under this division.” *Id.* § 26200(a)(1); see also CAL. HEALTH & SAFETY CODE § 11362.4(f)–(h) (2019) (offering examples of fines that can be levied for smoking marijuana). These provisions matter because zoning will concentrate marijuana dispensaries and users in certain neighborhoods. Not only will that increase exposure for the communities of those neighborhoods, but it will also lead to more aggressive code enforcement officers collecting fines in those areas.

¹⁴⁴ Counties that have banned cannabis include Ventura County, Santa Barbara County, Fresno County, Placer County, Modoc County, Tehama County, Glenn County, Colusa County, San Joaquin County, Merced County, Riverside County, and Contra Costa County. For those counting, 13 counties out of 48 in California ban all aspects of commercial marijuana. A summary of this data can be found at *California Cannabis Laws by County*, CANNABUSINESS L., <http://cannabusinesslaw.com/california-cannabis-laws-by-county/>.

¹⁴⁵ KERN CTY., CAL., MUN. CODE, tit. 19, ch. 8, § 055 (2017).

¹⁴⁶ SAN BERNARDINO CTY., CAL., CODE OF MUN. ORDINANCES § 83.34.040(e)–(f) (regulating the sight and smell of marijuana cultivation down to details such as the “light pollution, glare, or brightness . . . associated with the cultivation”).

within the jurisdiction but will probably win given the power granted to municipalities in Proposition 64.¹⁴⁷

Even cities more tolerant of marijuana have used zoning to isolate its presence in their jurisdictions. The City of Los Angeles allows retail locations but limits the location of dispensaries to industrial zones and spaces more than 600 feet from schools.¹⁴⁸ The consequence of this choice is that dispensaries are concentrated in neighborhoods of lower socio-economic status and near communities of color.¹⁴⁹ Monterey County¹⁵⁰ and Alameda County¹⁵¹ have nearly identical ordinances sequestering marijuana uses in heavily developed urban areas (read: poor and diverse). It is worth noting that even the two most permissive counties, Humboldt and Sonoma, passed zoning restrictions that funnel the industry into poorer areas.¹⁵² A snapshot mapping the present locations of dispensaries reveals an overwhelming majority of pot business in poorer areas.¹⁵³ In a way, zoning reveals what the jurisdiction will ultimately tolerate.

IV. MARIJUANA, LAND USE, AND RACE COLLIDE

Local officials are implementing very specific policies through their land use power. While policy goals may vary widely in theory, the more common themes reflect ambitions to either swell the local coffers or reject marijuana outright. Concentrating dispensaries in poorer or more industrial areas quarantines the unwanted disorder. Opening up commercial corridors will bring more tax revenue. Sanctioning illegal users and collecting fines also generates revenue.

The problem is that civil enforcement costs money, and Proposition 64 provided little funding for local jurisdictions.¹⁵⁴ The state frontloaded licensing and

¹⁴⁷ Brian Whitehead, *Major Cannabis Entrepreneur Sues San Bernardino over New Pot-License Ordinance*, SAN BERNARDINO SUN (Mar. 27, 2018, 10:07 AM), <https://www.sbsun.com/2018/03/26/major-cannabis-entrepreneur-sues-san-bernardino-over-new-pot-license-ordinance/>.

¹⁴⁸ L.A., Cal., Ordinance No. 185345 (Dec. 19, 2017), http://clkrep.lacity.org/onlinedocs/2014/14-0366-S4_ORD_185345_12-19-2017.pdf.

¹⁴⁹ See *infra* Appendix C.

¹⁵⁰ *Monterey County Regulations for Cannabis Related Commercial Activity*, CANNABUSINESS L., <https://cannabusinesslaw.com/california-cannabis-laws-by-county/monterey-county/> (“Restrictions apply to dispensary locations including a 1000 foot setback from another dispensary and a 600 foot setback from schools, parks, or drug recovery facilities.”).

¹⁵¹ *Alameda County Regulations for Cannabis Related Commercial Activity*, CANNABUSINESS L., <https://cannabusinesslaw.com/california-cannabis-laws-by-county/alameda-county/> (prohibiting dispensaries within 1,000 feet of each other and within 1,000 feet of “any school, public park or playground, drug recovery facility or recreation center”).

¹⁵² HUMBOLDT CTY., CAL., MUN. CODE § 55.4.8.7 (2016); SONOMA CTY., CAL., MUN. CODE § 26–88–256 (2018).

¹⁵³ See *infra* Appendix C.

¹⁵⁴ See *supra* note 26.

compliance costs onto industry participants. For good measure, the State also collects taxes in the form of a 15% excise tax.¹⁵⁵ Abatement fees and fines against illegal users will likely fund enforcement efforts for those looking to avoid imposing additional taxes or for those who do not collect taxes because they have banned commercial use. The theory of localism predicted some of this cost-benefit analysis, but did not adequately consider who will pay the fines and fees.¹⁵⁶

The targets of enforcement efforts will likely be those without access to legal aid or participants who could not afford a complete transition to the legal market. Enforcement will also follow the dispensaries, which were zoned into the poorer, minority communities.¹⁵⁷ It is here that we must remember marijuana's stigmatizing effect on persons of color and recognize that it may not change so dramatically by switching enforcers from cops to civil servants. Early statistics from Colorado and Washington show that black youth remain the target of sanctions and minorities the targets of fines.¹⁵⁸

Thus, we arrive at the intersection of zoning, race, and marijuana laws ushered in by Proposition 64. With local governments in control for the large part, zoning seems to be the tool of choice to regulate marijuana in the new system. The early results show jurisdictions are already concentrating dispensaries in poorer communities of color.¹⁵⁹ The extent of this negative impact depends entirely on how strictly marijuana laws will be enforced in those communities.

The question frustrating some observers in Colorado is how disparate enforcement continues in spite of marijuana legalization.¹⁶⁰ My answer lies in the inherent racism in both the land use system and marijuana policy. Perceptions of disorder and the underlying entities (politicians) responsible for enforcement policy have not changed. The theory driving marijuana policing, criminal and civil, is the "broken windows" idea, which expresses the wish to curb the minor incidents of disorderly behavior to ensure an orderly broader society.¹⁶¹

The broken windows theory does not necessarily depend on law enforcement implementing the agenda to maintain order in a neighborhood. Zoning serves these

¹⁵⁵ Abraham Finberg, *The Excise Tax: The Calculations Behind the 15% Tax on Retail Purchases*, MANZURI L.: LEGALLY-BLUNT (Oct. 20, 2017), http://www.manzurilaw.com/retail_excise_tax.

¹⁵⁶ Mikos, *supra* note 100, at 741.

¹⁵⁷ See Ben Markus, *As Adults Legally Smoke Pot in Colorado, More Minority Kids Arrested for It*, NPR (June 29, 2016), <https://www.npr.org/2016/06/29/483954157/as-adults-legally-smoke-pot-in-colorado-more-minority-kids-arrested-for-it>.

¹⁵⁸ *Lessons Learned After 4 Years of Marijuana Legalization*, SMART APPROACHES TO MARIJUANA (Oct. 2016), <https://learnaboutsam.org/wp-content/uploads/2016/11/SAM-report-on-CO-and-WA-issued-31-Oct-2016.pdf>.

¹⁵⁹ See *infra* Appendix C.

¹⁶⁰ See Lopez, *supra* note 127.

¹⁶¹ See Kelling & Wilson, *supra* note 119.

purposes equally well. The example provided in the original “broken windows” scenario involved police consistently arresting a single drunk or a single vagrant who has harmed no identifiable person.¹⁶² The proponents of this theory argued that this may seem unjust, but that failing to do anything about a score of drunks or a hundred vagrants may destroy an entire community. The logic followed that a particular rule that seems to make sense in the individual case, such as letting one drunk off the hook, makes no sense when it is made a universal rule and applied to all cases.¹⁶³

Proponents of the “broken windows” worldview would prefer policing of marijuana to decriminalization. Their goals, however, would still be served by quarantining disorder into certain districts. Marijuana, as a source of disorder in this view, could be contained in industrial districts or poorer neighborhoods. Their faith in zoning was not unreasonable. Look no further than to how cities leveraged their land use powers to cordon off prostitution and adult use bookstores in red-light districts, or look to how liquor stores get zoned for certain areas. In many ways vice regulation depends entirely upon zoning.

In the prostitution context, zoning protects “good women” with family values from the perceived amoral activity of the sex trade. Adult entertainment venues are zoned as far away from single-family-home neighborhoods as possible and put in highly dense, industrial, and poor areas of the city.¹⁶⁴ These policies famously created red-light districts.¹⁶⁵

In the alcohol context, zoning created skid rows by concentrating liquor stores together. According to the city residents, drunkards and vagrants followed.¹⁶⁶ An opposing view proposes that poverty locked them there.¹⁶⁷ In relation to public safety, efforts to reduce alcohol-related problems in these neighborhoods and improve the quality of life have been hampered by the disproportionately large number of liquor stores allowed within a geographically small area in inner cities.¹⁶⁸ Social disorder studies show a “high correlation between the number of liquor stores and a neighborhood’s crime rate.”¹⁶⁹ Further, residents of urban neighborhoods are “convinced that a high concentration of liquor stores contributes directly to crime, drug dealing and blight.”¹⁷⁰

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ See Stephanie Lasker, *Sex and the City: Zoning “Pornography Peddlers and Live Nude Shows,”* 49 UCLA L. REV. 1139 (2002).

¹⁶⁵ *Id.*

¹⁶⁶ See Saxer, *supra* note 75, at 124.

¹⁶⁷ *Id.* at 125.

¹⁶⁸ *Id.* at 123.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 124 (quoting Mary Kane, *Cities Targeting Liquor Stores in Effort to Ease Blight, Crime*, HOUSTON CHRON., June 20, 1993, at C7).

Counties harbor the same concerns about disorder with marijuana as they did with prostitution, alcoholism, and vagrancy. That marijuana dispensaries will pop up in these same spots as liquor stores is no surprise given the hesitance to accept the vice industry generally in strip malls and suburban neighborhoods. Once Proposition 64 passed, many counties turned to land use restrictions with strict enforcement goals that reveal the nervousness local jurisdictions felt in confronting marijuana legalization.¹⁷¹ Namely, local officials held serious concerns as to how they would control secondary nuisances related to marijuana. On the list of those opposing Proposition 64, a majority were government agencies, city councils, sheriffs, counties, and other representatives from planning commissions.¹⁷²

An emerging marijuana land use ordinance includes strict zoning ordinances with increases in enforcement funds meant to anticipate the disorder ancillary to marijuana uses. The disorder local officials envision includes: increased criminal activity around dispensaries, loitering, increased traffic, noise, litter, and a loss of trade for other business located nearby dispensaries.¹⁷³ In order to limit the effects of state-wide legalization, counties and cities will turn to zoning as a reliable tool to control disorder. The tangential consequence at the heart of this Article is that disorder controls' exclusion of unwanted uses will adversely impact certain users. So long as the community sees marijuana as a nuisance, or a conduit to secondary disorder, zoning will tightly control dispensaries, commercial uses, and personal cultivation.

Hesitation to legalize can be seen elsewhere in the nation. Only nine states have legalized recreational marijuana; other states have addressed marijuana by decriminalizing minor offenses or legalizing medical use.¹⁷⁴ Some of this hesitation can be explained by marijuana's status at the federal level. Nationally, marijuana remains a Schedule I drug and carries with it criminal penalties enforced by federal authorities, which can result in harsh penalties for those users acting in compliance with state law but charged by federal agents.¹⁷⁵ In practice, users begin acting in reliance on the state and start paying to participate in the legal market. Those investments may be rendered meaningless when criminalized by another level of that same government structure.

¹⁷¹ Scott Wilson, "Cannabis Will Be Everywhere": California Towns Scramble to Prepare for Legal Marijuana on Jan. 1, WASH. POST (Dec. 28, 2017), https://www.washingtonpost.com/news/national/wp/2017/12/28/feature/cannabis-will-be-everywhere-california-towns-scramble-to-prepare-for-legal-marijuana-on-jan-1/?utm_term=.59d5cbcf8644.

¹⁷² See *supra* note 25.

¹⁷³ Kern Cty., Cal., Cannabis Land Use Ordinance 2017-320 (Oct. 24, 2017), https://www.kerncounty.com/planning/pdfs/eirs/CLUO/cannabis_bos_resolution.pdf.

¹⁷⁴ *State Marijuana Laws in 2018 Map*, GOVERNING, <http://www.governing.com/gov-data/state-marijuana-laws-map-medical-recreational.html> (last updated Nov. 7, 2018).

¹⁷⁵ 21 U.S.C. § 812(b)-(c) (2012).

Pending a national solution, the potential whiplash threatens to destabilize the legal marijuana industry. Moreover, certain communities face serious double jeopardy.¹⁷⁶ Marginalized, impoverished, and immigrant communities are those typically involved in criminal enterprises that attract the federal government's notice.¹⁷⁷ They also cannot afford, for reasons of immigration status or money, to participate in the transition from the black market to the legal market, and thus face additional fines, injunctions, abatements, and other civil penalties.

All of these legal implications require an explanation of why marijuana carries stigmas that affect its prospects in the land use system and why minorities will remain the target of enforcement or, worse, experience double jeopardy. Consider the different penalties involved with criminalizing marijuana. As with arrests, minorities have experienced disproportionately excessive civil forfeitures in drug cases.¹⁷⁸

In California, police arrested African Americans at much higher rates than whites even though the statistics show nearly identical use rates.¹⁷⁹ This reminds us of the racism in law enforcement, particularly in the context of the War on Drugs. What has changed in law enforcement practices in the past ten years is the use of civil asset forfeiture in drug cases. Brent Skorup argues that forfeiture proceedings in these cases take on an increased presence because of who is being arrested for drug possession.¹⁸⁰

As Skorup explains, in eighty percent of civil forfeiture proceedings related to drug possession arrests no crime is ever charged. In the remaining twenty percent of cases where charges are brought, the charges are not contested. Skorup reasons that these charges go uncontested so often because the persons arrested cannot afford an attorney.¹⁸¹ While the criminal penalties and charges have evaporated in California, civil forfeiture proceedings continue to excessively impact marginalized communities.

Even with marijuana legalization, criminal penalties and civil forfeiture will only be avoided to the point where the personal and commercial marijuana use comply with the letter of Proposition 64 and to the point where interaction with the federal government can be avoided. Minority communities and marijuana uses, affected by land use policy, set up poorer areas for a collision with federal authorities

¹⁷⁶ Brent Skorup, *Ensuring Eighth Amendment Protection from Excessive Fines in Civil Asset Forfeiture Cases*, 22 GEO. MASON U. CIV. RTS. L.J. 427, 452–53 (2012).

¹⁷⁷ Press Release, U.S. Dep't of Justice, Sweeping Two-Day Operation Targets International Organized Crime in Sacramento Area Neighborhoods (Apr. 4, 2018), <https://www.justice.gov/usao-edca/pt/sweeping-two-day-operation-targets-international-organized-crime-sacramento-area>.

¹⁷⁸ Skorup, *supra* note 176, at 453.

¹⁷⁹ *Supra* Section III.A

¹⁸⁰ Skorup, *supra* note 176, at 454.

¹⁸¹ *Id.*

and civil fines for violations of the complicated business regulations in Proposition 64.

V. SOLUTIONS AND CONCLUSIONS

The implementation of Proposition 64 consistent with its social justice goals must confront localism. Responsibility for phasing in these changes rests in part with the judiciary and in part with the legislature. A legislative solution would be much more difficult to accomplish, however, as the California Constitution prohibits interfering with ballot initiatives.¹⁸²

Should constituents, the industry, or the legislature attempt to amend Proposition 64, there are three major changes to its structure which could prevent the concentration of dispensaries in marginalized areas. First, the Health and Safety Code should prohibit the placement of multiple dispensaries on the same city block.¹⁸³ The distance between them might force the municipality to open up other commercial areas for dispensaries outside of the same industrial neighborhood with liquor stores and low-income housing.

Second, the legislature should amend the fine structure within the Health and Safety Code. Instead of a straight fine for the stated infraction, the fine should take income into account and work on a sliding scale. If, for some reason, code enforcement catches a billionaire in a non-smoking public space smoking a joint, that person would be responsible for a one thousand dollar fine. On the other hand, a welfare recipient cited in the same space for the same infraction should not receive a fine in the hundreds of dollars, as is currently the law.¹⁸⁴ Because of the social justice push within Proposition 64, this context would be the best place to implement fines on a sliding scale responsive to income.

The final solution I propose depends on the judiciary. Under the Health and Safety Code, a locality can issue additional reasonable regulations on personal use.¹⁸⁵ More likely than not, it will fall to the judiciary to resolve what constitutes “reasonable” regulations. When evaluating these kinds of regulations, I propose that the judiciary keep the social justice goals of Proposition 64 in mind.

Analogizing to environmental law, environmental justice concerns require agencies to consider the environmental impact of an action on certain marginalized

¹⁸² CAL. CONST. art. II, § 10(c).

¹⁸³ CAL. HEALTH & SAFETY CODE § 11362.768(b) (2019) (mandating that dispensaries are at least 600 feet away from schools). A restriction like this can harmoniously coexist in this section that localities must abide by when zoning and permitting dispensaries.

¹⁸⁴ See Alec Schierenbeck, *A Billionaire and a Nurse Shouldn't Pay the Same Fine for a Speeding Ticket*, N.Y. TIMES (Mar. 15, 2018), <https://www.nytimes.com/2018/03/15/opinion/flat-fines-wealthy-poor.html>.

¹⁸⁵ CAL. HEALTH & SAFETY CODE § 11362.2(b) (2017).

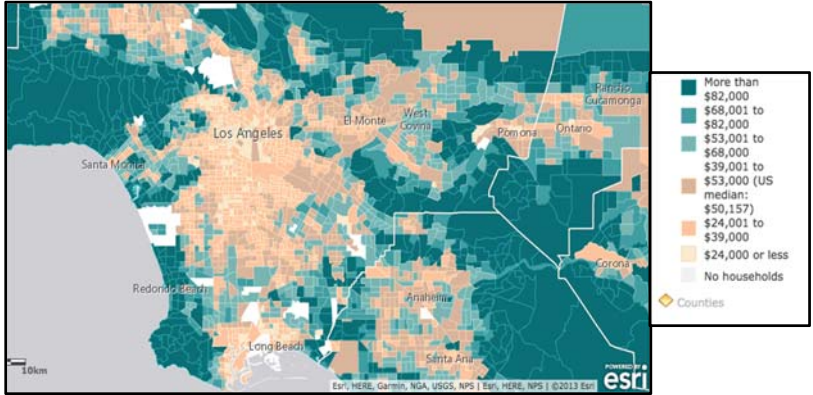
areas.¹⁸⁶ That is, where a project's impact would affect impoverished areas, the reviewing courts consider whether that impact or mitigation measure is fair and whether the project should be relocated. When a tenant challenges the landlord-tenant provision or one of the more restrictive provisions of the personal use regulations, the court should consider *where* that person lives and the impact on that particular person.

Ultimately, these proposals mitigate the impact on the communities who have been and will be disproportionately affected by marijuana laws. If the mother of a child who suffers from seizures rents in subsidized housing and treats her child with marijuana and her landlord tries to evict on the basis of that use, the courts should consider the injustice done because of her status *as a renter*. No affluent person with a private residence would be in the same situation because such a person could avail themselves of growing and using marijuana in his or her own home. That is the disparate impact. That is what needs to be fixed, and the courts may be able to consider that.

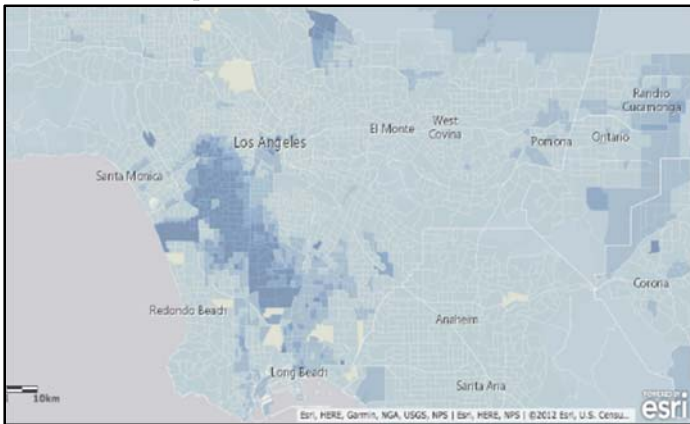
In conclusion, examining zoning power in depth reveals the structural concerns of importing marijuana regulation into this context, and also the limits of the state laws, given the above examples, in protecting those classes which will likely be regulated the most. Marijuana legalization in California occurred with a marked spirit of atonement and a desire to correct the wrongs of the justice system, yet the local controls may end up curtailing the possibilities for a more equitable system.

¹⁸⁶ CAL. PUB. RES. CODE § 21002 (2018).

APPENDIX A: LOS ANGELES BY INCOME (2010 U.S. Census Data)



APPENDIX B: LOS ANGELES BY RACE (2010 U.S. Census Data) (Dark grey areas are inhabited predominately by African American individuals)



APPENDIX C: LOCATION OF MARIJUANA DISPENSARIES IN LOS ANGELES CIRCA 2015 (Redlands University Data Set)

