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Why California Cities Already Lost Local Control (And Why the State Needs to Push Housing)

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Many Californians agree that the state government should push local cities to accept more housing. Yet many Californians also have an understandable reluctance to take power away from these cities, because they believe that dispersed local governments usually allow for a more open and responsive political system.

In this post, I want to explain why local governments in California have already lost control over most of the functions that matter, and why the current regime leaves them with little besides the ability to say “No!” to development, and little incentive to say anything but “No.” Therefore, the only reasonable solution to California’s housing crisis is to use state law to open up more and more intensively developed land.

To understand the current development problem in California, one needs to understand the peculiar situation of California’s local governments. California currently has about 5,000 different local governments, which sounds as if it’s a lot, but is actually less than a handful of other, smaller states.¹ One particular issue facing California, however, is that most areas in the state are not run by a single “local government,” but instead by multiple overlapping and distinctive “special district” governments. These overlapping governments now run many of the functions once reserved to local cities, and already limit local control and accountability.

The state originally created special districts to build regional infrastructure. Starting in 1921, the

state created district utilities to run water, sewer and power lines in areas outside of municipal control.² In 1928 they began creating regional bridge boards like the Golden Gate Bridge and Highway Authority. In 1947 the state created “Joint Power Authorities” to allow cities to combine to build certain regional projects (like hospitals, parking lots, and sports stadiums) that had benefits beyond any one city.³ In 1962 the state created the Bay Area Rapid Transit (BART) District to administer a massive regional public transit system, which inspired other regional transportation boards.⁴

These types of special districts are known as “enterprise districts,” since they try to collect revenues from customers to pay for their own operations. Yet many of the districts also were given the power to collect their own taxes, issue their own bonds, and run their own systems, without consulting with local cities or municipalities. After all, progressive activists created these districts to escape political skullduggery and political input.⁵ The end result, however, is that many essential functions of local government are no longer controlled by the “city” where most people live and in which most people vote.

Still, the most important local governments in California remained popularly-elected general municipalities, such as the cities of San Jose or Oakland or Los Angeles, which controlled everything from police to garbage to zoning. By the mid-20th century, these cities often encompassed at least one “school district,” and

¹ Max Neiman, “Local Government: Designing and Financing the Cities and Counties of California,” *Governing California: Politics, Government, and Public Policy in the Golden State*, Ethan Rarick ed. (Berkeley: Berkeley Public Policy Press, 2013), 329–365, 331.

² The first special districts were actually irrigation districts, for farmland, beginning with the Wright Act of 1887, but this article focuses on districts in urban governance. Special districts have both appointed and elected members, but public awareness of elected members is minimal, and they operate with little public input. California Senate Local Government Committee, “What’s So Special About Special Districts: A Citizen’s Guide to Special Districts in California,” 4th Ed., October 2010, https://www.ca-ilg.org/sites/main/files/file-attachments/resources__2010-WSSASD4edition.pdf

³ California Senate Local Government Committee, “Government’s Working Together: A Citizen’s Guide to Joint Powers Agreements,” August 2007, <https://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/GWTFinalversion2.pdf>

⁴ Michael C. Healy and John King, *BART: The Dramatic History of the Bay Area Rapid Transit System* (Berkeley: Heyday, 2016), 38.

⁵ For examples, see Louise Nelson Dyble, *Paying the Toll: Local Power, Regional Politics, and the Golden Gate Bridge* (Philadelphia: University of Pennsylvania, 2009).

schooling constituted the single biggest expenditure for each city or area.⁶

Both these general municipalities and their schools were funded by property taxes. The cities competed with each other for new housing and commercial development because development brought increased property taxes, which could be used to lower current residents' taxes or to improve school district funding. Zoning was generally "fiscal zoning," in that it kept out low-value uses in high-value areas, but allowed almost any high-value project to proceed.⁷ Fiscal zoning encouraged housing and especially businesses in lower-income municipalities, which were willing to deal with the pollution and traffic of development in exchange for property tax gains, and allowed housing to "filter down" to all income classes in other cities.⁸

As the 1960s began, California cities were "growth machines," seemingly competing with each other for the maximum amount of new development and new property taxes to spend on burgeoning schools. The state built new housing at the fastest rate in the nation.⁹ As the then pro-development Milpitas Post told its reader in 1966, "Cows don't pay taxes!"¹⁰

Yet complaints about property taxes began to threaten the growth machine. Such tax complaints were the result of both old and new state policies. Economic research shows that multiple,

overlapping local governments tend to tax at higher rates than non-overlapping, general governments, so California's districts helped push the state's property taxes to among the highest in the nation, and these taxes often went to districts or projects many voters barely understood.¹¹ A scandal in the early 1960s also dented popular support for property taxes. A number of local tax assessors (officials who appraised the value of property for taxing purposes), were caught taking bribes to underestimate values, and large commercial properties benefited most.¹²

These tax complaints inspired state law AB 80 in 1966, which forced all localities to assess all property taxes by market value, and forced them to have the same tax rate for each type of property. The result was a sudden jump in property taxes for homeowners, who learned that before the law municipalities had appraised and taxed business more than homeowners (for the simple reason that businesses don't vote, but homeowners do).¹³ Not only did AB 80 increase the property tax burden on homeowners, it made it difficult for cities or school districts to give selective tax breaks in response to new development, or to tax new residents at a higher rate (the old "welcome stranger" strategy, as it was called). Local residents who looked unlikely to get such tax breaks were less interested in development.

⁶ California once had many small elementary school districts, often comprising just one schoolhouse, along with larger high school districts. A 1936 state law required these to combine where they overlapped with each other and with the local city government, and led to the current situation of closely connected unified city and school governance. See Silicon Valley Community Foundation, "How Did We End Up with 54 School Districts in San Mateo and Santa Clara Counties," May 2012, San Mateo County <https://www.siliconvalleycf.org/sites/default/files/report-edu.pdf>. For extent of overlap in California, see William Fischel, "The Congruence of American School Districts with Other Local Government Boundaries: A Google Earth Exploration," SSRN Paper, April 1, 2010, p. 7. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=967399

⁷ Bruce Hamilton, "Zoning and Property Taxation in a System of Local Governments," *Urban Studies* 12, no. 2 (June 1975): 205–211.

⁸ Peter M. Detwiler, "California Within Limits: Research Notes for a History of California's Local Boundary Laws," UC Davis Land Use & Natural Resources Program, December 2013, p. 6–7, <https://www.yololafo.org/files/f21148c91/CA-WithinLimits-ResearchNotesonLocalBoundaryLaws+Dec2013.pdf>

⁹ California Legislative Analyst's Office, "California's High Housing Costs: Causes and Consequences," March 17, 2015, <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>

¹⁰ Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton: Princeton University Press, 1996), 284.

¹¹ Wallace Oates, *Fiscal Federalism* (1972); Russell Sobel, "Optimal Taxation in a Federal System of Governments," *Southern Economic Journal* 64 (2): 468–485; Benedict Jimenez, "The Fiscal Performance of Overlapping Local Governments," *Public Finance Review* 43 (5) (Jan. 2014): 606–35.

¹² Self, *American Babylon*, 286–287, 318.

¹³ Self, *Babylon*, 287

Even more crippling to the 1960s growth machine were changes to the spending side of the ledger. Instead of funding welfare directly through the state, the state began mandating that cities themselves increase welfare spending. Voters were not amenable to having property taxes go to spending they had not endorsed, and they resisted.¹⁴ More importantly, in 1968 a group of parents and lawyers sued the Los Angeles Unified School District, complaining that they had to pay higher taxes than parents elsewhere, and that funding school districts based on property taxes was inherently unfair and unequal. In 1971 they won their case, known as *Serrano v. Priest I*, before the California Supreme Court, which demanded the state spend more on schools. The state had been contributing to school spending to decades, however, and attempted to add just a little more to the pile.¹⁵

The real end of local control in California was the *Serrano v. Priest II* case in 1976. In *Serrano II*, the California Supreme Court decided that vague verbiage in the California constitution required every local school district in the state to receive almost equal funding (no more than a \$100 difference per student).¹⁶ Never mind that many districts with poor residents (such as industrial and central cities) received substantial funding, because they had lots of commercial property to tax, or that many suburban districts received poor funding (because they had no businesses), the case was seen as a necessity to ensure equality.¹⁷ The results were disastrous.

After *Serrano II*, property taxes became anathema. Most of the money raised in property

taxes for schools would now be taken to some other school district to be “equalized” away, so people began voting against any school funding. California’s school spending and school outcomes quickly dropped to among the lowest in the nation.¹⁸

The *Serrano* case, as economist William Fischel has shown, also birthed Proposition 13 as another means to limit such taxes. A previous version of the proposition had failed by a 2 to 1 margin in 1972, before the end of the *Serrano* case. After *Serrano*, in 1978, the proposition passed by more than 2 to 1.¹⁹ Prop. 13 limited all property taxes to 1% of the assessed value of property, which could increase at no more than 2% a year as long as that property was held by the same person.²⁰

With lower property taxes no longer a possible benefit of development, and school districts funded largely by the state, people took less interest in encouraging development or boosting their local schools and towns. Cities, especially in high service coastal areas,²¹ began substantially tightening zoning and forbidding new development. Beginning in 1970, after early changes to tax codes and early state spending mandates, the City of Petaluma in Sonoma County instituted the nation’s first “moratorium” on all new building permits, which in the late 1970s became almost standard in many California cities. Dozens of cities soon created “urban growth boundaries,” beyond which no housing was allowed. Other cities created “slope density” ordinances to limit once common homes on hillsides. Locals sponsored new “open-space” ordinances to buy potentially developable land

¹⁴ Self, *Babylon*, 287–98.

¹⁵ The state also limited what high-income districts could spend on their students. William Fischel, “Did Serrano Cause Proposition 13,” *National Tax Journal* 42, no. 4 (Dec. 1989): 465–73

¹⁶ Fischel, “Did Serrano Cause”; William Fischel, “How Serrano Caused Proposition 13,” *Journal of Law and Policy* 12 (1996): 607.

¹⁷ See essays in Wallace Oates, ed., *Property Taxation and Local Government Finance* (Boston: Lincoln Institute of Land Policy, 2001).

¹⁸ Fischel, “Did Serrano Cause”; Fischel, “How Serrano Caused Proposition 13.”

¹⁹ William Fischel, “Serrano and Proposition 13: The Importance of Asking the Right Question,” *State Tax Notes* (August 25, 2008): 535–542.

²⁰ Mac Taylor, California Legislative Analyst’s Office, “Understanding California’s Property Taxes,” November 29, 2012, <https://lao.ca.gov/reports/2012/tax/property-tax-primer-112912.pdf>

²¹ See Louise Nelson Dyble, *Paying the Toll*, 178.

near highways. Property taxes were replaced with high “impact fees” for new development, designed to keep housing out.²²

There was also a surge in rent control ordinances after 1978, when local residents realized that apartment houses were no longer bringing substantial tax benefits, so there was less reason to keep their value high. These rent controls also inhibited development. Many cities expanded their industrial or agricultural zoned land, or added multi-acre minimum lot sizes for houses, all with the goal of preventing housing development in particular. The already existing tendency of California cities to favor commercial properties over housing of any sort became more pronounced, and the job to housing imbalance increased.²³

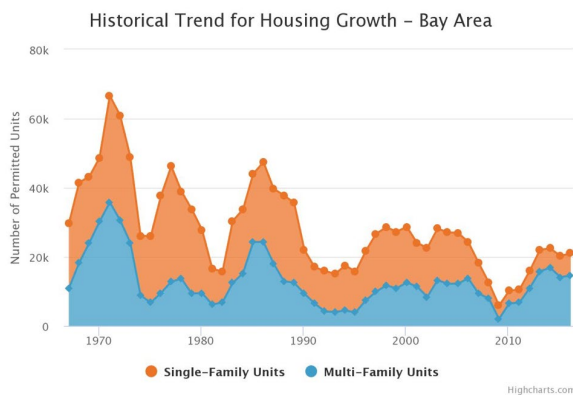


Figure 1: Post-1970 there was a downward trend in housing production in California coastal communities. Source: Vital Signs, “Housing Permits,” Metropolitan Transportation Commission <http://www.vitalsigns.mtc.ca.gov/housing-permits>

At the same time as the revolutions in local taxing and spending, the California state government tried to corral the ever-proliferating number of local districts and governments, which they noted operated “substantially without democratic control.” The state did it in a typically California way: by adding another layer of new local government. In 1963 the state government forced each county, which usually encompassed several cities and dozens of special districts, to create its own “Local Agency Formation Commission,” now affectionately known as “LAFCOs.”²⁴ These LAFCOs were composed of commissioners from several cities and districts, and were required to sign off on any new changes in local city boundaries or special districts, to make sure they didn’t conflict.²⁵ In reality, LAFCOs began to forbid cities and districts from “annexing” empty land in order to extend their water, sewer, and roads to them. The multiple public officials in LAFCOs themselves did not stand to benefit from new property taxes or development from a single expanding city, and they resented the loss of open land and development that competed with their own.²⁶ Especially after *Serrano* and Prop. 13, LAFCOs effectively prevented any expansion of urban land.

The state legislature also began creating new types of regional districts. These new districts were not supposed to create infrastructure, but to impose new regulations on infrastructure and development. In 1955 the state created the Bay Area Air Quality District, and it soon gave the

²² See the gradual evolution of the “Greenbelt Alliance” <https://www.greenbelt.org/history/> and the first “open space” district, Midpeninsula Regional Open Space District, created by San Mateo voters in 1972, and later expanded. <https://www.openspace.org/about-us/history>. Some economists have also argued that cities tightened land use policies after the arrival of federally-funded highways, which allowed poorer urban residents to move quickly into outlying suburban communities, and then led these suburban communities to zone these families out. See changes in William Fischel, *Zoning Rules!* (Cambridge, MA: Lincoln Institute of Land Policy, 2015).

²³ See William Fischel, “Municipal Corporations, Homeowners, and the Benefit View of the Property Tax,” in Oates, ed., *Property Taxation*, 51–55;

²⁴ Elisa Barbour, *Metropolitan Growth Planning in California, 1900–2000* (San Francisco: Public Policy Institute of California, 2002), 20, 26–27.

²⁵ Tami Bui & Bill Ihrke, California Senate Committee on Local Government, “It’s Time to Draw the Line: A Citizen’s Guide to LAFCOs,” May 2003. https://www.napa.lafco.ca.gov/uploads/documents/TimetoDrawLine_LAFCOs.pdf

²⁶ David E. Dowall, *The Suburban Squeeze: Land Conversion and Regulation in the San Francisco Bay Area* (Berkeley: University of California Press, 1984). For current relationships, see California Association of Local Agency Formation Commissions, “LAFCo 101 for Special Districts: Keys to Understanding and Working with Your LAFCo,” https://calafco.org/sites/default/files/documents/LAFCO%20and%20Special%20Districts%202019_for%20website.pdf

district control over industrial permitting and development that affected air quality. In 1961 the Association of Bay Area Governments was given formal power over planning in the area, and in 1965 the Bay Conservation and Development Commission was given power over development or infill on the San Francisco Bay. In 1972 the California Coastal Commission was given power over seaside development. At the same time, inspired by federal requirements for grant funding, the state created a number of “Metropolitan Planning Organizations,” which were supposed to organize transport and planning funding for whole regions.²⁷

Both the LAFCOs and new regional bodies became part of what some called the “Quiet Revolution in Land Use Control.”²⁸ The revolutionaries who vouchsafed these policies hoped to end the domination of short-cited municipalities and increase the power of broad-minded “regional plans,” which would supposedly encourage rational development across a whole metropolitan area. Like many revolutions, it did not end up as its advocates hoped. These regional bodies had little power to mandate new development or plans, but could only say “Yes” or “No” to new projects presented to them. Since only projects that had passed municipal review came to their door, in effect they became “second veto points” for any opponent of development who had failed to stop a project at a lower level. These regional bodies thus closed one of the final possibilities for growth in the region.²⁹

²⁷ Elisa Barbour, *Metropolitan Growth Planning in California, 1900–2000* (San Francisco: Public Policy Institute of California, 2002), 26–30; https://www.ppic.org/content/pubs/report/R_1202EBR.pdf; For examples, see Johnathan Smith and Alan Pendleton, “San Francisco Bay Conservation and Development Commission: Challenge and Response after 30 Years,” *Golden Gate University Law Review* 28, no. 3 (1998): 269–318; For “MPOs,” such as the Metropolitan Transportation Commission, created in 1970 for the Bay Area, see Institute for Local Government, “Metropolitan Transportation Commission (MTC)/ Association of Bay Area Governments (ABAG),” <https://www.ca-ilg.org/MPO-profile/association-bay-area-governments-metropolitan-transit-commission>

²⁸ Fred Bosselman and David L. Callies, *Council on Environmental Quality, The Quiet Revolution in Land Use Control* (Washington: Government Printing Office, 1972).

The end result of all these overlapping, intertwined, and labyrinthine policies, districts, boards, and mandates, is that California localities have little control over how to tax or spend or plan in regard to development.³⁰ One of the few powers cities have left is to say “No” to new building. Since they stand to gain little from such development, they have used this veto power with gusto, and have been supported by other vetoing bodies, such as regional districts and LAFCOs.

Before the existence of these mandates and reforms, California built the most housing in the country, and had housing prices only slightly higher than the rest of the United States. By 1980 however, California housing production lagged the nation, and its housing prices had already reached twice the national level. By the mid-2010s, California housing prices were almost triple the national level.³¹

In a different world, we could untangle the outrageous skein of bad state policies that have made local control in California but a pale shadow of its former self. We could make sure localities face both the costs and benefits of development, and have different cities decide how much development they want at different times, as they do in most of the nation.

Yet leaving today’s local governments with just the power to say “No” allows them to impose costs on others while bearing no costs themselves. Today, California needs to force a “Yes,” and stop allowing overlapping and often unaccountable governments to veto something

²⁹ David E. Dowall, *The Suburban Squeeze: Land Conversion and Regulation in the San Francisco Bay Area* (Berkeley: University of California Press, 1984).

³⁰ Of course today, these governments themselves create their own groups, with a “California Special Districts Association,” and a “California Association of Local Agency Formation Commissions.”

³¹ California Legislative Analyst’s Office, “California’s High Housing Costs: Causes and Consequences,” March 17, 2015, <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.aspx>

that everyone wants more of: housing. Current attempts to push such housing at a state level thus do not take away local control so much as allow local areas to grow again. Such reforms could and should garner everyone's support.