

**EXPLORING LAND VALUE TAXATION AS A MEANS  
OF MITIGATING GREATER BOSTON'S HOUSING  
AFFORDABILITY CRISIS\***

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**Abstract**

*Like many coastal American metropolitan areas flush with high-paying jobs characteristic of twenty-first century innovation economies, Greater Boston is grappling with skyrocketing housing costs and a shortage of affordable housing stock. Although the Commonwealth of Massachusetts and City of Boston have implemented a panoply of initiatives to address the housing crisis, the situation continues to worsen.*

*Meanwhile, after nearly a half-century of disinterest in land value taxation (LVT) as a policy tool to foster equitable urban development, local municipalities and regional authorities across the United States have once again started studying LVT as a means to counter rapidly rising rents and worsening urban sprawl. This note argues that, in theory, LVT could mitigate the prodigious upwards climb of housing costs in Greater Boston, especially around new transit corridors, while also providing alternative sources of financing for new affordable housing development. However, implementing LVT in Greater Boston would likely face significant political pushback as well as various challenges under the Massachusetts Constitution. As a result, the feasibility of LVT implementation in Greater Boston remains uncertain, although LVT has overcome similar hurdles in Pennsylvania. In the interim, current efforts to speed up the production of new housing should be prioritized. To that end, this Note highlights*

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*examples from peer metropolitan areas from which Greater Boston could learn.*

### **Table of Contents**

I.	<i>Introduction</i> .....	550
II.	<i>Greater Boston's Housing Affordability Crisis</i> .....	551
	A. State Initiatives .....	554
	B. Municipal Initiatives .....	560
III.	<i>Land Value Taxation—History, Theory, and Potential Applications</i> .....	565
	A. History and Theory .....	565
	B. Property Tax vs. LVT .....	567
	C. Potential Applications of LVT.....	574
IV.	<i>Legal Obstacles to LVT in Massachusetts</i> .....	580
	A. Potential Challenges.....	580
	B. Potential Solutions.....	584
V.	<i>Political Obstacles to LVT in Massachusetts</i> .....	588
VI.	<i>Policy Recommendations</i> .....	593
VII.	<i>Conclusion</i> .....	600

### **I. Introduction**

This note evaluates the legal and political viability of land value taxation (LVT) as a policy tool in Massachusetts. Greater Boston currently suffers from a housing affordability crisis as home values and rents continue to increase year-over-year despite numerous state and municipal efforts to combat the trend.<sup>1</sup> LVT could bolster current efforts to promote the development of both affordable and market-rate housing across the region. However, it is uncertain whether LVT would pass muster under the Massachusetts Constitution.<sup>2</sup> Additionally, LVT proposals would likely encounter significant political opposition, although prevailing preferences for housing and land use policy have slowly started to shift towards a more pro-development stance in

<sup>1</sup> See generally MODESTINO ET AL., BOS. FOUNDATION, THE GREATER HOUSING REPORT CARD 2019: SUPPLY, DEMAND, AND THE CHALLENGE OF LOCAL CONTROL 6–7 (2019) (summarizing the affordable housing crisis across Greater Boston).

<sup>2</sup> See discussion *infra* Part IV (analyzing LVT's permissibility under the Massachusetts Constitution).

recent years in cities across the country.<sup>3</sup> These obstacles by themselves should not deter policymakers from considering LVT as a means of addressing the housing affordability crisis; rather, they can inform proponents of potential roadblocks to LVT implementation and how best to address them.

Part II of this note discusses the housing affordability crisis, and reviews how state and municipal governments in Massachusetts have attempted to mitigate the rise in housing costs over the past several decades. Part III traces the history of LVT as a policy tool, its theoretical benefits, and potential applications. Part IV analyzes possible constitutional obstacles to implementing LVT in Massachusetts, including due process, takings, uniformity, and proportionality concerns. These obstacles raise viability issues vis-à-vis LVT in Massachusetts. Part IV ultimately concludes that while they could be overcome in theory, in practice they may represent an insurmountable barrier to LVT implementation. Part V provides an overview of political and popular opposition to housing development and land use reform in Massachusetts and identifies specific procedural obstacles opponents could utilize to block further housing development, regardless of the specific LVT proposal put forward. Part VI discusses the implications of the aforementioned legal and political obstacles to LVT and highlights peer metropolitan areas from which Greater Boston could learn as it continues to grapple with the consequences of its housing affordability crisis. Finally, Part VII provides a brief conclusion.

## ***II. Greater Boston's Housing Affordability Crisis***

Like many coastal American cities, Boston has become a victim of its own economic success.<sup>4</sup> It is grappling with an affordable housing crisis in the midst of a robust regional economy and a

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<sup>3</sup> See, e.g., Patrick Sisson, *How a San Diego YIMBY club changed city politics*, CURBED (Mar. 20, 2019, 3:06 PM), <https://www.curbed.com/2019/3/20/18274497/development-san-diego-real-estate-yimby-nimby> [https://perma.cc/7K6N-59MK] (discussing the rise of pro-housing popular movements and political candidates in San Diego and California as a whole).

<sup>4</sup> MODESTINO ET AL., *supra* note 1, at 4 (“Yet to some extent Greater Boston has become—not for the first time—the victim of its own success. Having failed to produce an adequate supply of housing for decades, the region is not prepared to accommodate the population growth that is being propelled by the current economic boom.”).

booming population.<sup>5</sup> Between 2013 and 2017, the median price of a single-family home in Greater Boston (defined as Suffolk, Essex, Middlesex, Plymouth, and Norfolk counties) climbed by 29 percent to \$447,799, with the median price for a home within five miles of Boston's city center hitting an all-time high of \$775,000.<sup>6</sup> By 2018, that median price was more than five times median household income for the region.<sup>7</sup> Although median rents declined by 3 percent in the City of Boston from 2016 to 2017, this slight decrease followed a rise in rents across Greater Boston of roughly 6.9 percent per year from 2009 to 2016.<sup>8</sup> Boston now stands as the fourth-most expensive rental market for one-bedroom apartments in the country (behind San Francisco, New York City, and San Jose), with a median monthly rent of \$2,500 as of August 2019.<sup>9</sup> Right across the Charles River, Cambridge, Massachusetts has earned the unfavorable distinction of being the second-most expensive small city for renters in the United States.<sup>10</sup>

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<sup>5</sup> Milton J. Valencia, *Can Boston's affordable housing shortage be eased?*, BOS. GLOBE (Nov. 3, 2017, 8:47 PM), <https://www.bostonglobe.com/news/nation/2017/11/02/can-boston-affordable-housing-shortage-eased/yFrdfNUzCs1awpKfQCWp5L/story.html> ("To those who are pushing for more affordable housing, any victory is crucial at a time that an influx of high-paying jobs in tech and other sectors has already begun to force low-income residents and their families, many from Boston's minority communities, out of the housing market.").

<sup>6</sup> BARRY BLUESTONE & JAMES HUESSY, BOS. FOUNDATION, *THE GREATER BOSTON HOUSING REPORT CARD 2017 9–10*, 16 (2017). These figures have accelerated even faster in many of Boston's core neighborhoods, with median condo and townhome sale prices reaching \$910,000 and \$1,399,000, respectively, in the second quarter of 2019. See Tom Acitelli, *Downtown Boston condo, townhouse prices hit records in spring, report says*, CURBED (July 18, 2019, 1:57 PM), <https://boston.curbed.com/2019/7/18/20699226/downtown-boston-condo-townhouse-prices-spring-2019> [<https://perma.cc/7FG8-T7MC>].

<sup>7</sup> MODESTINO ET AL., *supra* note 1, at 17 ("As of 2018, the median home price in Greater Boston was more than five times the median household income, making Boston the fourth least affordable of the 25 largest metropolitan areas.").

<sup>8</sup> BLUESTONE & HUESSY, *supra* note 6, at 51.

<sup>9</sup> Crystal Chen, *Zumper National Rent Report: August 2019*, ZUMPER (Aug. 21, 2019), <https://www.zumper.com/blog/2019/08/zumper-national-rent-report-august-2019/> [<https://perma.cc/5WB7-26SE>].

<sup>10</sup> The average apartment rent for the city now stands at \$3,210 per month. See Tom Acitelli, *Cambridge's average apartment rent highest among small U.S. cities east of the Rockies, report says*, CURBED (July 18, 2019, 5:23 AM),

These high prices impact residents severely. For example, a Boston household earning the area median household income (AMI) in 2018 (\$61,207) and paying the city's median monthly rent (\$2,613) is considered "extremely housing cost burdened," meaning the household expends greater than 50 percent of its annual income on housing costs.<sup>11</sup> That same statistic emerges at a micro level in 150 of the city's 170 census tracts—that is, a household earning the median income for a given census tract would pay over 50 percent of their income for a unit at the median rent in that tract.<sup>12</sup> The housing crunch has an even greater impact on "extremely low-income" (ELI) renter households, defined as those earning less than 30 percent of AMI.<sup>13</sup> Between 2011 and 2016, over half of ELI households spent greater than 50 percent of their annual income on housing costs, with over three-quarters spending at least a third.<sup>14</sup> Given these sobering statistics, it's no surprise that between 1990 and 2014, Boston shed 15,000 "middle-income" households despite growing by 88,000 households overall.<sup>15</sup>

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<https://boston.curbed.com/2019/7/18/20698302/cambridge-average-apartment-rent-july-2019> [<https://perma.cc/K9MT-PNK9>].

<sup>11</sup> LUC SCHUSTER & PETER CIURCZAK, BOS. FOUNDATION, BOSTON'S BOOMING ... BUT FOR WHOM? BUILDING SHARED PROSPERITY IN A TIME OF GROWTH 24 (2018) ("Median monthly rent for new listings in Boston is \$2,613/month, or \$31,356/year. That's 51 percent of median household income in Boston. A common benchmark in the housing policy world defines households that spend more than 30 percent of their income on housing to be "housing cost burdened" and those that spend more than 50 percent to be "extremely housing cost burdened." This means that a household earning at the median and paying median rent for a current listing is extremely housing cost burdened in Boston.").

<sup>12</sup> SCHUSTER & CIURCZAK, *supra* note 11, at 25 ("In almost all of Boston—150 out of 170 residential census tracts—households earning median income for that tract cannot "afford" median rent in that tract.").

<sup>13</sup> NICHOLAS CHIUMENTI, FED. RES. BANK OF BOS., THE GROWING SHORTAGE OF AFFORDABLE HOUSING FOR THE EXTREMELY LOW INCOME IN MASSACHUSETTS 4 (2019) ("[ELI] households, with incomes at or below 30 percent of the area median income (AMI), often have trouble paying rent.").

<sup>14</sup> *Id.* at 14 ("While just under half of all renter households were rent burdened in both 2011 and 2016 (that is, they spent more than 30 percent of their annual income on gross rent), more than three-quarters of ELI households met th[ese] criteria. Even starker is the difference in rates of severe rent burden. Over half of the state's ELI households paid more than 50 percent of their income toward gross rent in 2011 and 2016 . . .").

<sup>15</sup> Both high-income and low-income households grew in number as the middle class has hollowed out. See SCHUSTER & CIURCZAK, *supra* note 11, at

A shortage of affordable housing in Greater Boston has coincided with other pressing issues associated with the region's prodigious growth rate, including growing socioeconomic stratification,<sup>16</sup> worsening traffic congestion,<sup>17</sup> and urban sprawl,<sup>18</sup> putting pressure on state and local leaders to adopt aggressive solutions to mitigate these impacts. If Greater Boston fails to tackle its housing affordability crisis, the region could suffer "major [economic] repercussions," including reduced consumer spending, decreased employment mobility, and increased business relocation to lower-cost areas.<sup>19</sup>

### A. State Initiatives

Several state and regional initiatives currently promote the development and preservation of affordable housing across Greater

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26 ("Specifically, over the past few decades, the number of households at the low and high ends has grown. Boston grew by a total of 88,000 households from 1990 to 2014, and yet we lost more than 15,000 households in the middle of the distribution.").

<sup>16</sup> A 2015 study by the Federal Reserve Bank of Boston found that White households in Boston had a median net worth of \$247,500, while Black households had a median net worth of \$8. See ANA PATRICIA MUÑOZ ET AL., FED. RES. BANK OF BOS., *THE COLOR OF WEALTH IN BOSTON* 20 (2015).

<sup>17</sup> Drivers in Boston now lose on average 164 hours each sitting in traffic annually, making Boston the most congested city in the United States. See Jim Gorzelany, *Do You Live in the City with the Worst Traffic?*, FORBES (Feb. 11, 2019, 12:16 PM), <https://www.forbes.com/sites/jimgorzelany/2019/02/11/here-are-the-u-s-cities-suffering-the-worst-traffic-congestion/#1012688a6e36>.

<sup>18</sup> See, e.g., Rachel Watsky, *The Problems with Euclidean Zoning*, B.U. SCHOOL OF LAW: DOME (July 19, 2018), <http://sites.bu.edu/dome/2018/07/19/the-problems-with-euclidean-zoning/> [<https://perma.cc/64AF-V2P5>] ("Restrictions on minimum lot sizes, strict building codes, and other elements of Euclidean zoning have increased housing costs, limited new housing construction, worsened affordability issues, and increased the inequality divide in urban areas."); see also Edward Glaeser, *Reforming Land Use Regulations*, BROOKINGS INST. (Apr. 24, 2017), <https://www.brookings.edu/research/reforming-land-use-regulations/> [<https://perma.cc/27HY-XV6M>] ("[P]reventing local construction for environmental reasons only ends up increasing carbon emissions by pushing building to less salubrious climes.").

<sup>19</sup> CHIUMENTI, *supra* note 13, at 4 ("As affordability issues worsen, households may move outside the state, taking with them their human capital. Businesses may also relocate to another state, where they still have access to skilled labor but where they can pay lower wages in the absence of prohibitively high housing costs.").

Boston.<sup>20</sup> Recognizing that the Commonwealth suffered from a lack of low and moderate income (LMI) housing, the legislature in 1969 passed the landmark Comprehensive Permit Statute (40B)<sup>21</sup> “to reduce regulatory barriers that impede the development of such housing.”<sup>22</sup> 40B allows developers of projects that contain a threshold level of subsidized LMI housing to override municipal zoning rules by applying for a comprehensive permit from local zoning boards of appeal.<sup>23</sup> The statute and associated regulations are credited with creating over 70,000 new housing units throughout the Commonwealth since their enactment.<sup>24</sup> Although 40B has generated some

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<sup>20</sup> Of course, the federal government also promotes the development and preservation of affordable housing nationwide, largely through the U.S. Department of Housing and Urban Development (HUD) and federal tax policy. Programs include “Section 8” housing vouchers, public housing projects, and the Low-Income Housing Tax Credit (LIHTC) Program, among others. While important, these programs have not fully addressed the issue of housing insecurity in the United States, especially among low-income families. *See, e.g.*, Mark Lipschultz, *Merging the Public and Private: The LIHTC Program and a Formula for More Affordable Housing*, 36 REV. BANKING & FIN. L. 379, 387–90 (2016) (providing an overview of federal housing programs and noting that that various studies indicate that the U.S. suffers from a shortage of between four to seven million affordable housing units).

At any rate, a full discussion of federal housing policy is beyond the scope of this note, and land use and housing policy remain overwhelmingly concentrated at the state and local level. *See, e.g.*, Richard Briffault, *Smart Growth and American Land Use Law*, 21 ST. LOUIS U. PUB. L. REV. 253, 261 (2002) (“Federal and state tax, transportation, infrastructure assistance, and environmental policies have long had an impact on land use. Government mortgage subsidies and intergovernmental grants for new highways, water supply systems, and wastewater treatment and removal facilitated suburban growth . . . [t]he focus of federal and state governments, however, was on delegating zoning authority to local governments. Once they were empowered with zoning authority in the 1920s, local governments have dominated the land use field.”).

<sup>21</sup> MASS. GEN. LAWS ch. 40B §§ 20–23 (2019).

<sup>22</sup> 760 MASS. CODE REGS. 56.01 (2019).

<sup>23</sup> *Id.* (“Under M.G.L. c. 40B, §§ 20 through 23, the developer of a project that includes a sufficient level of subsidized low and moderate income housing units may apply for a Comprehensive Permit from the local zoning board of appeals (the “Board”).”).

<sup>24</sup> *See* John Infranca, *The New State Zoning: Land Use Preemption Amid a Housing Crisis*, 60 B.C. L. REV. 823, 838 (2019) (“The Act is credited with producing 70,000 housing units, 35,000 of which are low- to moderate - income.”).

opposition at the municipal level across Massachusetts,<sup>25</sup> voters overwhelmingly upheld it (58–42 percent) in a 2010 ballot referendum.<sup>26</sup> As a result, developers and affordable housing advocates regularly use the 40B process as a means of building and preserving LMI housing across the Commonwealth, as 40B projects not only result in additional supply of affordable units, but also *keep* these units affordable through deed restrictions that run with the land.<sup>27</sup> While imperfect, 40B has made some inroads in opening up exclusionary suburbs to affordable housing projects, and has attracted attention from legislators and housing scholars nationwide.<sup>28</sup>

In 2004, the legislature took another step to promote housing production with the passage of the Smart Growth Zoning Overlay District Act (40R).<sup>29</sup> 40R provides financial incentives for municipalities to establish special zoning districts that allow as-of-right higher density residential development, especially near transit stations.<sup>30</sup> By allowing for increased density in certain Smart Growth districts, 40R aims to boost housing production overall as well as the

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<sup>25</sup> See, e.g., AMY DAIN, MASS. SMART GROWTH ALLIANCE, *THE STATE OF ZONING FOR MULTI-FAMILY HOUSING IN GREATER BOSTON 7* (2019) (detailing one town’s master plan crafted to counter the “threat” of 40B and “potentially overwhelming large-scale developments that need not conform to our Zoning Bylaw.”).

<sup>26</sup> *Election 2010: Massachusetts*, N.Y. TIMES (Nov. 2010), <https://www.nytimes.com/elections/2010/results/massachusetts.html> (last visited Nov. 2, 2018) [<https://perma.cc/9ERD-AHYG>].

<sup>27</sup> 760 MASS. CODE REGS. 56.02 (2019) (defining a use restriction as a “deed restriction or other legally binding instrument” that “runs with the land . . . and which effectively restricts the occupancy of a Low or Moderate Income Housing unit to Income Eligible Households during the term of affordability.”).

<sup>28</sup> See Carolina K. Reid, Carol Galante, & Ashley F. Weinstein-Carnes, *Addressing California’s Housing Shortage: Lessons from Massachusetts Chapter 40B*, 25 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 241, 244–45 (2017) (“By all accounts, Chapter 40B has been successful in increasing the amount of housing built across Massachusetts, including in affluent suburbs that have traditionally resisted multi-family and affordable housing developments . . . Chapter 40B has served as model legislation for many other states—including Connecticut, Rhode Island, and Illinois.”).

<sup>29</sup> MASS. GEN. LAWS. ch. 40R (2019).

<sup>30</sup> 760 MASS. CODE REGS. 59.06 (2019) (outlining the financial payment schedule for density bonuses).



number of individual units in new developments.<sup>31</sup> Renewing its commitment to Smart Growth development, the legislature appropriated \$15 million in 2016 for a Smart Growth Housing Trust Fund to speed up the number of 40R projects in the pipeline.<sup>32</sup> Unfortunately, the effectiveness of this program has been called into question by some housing advocates, who note that only 3,683 units have been permitted under 40R since its passage, an average of 245 per year.<sup>33</sup> Additionally, many of these units likely would have been built even without 40R.<sup>34</sup> These underwhelming figures may stem in part from widespread municipal distaste for state-level housing initiatives.<sup>35</sup>

In addition to existing legislative initiatives such as 40B and 40R, several state agencies and quasi-independent entities contribute to ongoing efforts to preserve and develop affordable housing in the Commonwealth, including the Massachusetts Department of Housing and Community Development (DHCD),<sup>36</sup> MassHousing,<sup>37</sup> and the

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<sup>31</sup> 760 MASS. CODE REGS. 59.01 (2019) (“It is the purpose of M.G.L. c. 40R and 760 CMR 59.00 to encourage Smart Growth and increased housing production in Massachusetts.”).

<sup>32</sup> BLUESTONE & HUESSY, *supra* note 6, at 51.

<sup>33</sup> MODESTINO ET AL., *supra* note 1, at 49 (“These new 40R districts have the potential to support up to 18,916 new housing units, though only 3,683 units have been permitted to date in the state as a whole (and 2,932 permitted in the five-county Greater Boston region to date).”).

<sup>34</sup> *Id.* (“It is estimated that about half of the 40R units permitted to date would likely have been built without Chapter 40R.”).

<sup>35</sup> *Id.* (“At least 40 additional municipalities are reported to have considered creating additional 40R districts, but did not do so due to a variety of reasons including . . . votes falling short of the two-thirds majority required [and] fear of losing local control . . .”).

<sup>36</sup> DHCD acts as the state government department that oversees and coordinates various housing programs with municipal housing authorities across the Commonwealth, including public housing, rental assistance, and homeownership opportunities. See *A Guide to Obtaining Housing Assistance*, MASS. DEP’T HOUSING CMTY. DEV., <https://www.mass.gov/guides/a-guide-to-obtaining-housing-assistance> (last visited Nov. 25, 2019) [<https://perma.cc/A92W-6YW8>].

<sup>37</sup> See *About MassHousing*, MASSHOUSING, [https://www.masshousing.com/portal/server.pt/community/about\\_masshousing/221/about\\_us\\_home](https://www.masshousing.com/portal/server.pt/community/about_masshousing/221/about_us_home) (last visited Mar. 28, 2019) [<https://perma.cc/8PMP-6GW6>] (“MassHousing is an independent, quasi-public agency created in 1966 and charged with providing financing for affordable housing in Massachusetts. The Agency raises capital by selling bonds and lends the proceeds to low- and moderate-income homebuyers and homeowners, and to developers who build or preserve affordable

Massachusetts Housing Partnership (MHP).<sup>38</sup> DHCD also runs a housing voucher program, called the Massachusetts Rental Voucher Program (MRVP), which provides subsidies to households earning less than 80 percent AMI to rent certain qualified units in the private housing market.<sup>39</sup> Although the MRVP serves as a necessary social safety net, the program is small in scope, awarding only 9,400 vouchers in 2016.<sup>40</sup> Most of these vouchers are provided to homeless individuals and families as opposed to currently-housed ELI or other rent-burdened households.<sup>41</sup> Additionally, due to the ongoing affordable housing shortage and high demand for vouchers, most local waiting lists for the MRVP are lengthy or have ceased accepting new applications altogether.<sup>42</sup>

Recent administrations have also launched more targeted funding efforts to address the housing crisis, such as authorizing \$100 million for a Workforce Housing Trust Fund to develop market rate housing in lower-income “Gateway Cities” on the fringes of Greater Boston.<sup>43</sup> Despite these efforts, overall funding of public housing and

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and/or mixed-income rental housing. MassHousing does not use taxpayer dollars to sustain its operations, although it administers some publicly funded programs on behalf of the Commonwealth. Since its inception, MassHousing has provided more than \$22 billion for affordable housing.”).

<sup>38</sup> See *About Us*, MASS. HOUSING P’SHIP., <https://www.mhp.net/about-us> (last visited Mar. 28, 2019) [<https://perma.cc/Y8HK-S6HW>] (describing MHP’s various missions and objectives, including first-time homebuyer programs, affordable housing loans, and technical housing assistance).

<sup>39</sup> See MASS DEP’T HOUSING CMTY. DEV., MASS. RENTAL VOUCHER PROGRAM: ADMIN. PLAN 15, 22 (2017) (providing a high-level overview of the MRVP and specifying the AMI cut-off for the program).

<sup>40</sup> See MASS DEP’T HOUSING CMTY. DEV., *supra* note 39, at 16 (“[T]he current contracted and awarded Vouchers [in FY2016] stands at approximately 9,400.”).

<sup>41</sup> CHIUMENTI, *supra* note 13, at 20 (“Currently, MRVP vouchers are assigned largely to homeless individuals and families.”).

<sup>42</sup> MASS DEP’T HOUSING CMTY. DEV., *supra* note 39, at 69 (“Most LHAs that administer MRVP have closed waiting lists for MRVP.”).

<sup>43</sup> BLUESTONE & HUESSY, *supra* note 6, at 51 (“A second initiative under the Economic Development Bill was the establishment of the Workforce Housing Production Trust Fund (WHTF) . . . [t]he WHTF provides “support” for market rate housing in Gateway Cities.”); Donna Kimura, *MassHousing Launches Workforce Housing Fund*, AFFORDABLE HOUSING FIN. (May 17, 2016), [https://www.housingfinance.com/finance/masshousing-launches-workforce-housing-fund\\_o](https://www.housingfinance.com/finance/masshousing-launches-workforce-housing-fund_o) [<https://perma.cc/57YB-T5M7>] (“A new \$100 million

homelessness programs in the Commonwealth declined from \$503 million in FY2016 to \$432 million in FY2018, suggesting a need for exploration of new sources of revenue to finance affordable housing development and preservation.<sup>44</sup>

Aside from attempting to establish a favorable statutory and fiscal environment to promote the development of affordable housing, state leaders have also made public political commitments to address the shortage. Acknowledging the impact of high housing costs on residents of the Commonwealth, Massachusetts Governor Charlie Baker introduced a new housing bill in 2017 dubbed “An Act to Promote Housing Choices,” aimed at spurring the development of 135,000 new housing units across the Commonwealth by 2025.<sup>45</sup> If passed, the bill would allow city councils to loosen municipal zoning rules with a simple majority vote, instead of the current two-thirds threshold.<sup>46</sup> Such a change would facilitate local zoning reform to allow denser, multifamily and affordable development<sup>47</sup> in communities that have long resisted anything but single-family homes.<sup>48</sup>

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MassHousing fund aims to create workforce housing for households earning 61% to 120% of the area median income (AMI) in Massachusetts.”)

<sup>44</sup> BLUESTONE & HUESSY, *supra* note 6, at 55.

<sup>45</sup> Andy Metzger, *Gov. Baker Outlines Plan For 135,000 New Housing Units By 2025*, WBUR (Dec. 11, 2017), <https://www.wbur.org/bostonmix/2017/12/11/bakler-new-housing-plan> [<https://perma.cc/5SHG-K7C4>].

<sup>46</sup> Tim Logan, *A year after Baker’s push for more housing, it’s still in limbo*, BOS. GLOBE (Dec. 4, 2018), <https://www.bostonglobe.com/business/2018/12/03/there-housing-stalemate-beacon-hill/5n7umBjRHTrMRa3HJAP1bK/story.html> (“[The bill] would allow municipalities to change some zoning rules with a simple majority vote, instead of requiring—as state law now does—two-thirds of a local government’s council or town meeting to agree.”).

<sup>47</sup> See Infranca, *supra* note 24, at 856 (“The measures local governments would be permitted to approve with a simple majority include reduced minimum lot sizes, adoption of smart growth zoning districts, permitting multifamily and mixed-use developments in certain areas, and allowing ADUs—all measures directed towards increasing housing supply and density.”).

<sup>48</sup> See, e.g., Tim Logan, *Compared to other states, Mass. lags in move for more housing*, BOS. GLOBE (Mar. 16, 2019), <https://www.bostonglobe.com/business/2019/03/15/compared-other-states-mass-lags-push-for-more-housing/U0CYgYi64Ajpg3J2TABcYJ/story.html> (“Developers and housing advocates have long pushed for changes to state zoning rules that would encourage, or even require, more multifamily development in more places. But their efforts have repeatedly run smack into one of Massachusetts’ most-cherished governmental traditions: local control of land use and zoning.”); see also discussion *infra* Part V.

Unfortunately, the bill remains mired in legislative limbo,<sup>49</sup> a sharp contrast from several other states that have taken aggressive action in the face of growing housing crises.<sup>50</sup> Governor Baker and a broad coalition of housing advocates continue to whip up support, but whether the Massachusetts legislature will ultimately pass the bill remains an open question.<sup>51</sup>

### B. Municipal Initiatives

Like the Commonwealth of Massachusetts, the City of Boston has also attempted to address the affordable housing crisis by boosting housing production, with Mayor Marty Walsh announcing a goal in 2014 of building 53,000 new units by 2030, in part by streamlining the approval process.<sup>52</sup> By mid-2017, the Boston Planning and Development Agency (BPDA), the city agency responsible for development reviews in Boston, had approved 21,963 new residential units, nearly 128 percent of the 2017 target,<sup>53</sup> with some evidence of rent mitigation in older housing stock in specific neighborhoods.<sup>54</sup> Unfortunately, Boston's population has increased much faster than demographic estimates underlying the 2014 objective, leading city officials to raise

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<sup>49</sup> Tim Logan, *Other states are tackling their housing crises. So why not Mass.?*, BOS. GLOBE (Dec. 3, 2019, 7:12 PM), <https://www.bostonglobe.com/business/2019/12/03/other-states-take-housing-crunch-mass-still-stands-pat/XQub2KPqvOZMSn6sgJrO9N/story.html> (chronicling continued legislative opposition to Baker's proposed bill).

<sup>50</sup> See Logan, *Mass. lags*, *supra* note 48 (contrasting executive and legislative efforts in California and Oregon with political gridlock in Massachusetts).

<sup>51</sup> Jon Chesto, *Baker steps up the pressure for his housing bill*, BOS. GLOBE (Apr. 26, 2019), <https://www.bostonglobe.com/business/2019/04/25/baker-steps-pressure-for-housing-bill/hvdfLykXh0IKVMcsPgLVtJ/story.html> (describing the Baker administration's coalition-building efforts in an attempt to garner support for passage of the legislation).

<sup>52</sup> CITY OF BOSTON, HOUSING A CHANGING CITY: BOSTON 2030 4 (2014) ("The City of Boston believes that accommodating growth and stabilizing the market will require the creation of 53,000 new units of housing by 2030, a 20 percent increase in housing stock.") (report indicating that streamlining processes is a requirement to achieving its goals).

<sup>53</sup> BLUESTONE & HUESSY, *supra* note 6, at 49 ("The permitting target was 17,212 units by mid-2017. The actual number of permits issued so far is 21,963, or 128 percent of the current target.") (citing CITY OF BOSTON, HOUSING BOSTON 2030: Q2 2017 SUMMARY (2017)).

<sup>54</sup> CITY OF BOSTON, HOUSING BOSTON 2030: YEAR TWO SNAPSHOT 3 (2016) (highlighting a 4 percent decline in rents in older housing stock citywide)

the 2030 housing production target in 2018 by 30 percent, to 69,000 units.<sup>55</sup> By April 2019, the BPDA had approved 29,765 new residential units, roughly 131 percent of the revised target.<sup>56</sup> Despite the increase in supply, even the city itself has admitted the gap between demand and supply remains daunting: between 2010 and 2016, Boston's population surged by over 40,000 people, but new housing units built during that period could only accommodate 26,800 people.<sup>57</sup> Additionally, the pace of approvals slowed considerably in 2019, with only 426 residential units approved in Q12019, less than half the annualized 2018 rate of 1,055 units per quarter.<sup>58</sup>

In conjunction with Mayor Walsh's Boston-specific goal, a regional coalition of 15 mayors from cities across Greater Boston announced a target of 185,000 aggregate new housing units by 2030.<sup>59</sup>

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<sup>55</sup> Tim Logan, *Boston raises its goal for new housing by 30 percent*, BOS. GLOBE (Sep. 26, 2018), <https://www.bostonglobe.com/business/2018/09/25/city-raises-its-goal-for-new-housing-percent/Bqs0SPu9T6xiQUTSJFvrtN/story.html> (“The Walsh administration on Wednesday will roll out a plan to further accelerate the already robust pace of housing construction in Boston over the coming years, raising its ambitious target for new apartments and condos by 30 percent, with added emphasis on creating affordable housing and protecting lower-income renters at risk of eviction.”).

<sup>56</sup> CITY OF BOSTON, HOUSING BOSTON 2030: Q12019 REPORT 2 (2019) (detailing progress on the city's housing objectives).

<sup>57</sup> CITY OF BOSTON, HOUSING BOSTON 2030: UPDATE 2018 8 (2018) (“From 2010–2016, the population increased by 40,000 people, but newly built housing could only accommodate 26,800 people. This scarcity in supply perpetuates low vacancy rates, and continues to put upward pressure on rents and sales prices.”).

<sup>58</sup> 4,219 new residential units were permitted across the City of Boston in 2018—an annualized quarterly rate of 1,054.75 per quarter. *Compare* CITY OF BOSTON, HOUSING BOSTON 2030: 2018 YEAR END REPORT 3 (2019) (counting 4,219 new residential units permitted in 2018), *with* CITY OF BOSTON, HOUSING BOSTON 2030: Q12019 REPORT, *supra* note 56, at 2 (counting 426 new residential units permitted in Q12019).

<sup>59</sup> Tim Logan, *Citing ‘housing emergency,’ 15 mayors pledge to boost construction*, BOS. GLOBE (Oct. 2, 2018), <https://www.bostonglobe.com/business/2018/10/02/citing-housing-emergency-local-mayors-pledge-dramatic-ally-boost-construction/plYlzBr3OoM6W6la3L1zTL/story.html> (“The plan calls for 185,000 homes to be built over the next 12-plus years in the 15 municipalities, compared with the 32,500 that have been permitted since 2010.”); *see also* MODESTINO ET AL., *supra* note 1, at 34 (“The City of Somerville has also established a separate housing production goal through its

Although production rates vary by municipality, the new goal will require some cities in Greater Boston to triple the rate at which new units came online from 2010–2017.<sup>60</sup> The need for the production increase becomes apparent when comparing regional housing production to job growth: between 2010–2017, Greater Boston added 245,000 new jobs, but only 71,600 new units of housing.<sup>61</sup>

Unfortunately, purely voluntary regional commitments might not be enough: the Boston metropolitan area only permitted 14,183 new housing units in 2018—around 50 percent or less of the number produced by comparatively-sized metropolitan areas, including Seattle (28,186), Austin (30,035), Charlotte (26,209), and Atlanta (39,441).<sup>62</sup> Many smaller metro areas also outperformed Greater Boston, including Jacksonville (15,450), Denver (21,729), Minneapolis (18,206), and Nashville (19,159).<sup>63</sup> On a per capita basis, the picture appears even bleaker. In 2018, Boston only permitted 52.6 new units of housing per 10,000 residents, well below many peer cities experiencing similar rapid growth, including Seattle (109.3), Austin (139.7), Minneapolis (85.8), Denver (111.8), and Washington, D.C. (66.5).<sup>64</sup> Even housing-crunched San Francisco beat out Boston (58.6).<sup>65</sup>

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SomerVision 2030 plan. The goal commits the city to producing 6,000 new units, 1,200 of which will be permanently affordable, by 2030.”)

<sup>60</sup> Logan, *Housing emergency*, *supra* note 59 (observing that to meet the announced target “would mean building at a clip that is more than three times as fast as the region has built over this decade, and at twice the rate of the past few years.”).

<sup>61</sup> See DAIN, *supra* note 25, at preface (“From 2010 to 2017, the Metropolitan Boston region added 245,000 new jobs, a 14 percent increase. Yet according to the best data available, cities and towns permitted only 71,600 housing units over that same time period, growth of only 5.2 percent. When supply of new housing does not keep pace with the growing demand created by new workers and young adults forming new households, there is more competition for the existing units.”).

<sup>62</sup> AMERICAN COMMUNITY SURVEY, UNITED STATES CENSUS BUREAU, NEW PRIVATELY OWNED HOUSING UNITS AUTHORIZED UNADJUSTED UNITS BY METROPOLITAN AREA ANNUAL 2018, <https://www.census.gov/construction/bps/txt/tb3u2018.txt> [<https://perma.cc/G5EV-4KWA>].

<sup>63</sup> *Id.*

<sup>64</sup> *City Building and Construction Permits: Annual Statistics*, GOVERNING, <https://www.governing.com/gov-data/other/city-construction-building-permits-data-totals.html> [<https://perma.cc/8ZUM-VPNM>] (listing per capita housing permit rates for all U.S. municipalities over 50,000 in population).

<sup>65</sup> *Id.*

Finally, aside from production targets for construction of new market-rate and affordable housing units, Boston also promotes affordable housing development through two key municipal programs. The first program collects linkage fees from all commercial and institutional developments larger than 100,000 square feet; fees collected support LMI housing development citywide.<sup>66</sup> The second program—an Inclusionary Development Program (IDP)—mandates that private developers seeking zoning relief for their projects either set aside at least thirteen percent of their planned units for LMI households or contribute financially to the city’s IDP fund, which finances affordable housing development and preservation citywide.<sup>67</sup>

Boston has also started experimenting with somewhat unconventional efforts to alleviate pressure on the rental market, including an “intergenerational homeshare” pilot to pair graduate students with older homeowners who have extra vacant rooms,<sup>68</sup> a feasibility study to build affordable housing on top of publicly-owned buildings such as fire stations and libraries,<sup>69</sup> and an “Additional Dwelling Unit” program to permit certain homeowners to subdivide their homes to create new rental units.<sup>70</sup>

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<sup>66</sup> HOUSING A CHANGING CITY, *supra* note 52, at 110 (“Created in 1983 through a State enabling act, the Linkage Program charges a fee on all commercial and institutional development projects larger than 100,000 square feet.”).

<sup>67</sup> BOS. PLANNING & DEV. AGENCY, BRIDGING THE GAP: CREATING MIDDLE INCOME HOUSING THROUGH INCLUSIONARY DEVELOPMENT: 2017 ANNUAL REPORT 2 (2018) (describing the purpose and functionality of Boston’s IDP).

<sup>68</sup> BLUESTONE & HUESSY, *supra* note 6, at 50 (“Boston has also begun a housing pilot to pair empty nesters with graduate students. The Intergenerational Homeshare Pilot just launched in September of [2017] will match graduate students looking for a place to live with older homeowners who have extra rooms to rent. According to research by two recent MIT graduate students, there are more than 100,000 Baby Boomer homeowners with more than two spare bedrooms in their homes.”).

<sup>69</sup> *Housing with Public Assets*, CITY OF BOS., <https://www.boston.gov/departments/new-urban-mechanics/housing-innovation-lab/housing-public-assets> [<https://perma.cc/6DG7-JW3R>] (proposing the co-development of public assets and soliciting feedback from the public and interested community members).

<sup>70</sup> See Press Release, Bos. Planning & Dev. Agency, Mayor Walsh, City of Boston create path for more affordable housing through Additional Dwelling Units (Apr. 12, 2019), <http://www.bostonplans.org/news-calendar/news-updates/2019/04/12/mayor-walsh,-city-of-boston-create-path-for-more-a> [<https://perma.cc/V9WB-REAQ>] (“The Boston Planning & Development

Despite the myriad programs, policies, and goals in place at both the state and municipal level in Massachusetts, Greater Boston continues to grow more expensive.<sup>71</sup> The aforementioned initiatives, while well-intentioned, have largely failed at slowing the prodigious increase in housing costs over the last decade.<sup>72</sup> Meanwhile, as the housing crisis has unfolded across Greater Boston and other successful American metropolitan areas, some cities grappling with housing affordability issues have begun exploring value capture strategies such as LVT as a potential weapon in the municipal arsenal to combat rising rents.<sup>73</sup> The idea has also gained traction once again in intellectual

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Agency (BPDA) Board of Directors has approved a citywide zoning text amendment that would allow owner occupants to carve out space within their homes to create smaller, independent rental units, known as Additional Dwelling Units (ADUs). In accordance with Mayor Martin J. Walsh's Housing A Changing City, ADUs will increase affordable housing options, create safer living arrangements and support multigenerational family arrangements and opportunities for aging in place. ADUs provide an opportunity to use existing infrastructure to achieve the City of Boston's housing goals.").

<sup>71</sup> See discussion *supra* Part II(a).

<sup>72</sup> *Id.*

<sup>73</sup> See, e.g., Michael Safko, Comment, *Land-Value Taxation as a Method of Encouraging Growth in Baltimore*, 5 U. BALT. J. LAND & DEV. 69, 74–76 (2015) (exploring the viability of land-value taxation in Baltimore City); CTR. FOR TRANSP. STUDIES, UNIV. OF MINN., HARNESING VALUE FOR TRANSPORTATION INVESTMENT: SUMMARY OF THE STUDY: A VALUE CAPTURE FOR TRANSPORTATION FINANCE I (Peter Park Nelson et al. eds., 2009) (exploring various land value capture strategies as a means of financing transit development and maintenance in Minnesota); SHISHIR MATHUR & ADAM SMITH, MINETA TRANSP. INST., SAN JOSE STATE UNIV., A DECISION-SUPPORT FRAMEWORK FOR USING VALUE CAPTURE TO FUND PUBLIC TRANSIT: LESSONS FROM PROJECT-SPECIFIC ANALYSIS I (2012) (reviewing small-scale transit value capture strategies across several U.S. cities); GREG PATES, CTR. FOR URBAN AND REG'L AFFAIRS, UNIV. OF MINN., CENTRAL CORRIDOR LIGHT RAIL TRANSIT (LRT) IN MINNEAPOLIS AND SAINT PAUL: SUSTAINING AFFORDABLE HOUSING IN THE CENTRAL CORRIDOR: THE NEIGHBORHOOD CONNECTION 47 (2010) (proposing various value capture strategies as a means of preserving affordable housing along new transit corridors); PUGET SOUND REG'L COUNCIL, VALUE CAPTURE FINANCING IN WASHINGTON 1 (2013) (discussing value capture concepts and potential applications in the Puget Sound region of Washington state).



policy circles.<sup>74</sup> So what exactly is LVT, how does it work, and what problems is it designed to address?

### **III. Land Value Taxation—History, Theory, and Potential Applications**

#### **A. History and Theory**

LVT first entered the national policy lexicon when political economist Henry George published his landmark treatise, *Progress and Poverty*, in 1879.<sup>75</sup> A key figure in the Progressive Era, George sought to understand why extreme poverty persisted in the great cities of the United States despite the enormous amounts of wealth generated by the late nineteenth-century American economy.<sup>76</sup> Ultimately, he identified land concentration and speculation as a primary factor fomenting inequality and poverty in the United States.<sup>77</sup> As a solution to this problem, George advocated for the abolition of all taxes, save one upon the value of unimproved land without regard to improvements made on the land.<sup>78</sup> From George's original idea to the present day, advocates have proposed LVT as a means of eliminating

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<sup>74</sup> See, e.g., *The time may be right for land-value taxes*, ECONOMIST (Aug. 9, 2018), <https://www.economist.com/briefing/2018/08/09/the-time-may-be-right-for-land-value-taxes> (weighing the benefits and drawbacks of LVT).

<sup>75</sup> HENRY GEORGE, *PROGRESS AND POVERTY: AN INQUIRY INTO THE CAUSE OF INDUSTRIAL DEPRESSIONS AND OF INCREASE OF WANT WITH INCREASE OF WEALTH; THE REMEDY* (Walter J. Black, Inc. 1942) (1879).

<sup>76</sup> *Id.* at 7–8 (“[I]t is at last becoming evident that the enormous increase in productive power which has marked the present century and is still going on with accelerating ratio, has no tendency to extirpate poverty or to lighten the burdens of those compelled to toil . . . [t]his association of poverty with progress is the great enigma of our times.”).

<sup>77</sup> See J. Anthony Coughlan, *Land Value Taxation and Constitutional Uniformity*, 7 GEO. MASON L. REV. 261, 261 (1999) (“George argued that the growing disparity between rich and poor, the boom and bust cycle of modern economies, and the elusiveness of ‘full employment’ could in large part be attributed to land speculation.”).

<sup>78</sup> GEORGE, *supra* note 75, at 341 (“Now, insomuch as the taxation of rent, or land values, must necessarily be increased just as we abolish other taxes, we may put the proposition into practical form by proposing—[t]o abolish all taxation save that upon land values.”).

windfalls<sup>79</sup> enjoyed by private property owners who reap the benefits of public and private investment in their neighborhoods well in excess of any individual improvements made to their own land.<sup>80</sup>

Modern LVT schemes do not call for the abolition of all existing taxes as originally proposed by George, but instead usually deploy a “two-rate” framework through which land itself is taxed at a higher rate than buildings.<sup>81</sup> This is a key difference between LVT and traditional property taxes common in most states and municipalities. Traditional property taxes are calculated by assessing the value of an entire parcel at a single rate, which includes the land and any buildings on top of it; conversely, LVT applies differential tax rates to the unimproved value of the land itself and whatever buildings sit on top of that land.<sup>82</sup>

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<sup>79</sup> Donald G. Hagman, *Windfalls and Their Recapture*, in WINDFALLS FOR WIPEOUTS: LAND VALUE CAPTURE AND COMPENSATION 15, 15 (Donald G. Hagman & Dean J. Mischynski eds., 1978) (defining a windfall as “any increase in the value of real estate—other than that caused by the owner”).

<sup>80</sup> Ngai Pindell, *Fear and Loathing: Combating Speculation in Local Communities*, 39 U. MICH. J.L. REFORM 543, 564 (2006) (“The increased value of land due to surrounding activities and the provision of public services would belong to the public instead of a private landowner. This ‘unearned increment,’ defined as increases in land value independent of owner effort and due to factors such as ‘general community development, government investment in schools, streets, parks, population growth, and rising incomes’ would be used as local government revenue.”) (citing C. Lowell Harriss, *Fundamental and Feasible Improvements of Property Taxation*, in LAND-VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE 100, 105 (Kenneth C. Wenzel ed., 1999)).

<sup>81</sup> Jeffrey P. Cohen & Cletus C. Coughlin, *An Introduction to Two-Rate Taxation of Land and Buildings*, 87 FED. RES. BANK ST. LOUIS REV. 359, 360 (2005) (“Instead of taxing land and structures at the same rate, as is the case with the conventional property tax, the two-rate tax would tax land at a higher rate than the structures on the land.”).

<sup>82</sup> *Id.* at 359 (“When taxing a specific parcel of real property in the United States, the same rate is usually applied to the land as well as to the improvements to the land, such as buildings. The opinions expressed by Nobel Prize winners Milton Friedman and William Vickrey are at the root of proposals to differentiate the taxing of land from the buildings on that land.”).

## B. Property Tax vs. LVT

### 1. Property Tax in Massachusetts

Property taxes in Massachusetts generally operate in a traditional fashion. The Commonwealth levies taxes on all “real property” within its geographic boundaries, subject to various exemptions.<sup>83</sup> Four types of real property exist for taxation purposes: residential, open space, commercial, and industrial.<sup>84</sup> Residential property must contain at least one dwelling unit used for non-transient human habitation, and includes both the land and any buildings on top of the parcel.<sup>85</sup> Local municipalities survey each residential property parcel within their borders on an annual basis to assess the fair market value (FMV) of each parcel; each municipality then uses the FMV to levy a tax on the assessed property.<sup>86</sup> Provided that the municipality complies with all the requirements under the Massachusetts Constitution,<sup>87</sup> it may theoretically tax residential property at any rate it sees fit.<sup>88</sup> Although the Massachusetts Constitution states that municipalities

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<sup>83</sup> MASS. GEN. LAWS ch. 59, § 2A (2019) (“Real property for the purpose of taxation shall include all land within the commonwealth and all buildings and other things thereon or affixed thereto, unless otherwise exempted from taxation under other provisions of law. The assessors of each city and town shall determine the fair cash valuation of such real property for the purpose of taxation on the first day of January of each year.”).

<sup>84</sup> *Id.* (outlining the four categories of real property used for fair cash valuation purposes in the Commonwealth). Given this note’s focus on housing, for the purposes of evaluating potential LVT applications in Massachusetts, it will only discuss the residential property classification.

<sup>85</sup> *Id.* (“Such property includes accessory land, buildings or improvements incidental to such habitation and used exclusively by the residents of the property or their guests.”).

<sup>86</sup> MASS. GEN. LAWS ch. 59, § 38 (2019) (“The assessors of each city and town shall at the time appointed therefor make a fair cash valuation of all the estate, real and personal, subject to taxation therein, and such determination shall be the assessed valuation of such estate.”).

<sup>87</sup> *See infra* Part IV(a) and accompanying text (discussing the legal requirements of the Massachusetts Constitution’s uniformity and proportionality clauses).

<sup>88</sup> *See* LAWYERS DIARY & MANUAL, 2018 MASS. LAWYERS DIARY & MANUAL, MASS. MUN. TAX RATES 185–87 (2018) (providing a town-by-town break down of municipal tax rates across the Commonwealth).

have no independent authority to “levy, assess and collect taxes,”<sup>89</sup> the legislature has delegated “the power to assess property” and determine local tax rates to municipalities for over two-hundred years.<sup>90</sup> Although some municipalities calculate separate assessed values for land and improvements, both are considered “real property” for actual taxation purposes, and thus are taxed at the same residential or commercial rate based on their combined value.<sup>91</sup>

## 2. *Downsides of Traditional Property Tax*

Although economists traditionally consider the property tax one of the more efficient forms of modern taxation,<sup>92</sup> it remains an imperfect tax in many respects. First, many property tax assessments in practice are supremely inequitable. For example, Proposition 13 in California, passed in a popular referendum in 1978, limits property tax assessments to one percent of a property’s cash value at the time of purchase (accounting only for annual inflation increases), with market-value reassessments only occurring when the property is re-sold.<sup>93</sup> This benefits existing homeowners who enjoy low property taxes despite prodigious increases in their home values, and results in

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<sup>89</sup> MASS. CONST. art. LXXXIX § 7 (“Nothing in this article shall be deemed to grant to any city or town the power . . . to levy, assess and collect taxes . . .”).

<sup>90</sup> Opinion of the Justices to the House of Representatives, 393 N.E.2d 306, 310 (Mass. 1979) (“For almost two centuries the General Court has delegated to municipal authorities the power to assess property and to determine the rates of tax thereon.”).

<sup>91</sup> See, e.g., *How we tax your property*, CITY OF BOS., <https://www.boston.gov/departments/assessing/how-we-tax-your-property> (last visited July 23, 2019) [<https://perma.cc/54G2-KSBQ>] (providing general information on the tax assessment process as well as current residential and commercial property tax rates).

<sup>92</sup> See Zanny Minton Beddoes, *An unexploited resource*, ECONOMIST (Jun. 27, 2013), <https://www.economist.com/free-exchange/2013/06/27/an-unexploited-resource> (“Ask an economist about which are the most efficient kinds of taxes, and property taxes will be high up on the list. They distort behaviour less, and are more growth friendly, than taxes on income, employment or even consumption.”).

<sup>93</sup> CALIFORNIA TAX DATA, WHAT IS PROPOSITION 13? <https://www.california-taxdata.com/pdf/Prop13.pdf> [<https://perma.cc/HA6B-AVN7>] (“Property tax increases on any given property were limited to no more than 2% per year as long as the property was not sold. Once sold, the property was reassessed at 1% of the sale price, and the 2% yearly cap became applicable to future years.”).

billions of dollars of lost tax revenue per year.<sup>94</sup> In 1980, Massachusetts passed a similar scheme, Proposition 2 ½, which like Proposition 13 in California, places constraints on municipal ability to tweak property taxes from year to year.<sup>95</sup> The law prohibits a municipality from collecting greater than two and a half percent of the full “cash value of all taxable real and personal property” within its borders, and also caps any increase in the aggregate amount of tax a municipality can levy based on the municipality’s overall tax base growth.<sup>96</sup> The passage of Proposition 2½ may in part explain why residential and commercial property tax assessment rates in the City of Boston have stayed relatively static over the last twenty years.<sup>97</sup>

More significantly, however, because larger buildings incur higher tax assessments than smaller structures or vacant lots, traditional property taxes distort consumer behavior by penalizing parties who put land to more productive uses, such as building new housing.<sup>98</sup> Martin Meyerson, a city planning and urban research professor at Harvard University, observed this phenomenon in Boston’s real estate market in 1962:

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<sup>94</sup> Alexei Koseff, *Measure to Weaken Property Tax Limits Qualifies for California’s 2020 Ballot*, GOVERNING (Oct. 16, 2018, 10:40 AM), <https://www.governing.com/topics/finance/tns-property-tax-protections-california-ballot.html> [<https://perma.cc/H49U-HP6C>] (“Californians who hang onto their property for a long time can, as a result, end up paying far less in taxes than what new buyers would pay. Critics complain the state is losing out on billions of dollars per year in revenue from commercial and industrial property, and it has long been a dream of unions and other liberal advocacy groups to overturn at least parts of the law.”).

<sup>95</sup> See MASS. DEP’T OF REVENUE, *LEVY LIMITS: A PRIMER ON PROPOSITION 2 ½ 4* (2007), <https://www.mass.gov/files/documents/2016/08/oq/levylimits.pdf> [<https://perma.cc/2H8A-VGKK>] (“Proposition 2 ½ places constraints on the amount of the levy raised by a city or town and on how much the levy can be increased from year to year.”).

<sup>96</sup> *Id.* at 4–6 (discussing the logistics of tax ceilings and increase limits under Proposition 2½).

<sup>97</sup> See CITY OF BOS., *Residential & Commercial Tax Rates*, [https://www.boston.gov/sites/default/files/2019\\_taxrates\\_history.pdf](https://www.boston.gov/sites/default/files/2019_taxrates_history.pdf) [<https://perma.cc/R9VZ-7E2A>] (documenting Boston’s residential and commercial tax rates from 1991 to 2019).

<sup>98</sup> Cohen & Coughlin, *supra* note 81, at 365 (“A property tax on buildings, however, alters or distorts behavior away from that which would take place in a competitive economy without taxes.”).

The most serious defect of the real property tax is that it discourages new investment. As it stands, the tax offers property owners no incentive to tear down old houses, office buildings, stores, and factories and build better ones in their places. On the contrary, it actually penalizes efforts at modernization; a new building is at a tax disadvantage as compared to an old one. In a city like Boston, which has so many obsolete buildings, a tax system that works this way cannot be defended.<sup>99</sup>

### 3. *LVT's Advantages*

Proponents have long advocated that LVT could theoretically mitigate these baked-in issues associated with the traditional property tax because LVT represents a more efficient form of property taxation.<sup>100</sup> This is because a tax on buildings disincentivizes construction of new buildings and therefore limits supply; conversely, a tax on unimproved land value (or a two-rate system in which land is taxed at a higher rate than buildings) does not impact the aggregate supply of land because land supply is naturally fixed.<sup>101</sup> Except in very rare circumstances, land is neither created nor destroyed.<sup>102</sup> Instead, higher

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<sup>99</sup> David C. Harrison, *Housing Rehabilitation and The Pittsburgh Graded Property Tax*, 2 DUQ. U. L. REV. 213, 213 (1964).

<sup>100</sup> Nathan Farris, *What to Do When Main Street Is Legal Again: Regional Land Value Taxation as a New Urbanist Tool*, 164 U. PA. L. REV. 755, 764 (2016) (“LVT proponents argue that land should be taxed at a much higher rate than improvements to land because such a tax will incentivize more efficient land usage. [citation omitted]”). See also RICHARD F. DYE & RICHARD W. ENGLAND, LINCOLN INST. OF LAND POLICY, ASSESSING THE THEORY AND PRACTICE OF LAND VALUE TAXATION 7–12 (2010) (providing an overview of the various theorized benefits of LVT).

<sup>101</sup> Farris, *supra* note 100, at 763 (“Conversely, a tax on the value of land is efficient because, unlike the quantity of buildings, the quantity of land is fixed; therefore, an increase in the tax rate on land cannot result in a decrease in its supply. [citation omitted]”).

<sup>102</sup> For example, new land is sometimes created through infill from harbor dredging or other human activity. See, e.g., Tom Acitelli, *Boston reclamation: The 5 most significant infills in the city's history*, CURBED (May 16, 2017, 8:20 AM), <https://boston.curbed.com/2017/5/16/15640430/boston-infill-projects-reclamation> [<https://perma.cc/X8H8-6F9B>] (chronicling Boston's many infill projects over hundreds of years).

tax rates on land spurs owners to put their land to a more productive use that generates sufficient revenue to cover the cost of the tax or, if they are reluctant to do so, sell the land to an owner who will.<sup>103</sup> Thus, unlike a tax on buildings, a tax on land value causes very minimal economic distortion because, in theory, “the use that provides the highest return to the landowner before imposition of the tax will also be the most profitable use after imposition of the tax.”<sup>104</sup> Finally, land owners cannot easily avoid LVT—unlike intangible assets, land cannot be shifted outside of a local government’s jurisdiction, and can easily be seized if the owner fails to pay the tax.<sup>105</sup>

Because of these characteristics, advocates claim that if properly implemented, LVT can stimulate denser housing development, lower housing prices, deter land speculation, and limit suburban sprawl.<sup>106</sup> These goals naturally align with existing initiatives in Greater Boston aimed at mitigating housing affordability issues, although the real-world efficacy of LVT is not always clear.<sup>107</sup> LVT critics argue that, in addition to uncertainty about the ability to meet the expectations of its advocates, any LVT scheme carries potential downsides.<sup>108</sup> Additionally, despite numerous successful international

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<sup>103</sup> Farris, *supra* note 100, at 763 (“As the tax rate on land increases, landowners have a strong incentive to make capital improvements to land that will produce enough revenue to offset the higher taxes. [citation omitted]”).

<sup>104</sup> Stewart E. Sterk, “Nolan,” *Henry George, and Exactions*, 88 COLUM. L. REV. 1731, 1733–34 (1988).

<sup>105</sup> *Why Henry George had a point*, ECONOMIST (Apr. 2, 2015), <https://www.economist.com/free-exchange/2015/04/01/why-henry-george-had-a-point> (“Collection is cheap. Unlike profit, you cannot massage land away or move it to Luxembourg. If you do not pay, it can be seized and sold.”).

<sup>106</sup> Farris, *supra* note 100, at 763–769 (walking through and analyzing each proposed LVT benefit).

<sup>107</sup> Compare Harrison, *supra* note 99, at 241–42 (concluding that the Pittsburgh two-rate property tax system was largely a failure, and any positive effects realized were likely a result of other state and federal initiatives) with Cohen & Coughlin, *supra* note 81, at 366–68 (discussing evidence suggesting that the two-rate system in Pittsburgh stimulated a building boom in the 1980s). See also DYE & ENGLAND, *supra* note 100, at 17–22 (surveying various studies examining the efficacy of LVT schemes in the United States and identifying practical challenges in isolating the specific impacts on LVT on communities).

<sup>108</sup> A non-exhaustive list includes: logistical challenges of implementing LVT and assessing land value, fairness/equity (opponents argue LVT would do little to reduce wealth inequality and could have adverse effects on house-rich,

LVT models,<sup>109</sup> it has never been deployed widely in the United States.<sup>110</sup>

However, the one state that has enthusiastically embraced LVT for quite some time—Pennsylvania—contains several examples of LVT success.<sup>111</sup> In the early 20th century, the state adopted legislation permitting municipalities to experiment with LVT.<sup>112</sup> For example, Pittsburgh had citywide LVT from 1913 to 2001, when it was scrapped largely due to political opposition despite evidence of its success.<sup>113</sup> Even with this setback, the city still operates a pure LVT

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cash-poor middle-income households), and widespread political opposition. See *Land-value taxes*, *supra* note 74.

<sup>109</sup> For example, Taiwan, Australia, Denmark, and Singapore. See, e.g., Coughlan, *supra* note 77, at 261 (listing countries that have implemented forms of LVT); Anne Kristine Høj et al., *Land Taxes and Housing Prices*, De Økonomiske Råds Sekretariatet, Working Paper 2017: 1 (studying the effects of Denmark's LVT on housing prices); Edwin Loo, *Lessons from Singapore about land value capture*, Royal Town Planning Institute (Apr. 3, 2017), <https://www.rtpi.org.uk/briefing-room/rtpi-blog/lessons-from-singapore-about-land-value-capture/> [<https://perma.cc/HHF6-NP7K>] (discussing the significance of Singapore's land-value capture mechanisms to the country's public finances and overall development). See also DYE & ENGLAND, *supra* note 100, at 16 (describing LVT schemes in Australia, New Zealand, and South Africa).

<sup>110</sup> The only state to experiment with LVT broadly is Pennsylvania, though Hawaii has also had a modified two-rate taxation system in place since the 1960s. Houston briefly implemented a two-rate system between 1911 and 1914 before it was declared unconstitutional under the Texas Constitution. See Coughlan, *supra* note 77, at 262 (Pennsylvania); Cohen & Coughlin, *supra* note 81, at 366 (Hawaii); Donald G. Hagman, *The Single Tax and Land-Use Planning: Henry George Updated*, 12 UCLA L. REV. 762, 772–73 (1965) (Houston).

<sup>111</sup> DYE & ENGLAND, *supra* note 100, at 17 (“The real-world experiences with land value taxation in many Pennsylvania cities and in nations around the world offer evidence that can be used to test the claims of proponents.”).

<sup>112</sup> J. Brian Charles, *Leaning on the Land*, GOVERNING (Sept. 2019), <https://www.governing.com/topics/finance/gov-land-tax.html> [<https://perma.cc/BL7K-HGLW>] (“[Pennsylvania] adopted legislation allowing its cities to adopt a land value tax. A handful of them did.”).

<sup>113</sup> DYE & ENGLAND, *supra* note 100, at 14 (“When reassessments were released in January 2001, several decades after the previous round of property reassessments, they reflected a very large average increase in land values and an unequal distribution of the rate of increase around that average. Public officials then failed to cut tax rates by an offsetting amount. Consequently, most homeowners saw their annual tax bills jump sharply, and some saw their



scheme in its downtown central business district, which proponents say in part helped stimulate up to \$8.5 billion in new development in the last ten years.<sup>114</sup> Smaller cities, such as Harrisburg, Aliquippa, and Allentown, adopted LVT mechanisms in the 1980s and 1990s, boosting municipal revenues while cutting down the number of vacant or underutilized parcels within their city limits.<sup>115</sup> Additionally, despite the imposition of a new tax, most individual homeowners actually saw their property tax assessments go down, resulting in a reduction of tax burdens on the working class while capturing value from “absentee owners of vacant lots.”<sup>116</sup> As a result of these demonstrated benefits, LVT has grown more popular in Pennsylvania, with new towns experimenting with varied approaches in recent years.<sup>117</sup> While not a panacea, LVT has proven a useful municipal tool in Pennsylvania in stimulating positive new development and generating new local sources of revenue<sup>118</sup>—two policy successes that a housing-crunched metro area like Greater Boston could also benefit from.

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bills increase by very large amounts. Property owners were outraged and they blamed the two-rate system of property taxation.”); Charles, *supra* note 112 (describing the political failure to adjust the LVT as needed over time, leading to widespread “sticker shock” and a taxpayer revolt when the city finally updated the tax rates).

<sup>114</sup> Charles, *supra* note 112.

<sup>115</sup> Joshua Vincent, *Non-Glamorous Gains: The Pennsylvania Land Tax Experiment*, STRONG TOWNS (Mar. 6, 2019), <https://www.strongtowns.org/journal/2019/3/6/non-glamorous-gains-the-pennsylvania-land-tax-experiment> [<https://perma.cc/9HR2-S8K2>] (“The city of Allentown adopted LVT in 1996, establishing dual tax rates of 5.038% on land value and 1.072% on building value. The land tax rate is nearly five times greater than the building rate. Under a traditional single-rate property tax, Allentown would levy a tax of 1.752% to produce the same amount of revenue.”); Charles, *supra* note 112 (describing the two-tiered LVTs implemented by Harrisburg and Aliquippa).

<sup>116</sup> Vincent, *supra* note 115 (“After LVT was adopted by [Allentown] voters in 1996, 70% of residential parcels saw a tax decrease.”).

<sup>117</sup> See Charles, *supra* note 112 (chronicling the decision of the town of Millbourne, Pennsylvania to implement LVT this decade).

<sup>118</sup> See Vincent, *supra* note 115 (“[A]lmost all LVT cities have found that long-term non-glamorous gains exist: breathing space and time to figure out what’s next. Tax revenues have stayed stable or even increased. Harrisburg’s effective municipal tax rate dropped throughout 10 years from 1990 to 2000. Buildings use infrastructure; vacant lots do not. LVT ramps up the use of existing infrastructure, a century-old asset that literally creates value from the ground up.”).

### C. Potential Applications of LVT

Hypothetical examples help to illustrate how LVT could function in practice as a superior alternative to the current property tax system.<sup>119</sup> The first hypothetical (**A**) demonstrates how traditional property taxes can deter property owners from putting their land to more productive use. The second hypothetical (**B**) contrasts with **A** by running the same figures through a two-rate taxation framework that assesses land and buildings at different rates. The third hypothetical (**C**) involves a one-time transportation tax assessment that capture windfalls enjoyed by property owners adjacent to new transit infrastructure.

#### 1. Hypothetical A—Traditional Property Tax

The property owner in question owns a two-story apartment building with 6 one-bedroom units. The building is nearly 100 years old and in a state of relative disrepair. However, demand for rental units in the area is strong, so the owner can still charge a monthly rent of \$1,500 per unit. Some nearby owners have recently renovated their buildings, and this owner is considering the same. She does the math:

	<b>Current Building</b>	<b>Renovated Building</b>
Fair Market Value (“FMV”) (Land + Building)	\$1,000,000	\$1,500,000
Annual Operating Cost	\$50,000	\$50,000
Renovation Cost <sup>a</sup>	n/a	\$500,000 <sup>b</sup>
Tax Rate <sup>c</sup>	5% of FMV	5% of FMV
Property Tax Burden	\$50,000	\$75,000
Total Annual “Cost” <sup>d</sup>	\$100,000	\$175,000
Annual Revenue Generation	\$108,000 <sup>e</sup>	\$180,000 <sup>f</sup>
<b>Net Income</b>	<b>\$8,000</b>	<b>\$5,000</b>

<sup>119</sup> A full discussion of the impact of depreciation of property under the Internal Revenue Code is outside the scope of this Note and hypotheticals, which are intended primarily to demonstrate how, all other factors being equal, a two-rate LVT may incentivize more development than a single-rate property tax. *See generally* INTERNAL REVENUE SERVICE, PUBLICATION 946, HOW TO DEPRECIATE PROPERTY (2018), <https://www.irs.gov/publications/p946> [<https://perma.cc/MVC6-P8E4>].

- a Permitting, legal challenges, contractors, etc.
- b Amortized over 10 years
- c Land value and building value assessed together
- d Per-year: operating cost + property tax + amortized renovation cost
- e \$1500 x 6 units x 12 months
- f \$2500 x 6 units x 12 months

This admittedly simple example demonstrates how property taxes can discourage new development or renovation for a more productive, higher-revenue generation use. The owner in this case is better off maintaining a shabby apartment building. The city brings in less tax revenue, and outdated housing stock continues to deteriorate. Although the hypothetical relies on some assumptions that may not always play out in the same fashion in reality (e.g., similar operating costs pre- and post-renovation), it demonstrates how owners who seek to navigate myriad financial obstacles to redevelop their parcel are penalized with a higher tax bill.

Although this hypothetical focused on renovation of older housing stock, this scenario sometimes plays out when owners of low-productivity, non-residential parcels, such as parking lots, decide not to build housing on their land, thus limiting new construction.<sup>120</sup> Affordability considerations aside, redevelopment of such parcels also makes cities safer and more fiscally resilient by increasing awareness and raising municipal revenues.<sup>121</sup>

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<sup>120</sup> See Daniel Herriges, *What's with That Empty Lot in the Heart of the City?*, STRONG TOWNS (Mar. 5, 2019), <https://www.strongtowns.org/journal/2019/3/5/whats-with-that-empty-lot-in-the-heart-of-the-city> [https://perma.cc/W4DD-MNU7] (“A parking lot in a bustling downtown is the classic example of a property where nearly all of the value is in the land itself, not the asphalt on top of it . . . [the] property tax bill will be relatively low, because it’s based on the sum of land value and improvements. The land may be in a central, prized location, but the “improvements” on the property . . . are worth next to zero.”).

<sup>121</sup> See Doug Trumm, *Boost The Parking Lot Tax*, THE URBANIST (Jan. 17, 2017), <https://www.theurbanist.org/2017/01/17/boost-parking-lot-tax/> [https://perma.cc/23QL-4BCD] (“Walking by parking lots . . . can be dangerous since these gaps in the urban form rarely have people to provide eyes that are on the street. The revenue stream from increasing the parking lot tax and levying a vacant lot tax can be used to fund affordable housing or to boost bus service.”).

2. *Hypothetical B—LVT*

Now consider the same scenario in a jurisdiction with a two-rate framework that taxes land at a higher rate than buildings:

	<b>Current Building</b>	<b>Renovated Building</b>
FMV of Building	\$500,000	\$1,000,000
FMV of Land	\$500,000	\$500,000
Annual Operating Cost	\$50,000	\$50,000
Renovation Cost <sup>a</sup>	n/a	\$500,000 <sup>b</sup>
Tax Rate (Buildings)	2% of FMV	2% of FMV
Tax Rate (Land)	7.5% of FMV	7.5% of FMV
Building Tax Assessment	\$10,000	\$20,000
Land Tax Assessment	\$37,500	\$37,500
Total Tax Burden	\$47,500	\$57,500
Total Annual “Cost” <sup>c</sup>	\$97,500	\$157,500
Annual Revenue Generation	\$108,000 <sup>d</sup>	\$180,000 <sup>e</sup>
<b>Net Income</b>	<b>\$10,500</b>	<b>\$22,500</b>

**a** Permitting, legal challenges, contractors, etc.

**b** Amortized over 10 years

**c** Per year: Operating cost + property tax + amortized renovation cost

**d** \$1500 x 6 units x 12 months

**e** \$2500 x 6 units x 12 months

Unlike **Hypothetical A**, where the owner earns less income after renovating her old apartment building, under **Hypothetical B’s** two-rate system, she comes out ahead by undertaking the renovation. Under the two-rate system, the FMV of the land remains the same despite the renovation, because the land and building are assessed independently. Meanwhile, the FMV of the renovated building only represents the added value of the renovations, not the appreciation in price of the land and building combined (i.e., what happened in **Hypothetical A**).<sup>122</sup> As a result, this two-rate system not only incentivizes owners to renovate existing housing stock, but could also

<sup>122</sup> Even assuming the FMV of the renovated building increased by more than just the cost of renovation to \$1,500,000 instead of \$1,000,000 (perhaps due to a spike in demand for one-bedroom units), the renovation is still more profitable under the two-rate system. The renovated building’s assessment increases to \$30,000, raising the total annual cost to \$167,500 and resulting in \$12,500 in net annual income (\$2,000 more than the existing building).

encourage them to reconstruct their buildings to accommodate a larger number of units because they realize a greater income stream and lower tax burden per unit. Absent any constitutional constraints,<sup>123</sup> municipalities could also experiment with varied building tax rates in conjunction with a uniform land tax rate, setting lower rates for certain beneficial uses, such as affordable housing development.<sup>124</sup> Although a theoretical exercise, these hypotheticals demonstrate how LVT could incentivize developers to build more housing or renovate existing housing stock.

### 3. *Hypothetical C—Transit-Oriented LVT*

This hypothetical involves applying LVT to a real-world transit project in Massachusetts—the MBTA Green Line Extension (GLX).<sup>125</sup> Although GLX will not open until approximately 2021, property values along the planned transit corridor in Somerville, Massachusetts, have already increased in anticipation of its opening.<sup>126</sup>

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<sup>123</sup> See *infra* Part IV (discussing constitutional obstacles to LVT in Massachusetts).

<sup>124</sup> Such a framework could complement financial incentives that some cities already use to foster affordable housing development, such as density bonuses. Those schemes generally permit residential housing developers who set aside a certain threshold of units for income-restricted affordable housing to build higher and denser than local zoning regulations might otherwise allow, thus taking advantage of economies of scale. See, e.g., *Density Bonus*, SAN DIEGO HOUSING COMM., <https://www.sdhc.org/doing-business-with-us/developers/density-bonus/> [<https://perma.cc/W6BX-6S5Y>] (“Developers building five or more dwelling units in the City of San Diego (City) may be eligible for an increase in development density in exchange for setting aside a percentage of the units as affordable housing.”).

<sup>125</sup> GLX will extend the Green Line, a light rail line operated by the Massachusetts Bay Transportation Authority (MBTA), several miles from its current northern terminus at Lechmere in Cambridge, Massachusetts, through the neighboring communities of Somerville and Medford. See Frederick Salvucci, *Lessons to be learned from Green Line Ext.*, COMMONWEALTH MAGAZINE (Dec. 10, 2017), <https://commonwealthmagazine.org/opinion/lessons-learned-green-line-ext/> [<https://perma.cc/Y5X7-QDK5>] (discussing need for broader value capture tax on beneficiaries of infrastructure projects).

<sup>126</sup> Tim Logan, *Property in Somerville’s Green Line corridor getting pricey*, BOS. GLOBE (Aug. 18, 2016), <https://www.bostonglobe.com/business/2016/08/18/property-somerville-green-line-corridor-getting-pricey/O6ctpsdR3DsbhvS87DrcpO/story.html> (“Property values on sites within a half mile of the

Single-family home values within a half-mile walk from the new Green Line stations are predicted to climb by 16 to 25 percent after GLX opens.<sup>127</sup> Like Boston, the City of Somerville has an inclusionary zoning ordinance and commercial development linkage program that extract value from new residential and commercial construction to fund affordable housing development and preservation across the city.<sup>128</sup> However, no similar mechanism exists to capture value stemming from transportation improvements.

GLX is a textbook example of a potential opportunity to recover unearned wealth from a public investment that accrues to private landowners and re-deploy it to fund affordable housing. Landowners adjacent to the GLX route will enjoy significant appreciation in land value through no work or investment of their own,<sup>129</sup> thus, a one-time LVT assessment on the increased value could recover that windfall and deposit it into Somerville's Affordable Housing Trust Fund. The predicted increase in assessed property value directly associated with GLX ranges from \$1.37–\$1.52 billion.<sup>130</sup> Even a modest one-time tax assessment on the increased land value of parcels benefiting from the construction of GLX could raise significant revenue for those municipalities impacted by the new transit line.<sup>131</sup>

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proposed Green Line stops increased 20 percent faster than Somerville as a whole. This is a city where the housing market is already on fire.”).

<sup>127</sup> Austin Paul & Stacey Spurr, Property Value Impacts of Rapid Transit Accessibility in Boston 88 (Sept. 2016) (unpublished M.S. thesis, Massachusetts Institute of Technology) (on file with the Massachusetts Institute of Technology Library system) (“Using a similar model and a broad set of Assessor’s data, MAPC determined that single-family residential assessed property values within a half mile walkshed are expected to rise between 16% and 25%.”).

<sup>128</sup> CITY OF SOMERVILLE, AFFORDABLE HOUSING TRUST FUND FISCAL YEAR 2017 REPORT 4 (2017) (“To establish a recurring revenue source for future Trust activity, the City adopted a Linkage Ordinance requiring that large-scale commercial developments mitigate their impact on the potential supply of affordable housing by contributing a fee to the Trust. The City’s Inclusionary Zoning Ordinance, adopted in 1990, also has occasionally generated income under what are known as fractional payments. . . .”).

<sup>129</sup> See Logan, *Green Line corridor getting pricey*, *supra* note 126 (discussing increase in value of properties in close proximity to the planned Green Line Extension).

<sup>130</sup> Paul & Spurr, *supra* note 127, at 58.

<sup>131</sup> To lessen the impact on existing residential homeowners and prevent displacement, the LVT assessment could be collected over an extended period of time (say, five years) or include exemptions for lower-income homeowners

LVT Tax Rate	Revenue Generated (in millions)
1%	13.7–15.2
3%	41.1–45.6
5%	68.5–76

This supplemental funding for municipal affordable housing trust funds could help mitigate GLX’s impact on LMI tenants who might otherwise face steeper rents by setting aside new financial resources for affordable housing construction, renovation, or preservation efforts.<sup>132</sup> Similar value capture strategies (including forms of LVT) aimed at preserving housing affordability along newly-developed transit corridors have been explored in various jurisdictions, including Greater Seattle<sup>133</sup> and Minnesota.<sup>134</sup>

#### 4. Hypothetical Takeaways

The preceding hypotheticals demonstrate some of the numerous theoretical benefits associated with LVT. Additionally, these hypotheticals illustrate just a handful of the various LVT forms policy-makers could implement, from large scale reform of the property tax

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who lack the necessary liquidity to pay the tax. The latter approach, however, might trigger uniformity concerns under the Massachusetts Constitution. See discussion *infra* Part IV (discussing the Constitution’s uniformity requirements).

<sup>132</sup> Given the fact that per-unit construction costs for affordable housing tends to be extremely expensive in dense metropolitan areas, even this figure might not go too far if deployed to construct new affordable units. See, e.g., Joe Cortwright, *The high, high price of affordable housing*, CITYCOMMENTARY (April 19, 2017), <http://cityobservatory.org/the-high-high-price-of-affordable-housing/> [<https://perma.cc/8ET6-KAGX>] (“In San Francisco, one of the largest all-affordable housing projects, 1950 Mission Street, clocks in at more than \$600,000 per unit. That number isn’t getting any lower: new units in that city’s Candlestick Point development will cost nearly \$825,000 each . . . [a]nd while the problem is extreme in San Francisco, it crops up elsewhere. In St. Paul, affordable housing—mostly one bedroom units—in a renovated downtown building cost \$665,000 per unit.”).

<sup>133</sup> See, e.g., PUGET SOUND REGIONAL COUNCIL, *supra* note 73, at 15 (describing the potential benefits of creating “value capture districts” in areas well-served by transit lines).

<sup>134</sup> See, e.g., CTR. FOR TRANSP. STUDIES, *supra* note 73, at 5 (outlining the theoretical economic efficiency and equity benefits of LVT).

system to targeted one-time tax assessments.<sup>135</sup> However, it is not clear whether LVT could increase housing affordability across Greater Boston in practice.<sup>136</sup> While new policy ideas will always carry with them an element of uncertainty, the status quo in Greater Boston has become untenable as the region continues to grow more expensive.<sup>137</sup> LVT could take any number of forms to help address housing affordability across Greater Boston, from a full-fledged two-rate system to more modest impact assessments. However, what has been demonstrated over the past decade is that small-scale, incremental land use and housing reform is unlikely to make a serious dent in escalating housing costs.<sup>138</sup> The region must take bold steps to tackle the crisis head on instead of nibbling around the edges. Could LVT represent one such step? Unfortunately, several legal and political obstacles would likely impede any effort to implement a serious LVT scheme in Massachusetts.<sup>139</sup>

#### ***IV. Legal Obstacles to LVT in Massachusetts***

##### **A. Potential Challenges**

Potential benefits aside, whether LVT could ever be implemented in Greater Boston remains uncertain, as any proposal would likely face constitutional challenges. Regardless of jurisdiction, proposed LVT schemes may trigger takings<sup>140</sup> and due process

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<sup>135</sup> See, e.g., discussion *supra* note 73 (providing numerous examples of academic and government value capture policy proposals from across the United States).

<sup>136</sup> See discussion *supra* Part III(b)(iii) (discussing the various theoretical benefits and real-world efficacy questions posed by LVT as a policy proposal).

<sup>137</sup> See discussion *supra* Part II(a) (providing an overview of the affordable housing crisis in Greater Boston and its associated negative effects).

<sup>138</sup> See discussion *supra* Part II(b–c) (observing that despite the varied efforts of state and municipal authorities across Greater Boston, the region has continued to grow increasingly expensive).

<sup>139</sup> See discussion *infra* Parts IV–V (discussing legal and political barriers to LVT implementation).

<sup>140</sup> Sterk, *supra* note 104, at 1731 (“[E]xactions or similar programs might become subject to strict constitutional ‘takings’ scrutiny in addition to the state-law doctrines that already limit municipal authority to exact fees in return for permission to develop.”).



challenges<sup>141</sup> under the U.S. Constitution depending on the way they are structured. However, takings challenges would likely arise more often with non-LVT value capture schemes, such as “exactions,” in which developers who seek to build on a given parcel are required by the municipality to pay an impact fee or set aside a certain portion of the land for public use.<sup>142</sup> Additionally, barring any procedural defects in application and administration of LVT, a due process challenge would also likely fail, because federal courts typically apply rational basis review when assessing challenges to state or municipal land use regulation, and thus hesitate to invalidate such regulation absent unique circumstances.<sup>143</sup> So long as the state or municipal government could articulate a rational basis for implementing LVT (e.g., preserving affordable housing, increasing construction of housing stock, deterring land speculation), and the LVT did not violate any other federal or state constitutional provisions, a court would likely not overturn the scheme.<sup>144</sup>

Takings and due process issues aside, the most likely (and more significant) legal challenges to LVT enacted in Massachusetts would rely on various provisions of the Commonwealth’s Constitution. For example, like most state constitutions, the Massachusetts Constitution contains a “uniformity clause” regarding taxation of property.<sup>145</sup> This clause purports to require that parcels classified within one of four property classifications—residential, open space,

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<sup>141</sup> Pindell, *supra* note 80, at 573–74 (outlining the general parameters of due process claims against land use regulations).

<sup>142</sup> See Sterk, *supra* note 104, at 1731 n.3 (discussing possible judicial scrutiny of municipal schemes that require the taking of land to develop a given parcel).

<sup>143</sup> See Pindell, *supra* note 80, at 573–74 (discussing the typical standard of review applied to due process claims against land use regulations).

<sup>144</sup> See *id.* (“In assessing due process violations, federal courts give substantial deference to legislative determinations, overturning these determinations only in instances of bad faith, arbitrary and capricious application, or absence of a rational relationship to health, safety, morals or general welfare.”).

<sup>145</sup> MASS. CONST. art. XLIV (“Full power and authority are hereby given and granted to the general court to impose and levy a tax on income in the manner hereinafter provided. Such tax may be at different rates upon income derived from different classes of property, *but shall be levied at a uniform rate throughout the commonwealth upon incomes derived from the same class of property.*”) (emphasis added).

commercial, and industrial—be taxed at a uniform rate across the category, regardless of location or assessed value.<sup>146</sup>

LVT opponents may challenge two-rate taxation proposals as violative of the clause.<sup>147</sup> A potential challenger could argue that residential land and buildings cannot be assessed at different tax rates because they fall within the same constitutional class.<sup>148</sup> As a result, the Massachusetts Constitution's strict limit on the number of property classifications for assessment and taxation purposes represents a significant hurdle for municipal governments seeking to separate land and buildings into separate classifications for an LVT scheme.<sup>149</sup> Unfortunately, precedent from the Massachusetts Supreme Judicial Court (SJC) also strengthens the textual basis for a uniformity challenge to LVT. In 1942, the SJC held that land and buildings “are ordinarily parts of the same real estate, and . . . cannot be separated for the purpose of collecting taxes,” further weakening the constitutional basis for establishing separate classes of property to tax land and buildings at differential rates.<sup>150</sup> On top of these uniformity concerns, the Massachusetts Constitution also contains a “proportionality clause,” which requires that taxes levied on incomes derived from a given property parcel must be proportional to the value of the assessed parcel.<sup>151</sup> In analyzing how LVT may fare under various state

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<sup>146</sup> *Id.*; see also MASS. GEN. LAWS ch. 59 § 2A (2019) (outlining the four real property classifications).

<sup>147</sup> Coughlan, *supra* note 77, at 290–91 (discussing potential uniformity issues posed by LVT under various state constitutions).

<sup>148</sup> See *supra* note 84 (outlining the real property classifications).

<sup>149</sup> Currently, Massachusetts has four property classes: residential, commercial, industrial, and open space. As a result, the legislature would have to modify the current classification framework to implement a separate LVT so as to avoid violating the constitutional classification requirement. See Richard D. Coe, *The Legal Framework in the United States*, in LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE 129, 144–45 (Richard F. Dye & Richard W. England eds., Lincoln Institute of Land Policy 2009); see also MASS. CONST. art. CXII (“[T]he general court may classify real property according to its use in no more than four classes and to assess, rate and tax such property differently in the classes so established, but proportionately in the same class, and except that reasonable exemptions may be granted.”).

<sup>150</sup> *Town of Lenox v. Oglesby*, 41 N.E.2d 45, 48 (Mass. 1942).

<sup>151</sup> Coe, *supra* note 149, at 136 (“[P]roportionality is the concept that property taxes on different parcels of property should be proportional to the values of those properties.”); see also MASS. CONST. art. CXII (permitting the legislature to “impose and levy proportional and reasonable assessments, rates, and

constitutions, Richard D. Coe, an economics professor specializing in taxation policy, summarized some of these constitutional hurdles:

[T]ax rates may vary by class and by jurisdiction without violating constitutional uniformity provisions, but *differential tax rates on the same class of property in the same jurisdiction would face a formidable constitutional challenge*. It is perhaps the most fundamental requirement of state constitutional uniformity provisions that property in the same class and not subject to any exemption provision face the same statutory tax rate.<sup>152</sup>

The specter of Proposition 2½ further complicates the uniformity and proportionality issues. In theory, if a two-rate taxation system were to clear the uniformity and proportionality hurdles set by the Massachusetts Constitution, municipalities would nevertheless remain constrained in their ability to set the land-value portion of the LVT at a high enough rate to make the system effective.<sup>153</sup> As one scholar explained, if the unimproved value of the land of a given parcel is not taxed at a rate sufficiently higher than the rate applied to improvements on the land, the owner will not be incentivized to shift their utilization of the land to a more productive use:

As the tax rate on land increases, landowners have a strong incentive to make capital improvements to land that will produce enough revenue to offset the higher taxes . . . [a]ccordingly, LVT proponents argue that land should be taxed at a much higher rate than improvements to land because such a tax will incentivize more efficient land usage . . . LVT provides landowners both a carrot and a stick. LVT's carrot comes in the form of the benefit the tax system provides: if landowners put bigger buildings on their land, the value of those buildings will be taxed at a much lower rate than the land. LVT's stick is that if a landowner

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taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said [C]ommonwealth.”)

<sup>152</sup> Coe, *supra* note 149, at 141 (emphasis added).

<sup>153</sup> See *supra* notes 95–97 and accompanying text (discussing the taxation constraints placed on municipalities in Massachusetts by Proposition 2 ½).

holds land in an unproductive fashion and fails to make improvements, it will cost much more than under a single-rate system.<sup>154</sup>

As a result, Proposition 2½ represents a significant constitutional barrier to implementing any LVT scheme because it effectively handicaps the ability of even the most reform-minded municipalities or state legislators to experiment with LVT at a local level.

### B. Potential Solutions

The most comprehensive method of overcoming these legal obstacles would be to amend the Massachusetts Constitution to allow the legislature to pass LVT in various forms.<sup>155</sup> However, amending the Massachusetts Constitution by popular initiative is not a simple task; the last time this occurred was nearly twenty years ago, with the passage of Article CXX in 2000.<sup>156</sup> Proponents of prospective amendments must gather a minimum of twenty-five thousand signatures, and the amendment must be approved by both the legislature and the governor, who retains veto power.<sup>157</sup> Realistically, authorizing LVT via constitutional amendment would be a challenging and lengthy process, given the lack of popular and political understanding of LVT as a policy tool as well as widespread opposition to land-use reform at the local level.<sup>158</sup>

An alternative method to passage of a new constitutional amendment would be to fashion a creative interpretation of Article CXII of the Massachusetts Constitution, which in relevant part states:

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<sup>154</sup> In other words, Proposition 2½ would prevent both the “carrot” and the “stick” of the LVT scheme from functioning as intended. *See* Farris, *supra* note 100, at 764.

<sup>155</sup> Coe, *supra* note 149, at 157 (“However, even in states that currently have the most formidable legal barriers embedded in their constitutions, a state constitutional amendment granting the legislature the power to enact a land tax of whatever form is the magic elixir that cures all constitutional problems.”).

<sup>156</sup> MASS. CONST. art. CXX.

<sup>157</sup> MASS. CONST. art. XLVIII §§ IV, VI (“If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters . . . [s]ubject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.”).

<sup>158</sup> *See* discussion *infra* Part V.

[I]n addition to the powers conferred under Articles XLI and XCIX of the Amendments, the general court may classify real property according to its use in no more than four classes and to assess, rate and tax such property differently in the classes so established, but proportionately in the same class, and *except that reasonable exemptions may be granted*.<sup>159</sup>

Whether LVT could survive a uniformity or proportionality challenge based on a novel reading of Article CXII is a matter of statutory interpretation. Does the clause, “except that reasonable exemptions may be granted,” suggest that exemptions to the strict four-class system can exist? Or does the clause simply apply to exemptions from proportional taxation within the same class? Given the clause’s location within the broader paragraph, the latter reading emerges as more likely; however, the question has never been litigated directly.<sup>160</sup>

Despite the absence of a conclusive judicial opinion on this question, challenges regarding the nature of “reasonable exemptions” under Article CXII (as well as exemptions from uniformity and proportionality principles generally) do not exactly strengthen the case for LVT’s constitutionality. For example, prior to the passage of Article CXII, the SJC considered a proposed taxation scheme that would have allowed municipalities to exempt new residential construction from property tax assessments for five years, finding that “a tax assessed upon most property at the current rate but upon other property at a

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<sup>159</sup> MASS. CONST. art. CXII (emphasis added).

<sup>160</sup> As discussed previously, the SJC has held that land and buildings “are *ordinarily* parts of the same real estate, and . . . cannot be separated for the purpose of collecting taxes.” *Town of Lenox v. Oglesby*, 41 N.E.2d 45, 48 (Mass. 1942) (emphasis added). This language lends credence to an argument that land and buildings cannot be split out into separate classes for assessment purposes.

However, because *Oglesby* was decided prior to the passage of Article CXII, and therefore did not consider Massachusetts’ current property tax classification structure, it does not directly answer the question of whether “reasonable exemptions” can apply to the Constitution’s uniformity requirement. *See Verizon New England Inc. v. Board of Assessors of Boston*, 62 N.E.3d 46, 50 (Mass. 2016) (observing that the Massachusetts legislature enacted legislation to implement Article CXII as proposed in 1979). Even if *Oglesby* were to be considered as part of this question, the use of the term “ordinarily” by definition implies that there are exceptions to the ordinary rule.

lower rate, or in this instance (as to buildings) at no rate at all, is not ‘proportional’ to property owned.”<sup>161</sup> The Court further explained that the resulting tax assessment disparities between property owners would violate uniformity principles under the Massachusetts Constitution because among owners “[t]here would no longer be a uniform ratio between the value of property owned and the taxes upon it.”<sup>162</sup>

In considering the proposed constitutional amendment to Article IV (eventually codified as Article CXII), the SJC expounded further on the concept of uniformity, finding that the Constitution requires only “that municipal tax rates *must be uniform within each municipality*, not that they must be uniform” across all municipalities.<sup>163</sup> The Court concluded by noting that the new tax classification scheme would result in municipalities setting their local tax rates in new and novel ways, but that underlying uniformity principles would still apply to those rates.<sup>164</sup>

Regardless of this line of reasoning, the explicit purpose of Article CXII’s passage was to permit taxation of residential property at different rates than commercial, industrial, or open space, so long as property within each classification was taxed at the same rate.<sup>165</sup> In theory, any LVT scheme featuring a two-rate framework runs counter to the purpose of the Article’s passage, as such a system relies explicitly on differential taxation of land and improvements, both of

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<sup>161</sup> Although not identical to LVT, this proposed scheme had a similar goal: namely, to encourage development of new housing in a time of shortage (specifically, for veterans returning home from World War II). *See In re Opinion of Justices*, 85 N.E.2d 222, 223, 225 (Mass. 1949).

<sup>162</sup> *Id.* at 225.

<sup>163</sup> *Opinion of the Justices to the House of Representatives*, 393 N.E.2d 306, 311 (Mass. 1979) (emphasis added).

<sup>164</sup> *Id.* at 312 (“The present statute assumes, we believe correctly, that the requirement of uniform rates (for each class of property) relates to the individual municipality, not the State; and the same would hold in respect to the bill. It is true that rates under the bill would be set in a novel way, but that would not affect the meaning of the requirement.”); *see also C&S Wholesale Grocers, Inc. v. City of Westfield*, 766 N.E.2d 63, 66 (Mass. 2002) (“We have interpreted these constitutional provisions to require that taxes be proportionate within each class and within each municipality.”).

<sup>165</sup> *See Verizon New England*, 62 N.E.3d at 54 (“This history reflects that the animating purpose of art. 112 was to change the meaning of proportionality in art. 4 in order to enable residential property to be treated differently from other property classes. Article 112 must be interpreted to give effect to this purpose . . .”).

which are considered “residential property” under the Massachusetts Constitution.<sup>166</sup> Thus, even under the deferential standard of review adopted by the SJC when considering tax measures,<sup>167</sup> both the history of the amendment’s passage and precedent concerning the amendment make arguing for the constitutionality of LVT under Article CXII an uphill battle.

Despite all this unfavorable precedent, even if LVT proponents failed in arguing for the constitutionality of LVT using one of the two aforementioned strategies, a uniformity challenge still might not succeed. For example, like Massachusetts, the Pennsylvania Constitution contains a strict uniformity clause for property taxation.<sup>168</sup> Despite this, two-rate taxation has flourished in several Pennsylvanian municipalities for over a century with no successful challenges striking down the scheme in state court.<sup>169</sup> This peculiarity may persist because of LVT’s long history in Pennsylvania;<sup>170</sup> proposing LVT in Massachusetts now would likely draw much more significant public and legal scrutiny.<sup>171</sup> However, the apparently-accepted constitutionality of LVT in Pennsylvania could serve as useful persuasive precedent when responding to legal questions regarding LVT’s constitutionality in Massachusetts. Prior to LVT facing or surmounting any legal challenge in Massachusetts, though, it would have to clear what may be an even larger hurdle: political opposition.

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<sup>166</sup> See *supra* note 91 and accompanying text (observing that land and improvements are currently considered together for the purposes of levying property taxes under the residential classification).

<sup>167</sup> *Verizon New England*, 62 N.E.3d at 53 (quoting *WB & T Mtge. Co. v. Assessors of Boston*, 889 N.E.2d 404, 409 (Mass. 2008)) (“We start from the premise that [a] tax measure is presumed valid and is entitled to the benefit of any constitutional doubt, and the burden of proving its invalidity falls on those who challenge the measure.”).

<sup>168</sup> *Coe*, *supra* note 149, at 156–57 (“[T]he Pennsylvania Constitution contains a uniformity clause as well as a universality clause, both dating effectively from 1874.”).

<sup>169</sup> *Id.* (“These provisions have had a long and convoluted history of interpretation by the Pennsylvania Supreme Court . . . [d]espite this apparent substantial constitutional hurdle, Pennsylvania is one of the very few states that have enacted a land tax . . .”).

<sup>170</sup> See *supra* notes 111–118 and accompanying text (discussing Pennsylvania’s experiments with LVT).

<sup>171</sup> See discussion *infra* Part V (discussing historical and current political and public opposition to land use reform in Massachusetts).

## V. *Political Obstacles to LVT in Massachusetts*

Setting possible legal challenges aside, like most proposed land use regulations, LVT would also likely encounter significant political opposition.<sup>172</sup> Massachusetts has a long legacy of “Not-In-My-Backyard” (NIMBY) popular sentiment.<sup>173</sup> Many residents of Greater Boston vocally oppose relaxed land use regulations or new development regardless of context or proposal.<sup>174</sup> Furthermore, wealthy, white, older homeowners disproportionately show up to public meetings and comment on proposed housing projects, opposing any policies that will lead to increased development.<sup>175</sup> This trend is unsurprising, given this particular demographic group’s overwhelming economic self-interest to maintain the ever-increasing upwards march of home prices.<sup>176</sup>

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<sup>172</sup> Cohen & Coughlin, *supra* note 81, at 372 (discussing potential political obstacles and rationale for opposition to a two-rate taxation framework).

<sup>173</sup> See, e.g., Michael Wheeler, *Negotiating NIMBYs: Learning from the Failure of the Massachusetts Siting Law*, 11 YALE J. REG. 241, 243–49 (1994) (tracing the history of NIMBYism in Massachusetts with regards to waste disposal and multi-family housing development).

<sup>174</sup> See Megan E. Irons, *Boston’s storied history of NIMBY-ism*, BOS. GLOBE (Apr. 24, 2015, 12:00 AM), <https://www.bostonglobe.com/metro/2015/04/23/boston-storied-history-nimby-ism/ABus2RAm8JRWdIWjq15aIM/story.html> (detailing an extensive list of major projects derailed by community opposition in the Boston area); see also *infra* note 175 (providing examples of opposition to housing developments and zoning reform across Greater Boston).

<sup>175</sup> KATHERINE LEVINE EINSTEIN, MAXWELL PALMER, & DAVID GLICK, BOSTON UNIVERSITY INITIATIVE ON CITIES, RACIAL DISPARITIES IN HOUSING POLITICS: EVIDENCE FROM ADMINISTRATIVE DATA 1 (2018) (“We show that homeowners and whites are strikingly overrepresented in these venues, and Latinos are especially underrepresented. Strong majorities of all racial/ethnic groups oppose the construction of new housing, though support is significantly higher among black meeting participants. Even in highly diverse communities, development meetings are dominated by whites who oppose new housing, potentially distorting the housing supply to their benefit.”).

<sup>176</sup> In early 2019, the aggregate housing wealth of homeowners aged 62 and older reached exceeded \$7 trillion for the first time in history. This represents approximately an amount equal to 34 percent of U.S. GDP. See Chris Clow, *Senior Housing Wealth Tops \$7 Trillion for First Time Ever*, REVERSE MORTGAGE DAILY (Mar. 13, 2019), <https://reversemortgagedaily.com/2019/03/13/senior-housing-wealth-tops-7-trillion-for-first-time-ever/> [<https://perma.cc/X57X-CKPE>].



Notice and comment periods, public meetings, and citizen input were originally put in place to safeguard vulnerable communities against the excesses of government urban renewal programs that bulldozed entire neighborhoods in the 1950s and 1960s.<sup>177</sup> However, in Greater Boston, unrepresentative minority populations have hijacked these processes to shrink, delay, or even kill proposed housing developments or land use reforms.<sup>178</sup> As a result, planners, government officials, and developers often face vociferous NIMBY vitriol when proposing new housing.<sup>179</sup> These sentiments have manifested repeatedly across Greater Boston as populations have grown and housing demand has spiked.<sup>180</sup>

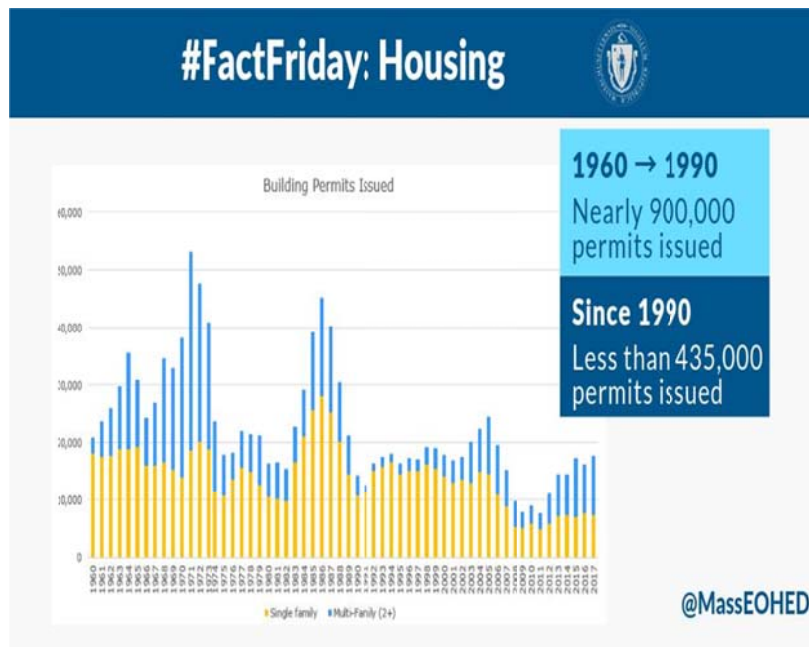
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<sup>177</sup> EINSTEIN ET AL., *supra* note 175, at 2 (“In the wake of these government- and developer-driven excesses, reformers pushed for more neighborhood input in redevelopment decisions.”)

<sup>178</sup> *Id.* at 3 (“Rather than empowering underrepresented interests, these meetings amplify the voices of older, home-owning, and male residents who have lived in their communities for longer periods of time.”)

<sup>179</sup> *Id.* (“NIMBY (Not In My Backyard) sentiments predominate in these venues.”)

<sup>180</sup> See, e.g., Kelsey Bode, *Hamilton residents reject affordable housing proposal*, SALEM NEWS (Oct. 18, 2018), [https://www.salemnews.com/news/local\\_news/hamilton-residents-reject-affordable-housing-proposal/article\\_526ccf90-2f15-5b88-96ed-02fd8a1780d2.html](https://www.salemnews.com/news/local_news/hamilton-residents-reject-affordable-housing-proposal/article_526ccf90-2f15-5b88-96ed-02fd8a1780d2.html) [https://perma.cc/W496-GMWR] (“Residents Saturday voted down a proposal to pay \$600,000 to encourage a local nonprofit developer to build a smaller affordable housing development.”); Jon Chesto & Tim Logan, *Legislature may get involved in fight over housing at old power plant in South Boston*, BOS. GLOBE (Jan. 20, 2019, 6:44 PM), <https://www.bostonglobe.com/business/2019/01/20/legislature-may-get-involved-fight-over-housing-old-boston-power-plant/DEzCYbNxtTJa1rPdJxvY1J/story.html> (“The project has been under review for nearly two years by the Boston Planning & Development Agency, with the developers last summer shaving nearly 250 housing units from their original plan in response to the concerns. Last month, the city agency asked for more information about transportation and other impacts. That request will trigger another public comment period . . . probably extending the process for several more months.”); Jesse Collings, *Arlington residents group looking to halt zoning density changes*, ARLINGTON ADVOC. (Mar. 26, 2019, 1:00 PM), <https://arlington.wickedlocal.com/news/20190326/arlington-residents-group-looking-to-halt-zoning-density-changes> [https://perma.cc/Q29J-RLUW] (“With Town Meeting on track to make a crucial decision regarding changes to the zoning bylaws that would increase housing density in certain neighborhoods, a group of residents is mobilizing to try and prevent the changes from being approved . . . .”); Adam Gaffin, *Lagrange Street residents win:*



Unsurprisingly, despite calls for more multifamily development from recent governors, housing production rates in Massachusetts are approximately half of what they were in the 1970s and 1980s, even while the Commonwealth’s economy and population are booming today.<sup>181</sup> The Massachusetts Office of Housing and Economic

*Board rejects condo building; they get to keep fire-ravaged eyesore*, UNIVERSAL HUB (Apr. 9, 2016, 9:40 AM), <https://www.universalhub.com/2016/lagrange-street-residents-win-board-rejects-condo> [<https://perma.cc/C5C9-2AVN>] (“The Zoning Board of Appeals this week rejected a proposed condo building on the site of a former asthma-inhaler factory in West Roxbury, citing neighborhood concerns about density, parking and the developer’s proposal to assemble prefab modular units on the site, rather than hiring local workers for more traditional construction.”).

<sup>181</sup>Anthony Flint, *How to Block Multi-Family Housing*, *Boston-Style*, CITYLAB (June 19, 2019), <https://www.citylab.com/equity/2019/06/nimbys-housing-boston-massachusetts-single-family-zoning/591964/> [<https://perma.cc/9V3Q-RYQZ>] (“‘Massachusetts builds only half of the homes that we did each year in the 1970s when our economy was stagnant.’ Not that there haven’t been good efforts. The last three governors—Mitt Romney, Deval Patrick, and now Charlie Baker—have all pleaded for more multifamily construction.”).

Development has illustrated the downwards trend of housing production in the Commonwealth.<sup>182</sup>

In response to this pervasive NIMBYism and increasing housing costs, a burgeoning Yes-In-My-Backyard (YIMBY) counter-movement has begun to emerge across Greater Boston.<sup>183</sup> The broader American YIMBY movement first rose to prominence in San Francisco, and although YIMBY organizers represent a wide swath of political and social diversity, the movement broadly advocates for reducing regulatory and political barriers to boost housing supply.<sup>184</sup> Across the United States, YIMBY organizations have sprung up to combat traditional narratives about housing affordability and land use regulation, growing in large part due to frustration with exclusionary zoning, convoluted approval processes, and intense neighborhood opposition.<sup>185</sup>

However, pro-housing advocates nationally have encountered resistance not only from traditional NIMBY elements but also from various community organizations and social justice groups.<sup>186</sup> For example, in late 2018, YIMBY activists held their third-annual

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<sup>182</sup>Massachusetts Executive Office of Housing and Economic Development (@MassEOHED), TWITTER (Apr. 12, 2019, 12:05 PM), <https://twitter.com/MassEOHED/status/1116734051736543232> [<https://perma.cc/R56A-JGBR>].

<sup>183</sup> See, e.g., *ABC Platform*, A BETTER CAMBRIDGE, <https://www.abettercambridge.org/platform> (last visited Mar. 28, 2019) [<https://perma.cc/6MSE-AN5W>] (“[F]or Cambridge to continue to live up to its promise, we must solve our housing affordability crisis. One of the most important ways to do that is to build new homes in our city and region. Increasing density is crucial to racial justice, environmental sustainability and quality of life . . . ABC is proud to be part of the nation’s growing YIMBY (yes in my backyard) movement.”); *Platform*, SOMERVILLE YIMBY, <https://somervilleimby.org/platform/> (last visited Mar. 28, 2019) [<https://perma.cc/K39D-VCA2>] (“Somerville and the Boston region as a whole are suffering through a housing affordability crisis. To address it, we need to build more housing.”).

<sup>184</sup> See Anthony Flint, *Backyard Brouhaha*, LINCOLN INST. OF LAND POLICY (Feb. 26, 2019), <https://www.lincolninst.edu/publications/articles/backyard-brouhaha> [<https://perma.cc/DA4E-DKG9>] (explaining the origins and broad objectives of the YIMBY movement).

<sup>185</sup> *Id.* (“YIMBYism arose in large part out of frustration with neighborhoods saying no to new housing supply.”).

<sup>186</sup> *Id.* (“[T]he backlash against the YIMBY movement has been strong, as community activists have warned that increased development actually makes things worse. They worry, with some evidence, that the zoning changes YIMBYs are advocating for only accelerate gentrification and displacement—disproportionally harming low-income families and communities of color.”).

national conference in the Roxbury neighborhood of Boston, convening approximately 250 individuals from around the region and country to discuss housing policy.<sup>187</sup> The event sparked both counter-protests from local community groups and an opposing “People’s Assembly” coalition meeting aimed at developing “a more equitable approach to development in Boston.”<sup>188</sup>

As the housing affordability debate rages on across Greater Boston, one takeaway is clear: communities are averse to change, and politicians, in response to constituent pressure, often drag their feet on housing-related issues.<sup>189</sup> Political opposition to land use reform in the Commonwealth is not a partisan issue: opponents of recent statewide zoning reform bills have ranged from suburban Republicans to urban Democratic Socialists.<sup>190</sup> While implementing LVT in Massachusetts remains a purely theoretical exercise for now, the history of political gridlock over land use legislation suggests that any new proposal, especially one involving a relatively obscure taxation scheme, would likely encounter opposition in the legislature.<sup>191</sup> Although some

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<sup>187</sup> Tim Logan, *Two gatherings, two visions for fixing Boston’s housing crisis*, BOS. GLOBE (Sept. 20, 2018, 9:17 PM), <https://www.bostonglobe.com/business/2018/09/20/two-gatherings-two-visions-for-fixing-boston-housing-crisis/aB9HnRP3QGmSHxM07bV8WI/story.html> (“Organizers expect about 250 people to attend from the Boston area as well as from the West Coast, Texas, Canada, and even London.”).

<sup>188</sup> *Id.* (“Several such groups, including some that advocate for renters facing eviction, are holding a “People’s Assembly . . . in Roxbury, where they’ll map out what organizers say would be a more ‘equitable’ approach to development in Boston.”); see Flint, *Backyard Brouhaha*, *supra* note 184 (“[A] coalition of local social justice groups organized a protest under the banner Homes for All. Bearing spools of caution tape imprinted with the words ‘No Displacement Zone,’ they interrupted the closing plenary, which featured a speaker from the National Low Income Housing Coalition.”).

<sup>189</sup> See *supra* notes 45–51 and accompanying text (discussing political obstacles to passing comprehensive housing reform in the Massachusetts legislature).

<sup>190</sup> See *Mass. Senate passes sweeping zoning reform bill*, WORCESTER BUS. J. (June 10, 2016), <http://www.wbjournal.com/article/20160610/NEWS01/160619998/mass-senate-passes-sweeping-zoning-reform-bill> (“The bill was passed on a 23-15 vote, with [several Democratic members] joining the chamber’s six Republicans in opposing the bill.”); Logan, *Limbo*, *supra* note 46 (describing opposition to the Governor’s Housing Choice Bill from Cambridge Democratic Representative Mike Connolly).

<sup>191</sup> In addition to the Governor’s Housing Choice Bill, a Senate zoning reform Bill passed in 2016 but was never taken up by the House. See BLUESTONE &

academics have floated proposals to mitigate the impact of opposition to LVT—including the introduction of uniform property tax credits for those landowners most severely impacted by a new two-rate taxation system<sup>192</sup>—adding another element to an already unfamiliar taxation concept may only turn off politicians further. In the context of these considerations, while political opposition does not by itself constitute a de facto death knell for new land use proposals, it does add another layer of complexity and difficulty for any state or local authorities contemplating LVT in Greater Boston.

## **VI. Policy Recommendations**

Any LVT proposal in Massachusetts would undoubtedly face significant legal and political hurdles that would make the legislative process a herculean endeavor. For the time being, LVT remains an exciting theoretical concept, but one that may never manifest in any practical form in the Commonwealth. With home and rent prices continuing to climb upwards,<sup>193</sup> what alternatives should policymakers consider? Many of the current proposed and implemented state and municipal initiatives are commendable,<sup>194</sup> albeit arguably too modest in scope to truly make a significant dent in the shortage of affordable housing stock across Greater Boston. No single solution will solve the region's housing woes; housing affordability remains a complex issue influenced by multiple factors, some of which state and municipal officials have little control over.<sup>195</sup> However, examples from other

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HUESSY, *supra* note 6, at 52–53 (discussing the successful passage of S. 2311, a comprehensive zoning reform package, in the Senate and subsequent failure of the House to consider the bill).

<sup>192</sup> See Cohen & Coughlin, *supra* note 81, at 372 (“[O]pposition to tax reform will likely be reduced if, as part of the introduction of two-rate taxation, uniform property tax credits are also introduced.”).

<sup>193</sup> See discussion *supra* Part II (chronicling the rapid increase in housing costs in Greater Boston over the last decade).

<sup>194</sup> See discussion *supra* Part II(b) (outlining the various state and municipal initiatives in Massachusetts designed to promote housing affordability).

<sup>195</sup> See Robert Dietz, *The housing market has a growing affordability problem, and here's why*, HOUSINGWIRE (Mar. 13, 2019), <https://www.housingwire.com/blogs/7-pulse/post/48418-pulse-the-housing-market-has-a-growing-affordability-problem-and-heres-why> [<https://perma.cc/2JAH-E745>] (acknowledging the complexities of the housing market and listing influencing factors such as labor shortages, construction material costs, and regulatory burdens).

cities and states across the country offer lessons that policymakers in Massachusetts would do well to heed.

First, many of the nation's most affordable metropolitan areas build new housing at much faster rates than Greater Boston.<sup>196</sup> Furthermore, even relatively unaffordable metropolitan areas that have aggressively expanded the supply of new housing have seen prices begin to level off.<sup>197</sup> Seattle in particular offers a compelling case study as it closely resembles Boston in a few significant ways. Both cities have similar municipal and metropolitan area populations,<sup>198</sup> and both have undergone rapid population growth over the last decade,<sup>199</sup> driven in part by steady job growth, especially in high-paying industries, such as technology and life sciences.<sup>200</sup> Despite these similarities,

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<sup>196</sup> See *supra* notes 62–65 and accompanying text (outlining the stark differential in housing permitting rates between Greater Boston and other peer metro areas both in the aggregate and on a per-capita basis).

<sup>197</sup> Megan Leonhardt, *7 cities where rent prices are actually falling*, CNBC (Jun. 12, 2018, 11:15 AM), <https://www.cnbc.com/2018/06/12/rent-prices-are-falling-in-these-7-major-u-s-cities.html> [<https://perma.cc/RT9Q-NZ4D>] (“The price drops in Portland, Oregon, and Seattle are due, in large part, to the flood of new apartments hitting the market . . . [o]verall, Portland saw a 2.2 percent decrease, while Seattle rental prices dropped 0.9 percent.”).

<sup>198</sup> In 2017, Seattle had a population of 724,745 compared to a population of 685,094 for Boston. By contrast, the Boston metropolitan area contained roughly 4.6 million people compared to 3.5 million in Greater Seattle. See Wolfram Alpha, <https://www.wolframalpha.com/input/?i=Seattle,+Washington+vs.+Boston,+Massachusetts> [<https://perma.cc/NLF4-SSCZ>].

<sup>199</sup> See, e.g., Gene Balk, *Seattle once again nation's fastest-growing big city; population exceeds 700,000*, SEATTLE TIMES (May 25, 2017, 6:48 AM), <https://www.seattletimes.com/seattle-news/data/seattle-once-again-nations-fastest-growing-big-city-population-exceeds-700000/> (“With the big bump in population, Seattle also hit a milestone this past year, passing the 700,000 mark for the first time. And remarkably, it didn’t even take us 10 years from the previous milestone of 600,000—that happened in 2009.”); Jaclyn Reiss, *How population numbers in Boston and Massachusetts changed over the last 8 years*, BOS. GLOBE (Apr. 22, 2019, 6:15 PM), <https://www.bostonglobe.com/metro/2019/04/22/how-population-numbers-boston-and-massachusetts-changed-over-past-years/9ph6dKSuYuKvMAOPmfTV8I/story.html> (“The new data shows that the population in Suffolk County, which includes Boston, increased from 722,190 in 2010 to 807,252 in 2018.”).

<sup>200</sup> See, e.g., Sarah Szczybinski, *Jobs outlook 2019: Seattle, state can expect ‘still-strong’ growth*, SEATTLE TIMES (Jan. 11, 2019, 6:05 AM), <https://www.seattletimes.com/explore/careers/job-outlook-2019-seattle-has-a-very-innovative-workforce-and-no-one-wants-to-miss-the-party/> (“Washington’s employ-

one stark difference has also emerged in recent years—a significant disparity in new housing construction.<sup>201</sup> In 2018, Greater Seattle permitted new housing at over double the rate of Greater Boston, both in the aggregate and on a per capita basis.<sup>202</sup> While boosting the supply of new housing to accommodate growing demand is only one component of promoting housing affordability, Seattle’s approach has for the time being slowed and even reversed at times its formerly-inexorable climb of housing prices.<sup>203</sup> After nearly a decade of precipitous increases, both apartment rents and new condo prices have leveled off as a result of a sustained and aggressive multifamily unit building boom.<sup>204</sup> The boom stems in part from two rounds of up-zoning in 2017 and 2019, which permitted denser multifamily construction

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ment growth was expected to slow in 2018, but the state’s overall growth and competitiveness improved significantly, ranking the fifth-highest in the nation compared to the seventh spot in the previous year. . . .”); Megan Woolhouse, *Mass. Job growth best since 2000*, BOS. GLOBE (Jan. 24, 2014, 12:00 AM), <https://www.bostonglobe.com/business/2014/01/24/best-year-for-jobs-since-dot-com-era/d9nTNWzNslw30rUtUUAvkN/story.html> (“The Massachusetts economy added more than 10,000 jobs in December as the state capped its best year for job growth since the dot-com era.”).

<sup>201</sup> See *supra* notes 62 and 64 and accompanying text.

<sup>202</sup> The Boston metropolitan area permitted 14,183 new housing units in 2018, compared to 28,186 in the Seattle metropolitan area. That same year, Boston only permitted 52.6 new units of housing per 10,000 residents, compared with 109.3 in Seattle. See *id.*

<sup>203</sup> From 2017 to 2018, average rents across the Seattle metropolitan area dropped 2.9 percent, equating to a monthly saving of around \$100 for some inner neighborhoods. The dip in rents is largely attributed to a multi-year multi-family apartment construction boom. See Mike Rosenberg, *Seattle-area rents drop significantly for first time this decade as new apartments sit empty*, SEATTLE TIMES (Jan. 12, 2018, 6:00 AM), <https://www.seattletimes.com/business/real-estate/seattle-area-rents-drop-significantly-for-first-time-this-decade-as-new-apartments-sit-empty/>.

<sup>204</sup> See Mike Rosenberg, *Relief for Seattle-area condo buyers as prices drop amid flood of new units*, SEATTLE TIMES (Apr. 5, 2019, 1:44 PM), <https://www.seattletimes.com/business/real-estate/relief-for-seattle-area-condo-buyers-as-prices-drop-amid-flood-of-new-units/> (“Condo prices countywide dropped 7% in March compared to a year prior, according to monthly real-estate data released Friday . . . [t]he number of condos on the market countywide has soared 164% while sales have decreased 15% versus a year ago.”); see also *id.*

around key transportation hubs while also imposing additional affordability requirements on developers.<sup>205</sup>

Meanwhile, Greater Boston's comparatively anemic growth in housing stock has accompanied an alarming rise in housing costs.<sup>206</sup> The region's inability to produce a sufficient supply of new housing stems from several factors, including widespread NIMBYism,<sup>207</sup> exorbitant construction costs,<sup>208</sup> and chronic underproduction of student housing by the region's numerous universities.<sup>209</sup> While these factors remain largely out of the control of state and municipal lawmakers, the City of Boston in particular could address one element over which it has direct control: zoning rules and regulations.<sup>210</sup> Restrictive and exclusionary zoning practices that limit the supply of new housing (in particular new multifamily housing) have contributed to the spiraling

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<sup>205</sup> Daniel Beekman, *Seattle upzones 27 neighborhood hubs, passes affordable-housing requirements*, SEATTLE TIMES (Mar. 18, 2019, 4:30 PM), <https://www.seattletimes.com/seattle-news/politics/seattle-upzones-27-neighborhood-hubs-passes-affordable-housing-requirements/> (“The council’s vote will allow denser construction in and around 27 neighborhood hubs while requiring developers in those areas to contribute to affordable housing by including low-income apartments in their buildings or by paying fees.”).

<sup>206</sup> See discussion *supra* Part II(a) (chronicling the rise in housing costs across Greater Boston over the last decade).

<sup>207</sup> See discussion *supra* Part V (discussing the NIMBY phenomenon in Boston).

<sup>208</sup> See Tim Logan, *Land costs, labor drive Boston-area housing prices out of control*, BOS. GLOBE (Nov. 13, 2015), <https://www3.bostonglobe.com/business/2015/11/12/boston-area-housing-costs-hitting-extreme-levels/GqZU6MDkAI4poEw8EHwIoL/story.html?> (“The average 1,600 square-foot apartment today costs more than \$438,000 to build . . .”).

<sup>209</sup> See Tim Logan, *Fenway in line for more student housing*, BOS. GLOBE (April 23, 2019, 8:54 PM), <https://www.bostonglobe.com/business/2019/04/23/fenway-line-for-more-student-housing/hH5NSooXFwuFNpm53NXPCM/story.html> (“[S]chools in the Fenway have added thousands of dormitory beds, with more permitted or in planning. Still, the schools haven’t been able to keep up, especially in housing their fast-growing populations of graduate students, who are more likely to live off-campus in apartments that could otherwise house families.”).

<sup>210</sup> Like in most states, Massachusetts law largely delegates zoning law to local municipalities. See MASS. GEN. LAWS ch. 40A § 5 (2019) (“Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal . . . [a]doption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law . . .”).



increase in housing costs in many of the country's most economically-prosperous metro areas.<sup>211</sup> These land use limitations have persisted in many cities despite “growing awareness of the environmental benefits of density, a preference for denser living, and an informed cohort of young professionals pushing for increased housing supply in urban areas.”<sup>212</sup> In addition to causing housing shortages on a local level, one study has estimated that restrictive zoning rules reduce the output of U.S. GDP by nearly \$1.5 trillion each year by limiting opportunities for new development.<sup>213</sup> Ostensibly, by loosening zoning rules across Greater Boston, new municipalities could pave the way for both large-scale and incremental housing development currently blocked by existing municipal codes.<sup>214</sup>

Thankfully, Greater Boston would not have to start from scratch in any effort to reform its zoning rules and regulations because another large, economically prosperous metro area has already provided a successful example: Minneapolis.<sup>215</sup> In late 2018, the midwes-

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<sup>211</sup>See, e.g., Joe Cortwright, *Zoning and cities on the national economic stage*, CITYCOMMENTARY (Nov. 25, 2015) <http://cityobservatory.org/zoning-and-cities-on-the-national-economic-stage/> [<https://perma.cc/5GMM-4XH2>] (discussing the impact of restrictive zoning practices on economic and geographic mobility and housing costs); Watsky, *supra* note 18 (“Restrictions on minimum lot sizes, strict building codes, and other elements of Euclidean zoning have increased housing costs, limited new housing construction, worsened affordability issues, and increased the inequality divide in urban areas.”).

<sup>212</sup>Infranca, *supra* note 24, at 878.

<sup>213</sup>See Conor Dougherty, *How Anti-Growth Sentiment, Reflected in Zoning Laws, Thwarts Equality*, N.Y. TIMES (July 3, 2016) <https://www.nytimes.com/2016/07/04/business/how-anti-growth-sentiment-reflected-in-zoning-laws-thwarts-equality.html> (“The lost opportunities for development may theoretically reduce the output of the United States economy by as much as \$1.5 trillion a year, according to estimates in a recent paper by the economists Chang-Tai Hsieh and Enrico Moretti.”).

<sup>214</sup>This is one of the primary objectives of Governor Baker’s Housing Choice Bill. See *supra* notes 45–51 and accompanying text (discussing the bill’s objective to facilitate municipal zoning reform across Massachusetts).

<sup>215</sup>See Miguel Otárola, *Minneapolis City Council Approves 2040 comprehensive plan on 12-1 Vote*, STAR TRIBUNE (Minneapolis) (Dec. 7, 2018, 10:22 PM), <http://www.startribune.com/minneapolis-city-council-approves-2040-comprehensive-plan-on-12-1-vote/502178121/> [<https://perma.cc/J8B6-QJNP>] (“The 2040 plan has gained national attention for its citywide upzoning. It would allow the construction of multi-family housing, such as duplexes or triplexes, in neighborhoods that for decades have been reserved for single-family homes.”).

tern city passed perhaps the most progressive and equitable zoning reform package in modern American history: Minneapolis 2040.<sup>216</sup> Developed over a lengthy period characterized by extensive public involvement, the plan features three primary zoning reforms: elimination of single-family zoning citywide; elimination of mandatory parking minimums; and up-zoning along key job clusters and transit corridors.<sup>217</sup> Passed in conjunction with an inclusionary development scheme<sup>218</sup> and \$40 million in budget appropriations earmarked for affordable housing,<sup>219</sup> Minneapolis 2040 aims to encourage denser housing development citywide in addition to boosting the overall supply of new construction.<sup>220</sup>

The plan originally grew out of concerns about the region's failure to build housing at a rate sufficient to accommodate an upward trend in newcomers (and the corresponding spike in housing prices that resulted).<sup>221</sup> Prior to the passage of Minneapolis 2040, over 75 percent of Minneapolis residents lived in neighborhoods zoned

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<sup>216</sup> See Jenny Schuetz, *Minneapolis 2040: The Most Wonderful Plan of the Year*, BROOKINGS: THE AVENUE (Dec. 12, 2018) <https://www.brookings.edu/blog/the-avenue/2018/12/12/minneapolis-2040-the-most-wonderful-plan-of-the-year/> [https://perma.cc/AJ9K-DW6Y] (“[The Minneapolis City Council] delivered an early holiday gift to Twin Cities urbanists: several key zoning reforms, neatly packaged in an 1100-page comprehensive plan.”).

<sup>217</sup> *Id.* (outlining the core tenets and policy reforms of the plan).

<sup>218</sup> See Andy Mannix, *Minneapolis Proposal Would Require Builders to Create More Affordable Units*, STAR TRIBUNE (Minneapolis) (Oct. 3, 2018, 8:53 PM), <http://www.startribune.com/minneapolis-proposal-would-require-builders-to-create-more-affordable-units/495109521/> [https://perma.cc/8FKS-BD8B] (outlining the scope of the city's proposed inclusionary development program).

<sup>219</sup> Jessica Lee, *How Minneapolis Mayor Jacob Frey Plans to Spend \$40 Million on Affordable Housing*, MINNPOST (Sept. 7, 2018), <https://www.minnpost.com/politics-policy/2018/09/how-minneapolis-mayor-jacob-frey-plans-to-spend-40-million-on-affordable-housing/> [https://perma.cc/FZ-8T-2Y3S] (providing a detailed line-item breakdown of the affordable housing appropriations).

<sup>220</sup> Schuetz, *supra* note 216 (outlining the plan's objectives of encouraging greater housing density and construction).

<sup>221</sup> Lee, *supra* note 219 (“The local push comes as leaders at the region and state levels grapple with similar problems, amid a housing crunch across Minnesota that only 10,000 additional homes per year can fill, according to a state analysis. The Minneapolis-St. Paul metro area has added 83,000 households since 2010 while building less than 64,000 new homes to accommodate those newcomers, according to the Metropolitan Council.”).

exclusively for single-family homes or small multifamily dwellings, effectively capping the amount of new development that could go in those neighborhoods to satisfy growing housing demand.<sup>222</sup> Ideally, the plan's passage will facilitate both the construction of small-scale duplexes and triplexes in these majority single-family neighborhoods, as well as large multifamily apartment complexes in denser areas of the city; both outcomes will be necessary for Minneapolis to increase its housing development in line with its growing population.<sup>223</sup> Although Minneapolis 2040 remains too young to measure any possible empirical effects of its zoning reforms on housing production and affordability,<sup>224</sup> the Twin Cities will be an important region to watch as a case study to contrast with metro areas characterized by more restrictive zoning.<sup>225</sup>

In Greater Boston, municipalities have extensive autonomy to tailor their zoning rules under the Commonwealth's municipal zoning act.<sup>226</sup> Unfortunately, most cities and towns outside of the City of Boston feature restrictive zoning rules that intentionally constrain new housing development, including complicated approval processes, minimum parking requirements, multifamily apartment bans, and

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<sup>222</sup> Patrick Sisson, *Can Minneapolis's Radical Rezoning Be a National Model?*, CURBED (Nov. 27, 2018, 12:45 PM), <https://www.curbed.com/2018/11/27/18113208/minneapolis-real-estate-rent-development-2040-zoning> [<https://perma.cc/AU7B-93PP>] (“[M]ore than 75 percent of city residents live in areas that only allow single-family residences or small multi-family housing”).

<sup>223</sup> See Schuetz, *supra* note 216 (“The only long-term way to reduce housing costs—or at least reduce the rate of housing price growth—is to build more housing.”).

<sup>224</sup> The plan received final approval in late 2019, with changes going into effect on January 1, 2020. See Miguel Otárola, Minneapolis moves forward by allowing triplexes citywide, STAR TRIBUNE (Nov. 8, 2019, 8:58 PM), <http://www.startribune.com/minneapolis-moves-forward-with-allowing-triplexes-citywide/564664232/>.

<sup>225</sup> See Sisson, *supra* note 222 (suggesting that Minneapolis could serve as a national model for zoning in other cities).

<sup>226</sup> See generally MASS. GEN. LAWS ch. 40A (2019). Boston itself has a separate zoning statute, enacted in 1964. See BOS. PLANNING & DEV. AGENCY, WHAT IS ZONING?, <http://www.bostonplans.org/zoning/what-is-zoning> (last visited July 23, 2019) [<https://perma.cc/4C5Q-ETAR>] (“The most recent edition of the Boston Zoning Code, enacted in 1964, has evolved and adapted to accommodate the unique character of these places and it includes many separate maps and amendments.”).

height/ setback requirements.<sup>227</sup> The aforementioned 40B and 40R, though positive legislative developments, amount to using Band-Aids to heal a gaping wound.<sup>228</sup> However, shifting political winds and the prospect of loosened procedural requirements for zoning reform at the local level could lead to future local reforms along the lines of those seen in Minneapolis.<sup>229</sup> Other states and cities have already begun to emulate the midwestern city's approach.<sup>230</sup> Whether and when these reforms happen in Boston, though, remains to be seen.

## **VII. Conclusion**

No one questions that Greater Boston is mired in an affordable housing crisis that could stymie intergenerational wealth building for decades. Both the Commonwealth and many local governments have acknowledged that more needs to be done to slow rising housing costs. Various statutes and programs have largely failed to do so. A targeted LVT scheme could help bridge the gap by spurring increased housing development and providing another dedicated revenue source for affordable housing development at the state or municipal level. However, the real-world efficacy of proposed LVT schemes across the country remains unclear, and LVT would likely face significant constitutional and political challenges in Massachusetts. Such obstacles do not warrant complete abandonment of LVT as a policy option in the Commonwealth but can inform policymakers and legislators should they consider LVT as a new arrow in their currently-insufficient affordable housing quiver.

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<sup>227</sup> See DAIN, *supra* note 25, at iv–vi (describing the key zoning drivers behind the region's affordable housing crisis).

<sup>228</sup> See *supra* notes 21–35 and accompanying text (providing an overview of the Commonwealth's affordable housing and smart-growth statutes).

<sup>229</sup> See *supra* notes 45–51, 183–185 and accompanying text (discussing proposed zoning reform and pro-development activism in the Commonwealth).

<sup>230</sup> See, e.g., Michael Andersen, *Oregon Just Voted to Legalize Duplexes on Almost Every City Lot*, SIGHTLINE INST. (June 30, 2019), <https://www.sightline.org/2019/06/30/oregon-just-voted-to-legalize-duplexes-on-almost-every-city-lot/> [<https://perma.cc/V6D6-BW7R>] (highlighting a recent bill passed in Oregon that effectively bans single-family zoning statewide and encourages denser, multifamily development in municipalities with populations greater than 25,000).