

# **Reparations**

## **Village Board of Trustees Presentation**

July 11, 2022





# Overview

- Definition of reparations?

Anything paid or done to make up for a wrongdoing, or the act of making up for a wrongdoing.

- Example of reparations:

Per the Civil Liberties Act of 1988, reparations were paid by the federal government in the amount of \$20,000 to over 80,000 Japanese Americans for their incarceration in internment camps during World War II.

# Reparations for Black Americans

Currently, there is a national conversation on reparations for Black Americans at the federal, state and local levels.

- On the federal level, House Bill 40 is pending in the United States House of Representatives which would establish a commission to study and develop reparation proposals. The commission would examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies. The bill has been introduced in each Congressional session since 1989. The bill was voted out of the House of Representatives Judiciary Committee last year after being introduced by Texas Representative Sheila Jackson Lee.
- House Bill 40's preamble provides a basis for this national conversation when it describes its intent as “[T]o address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, its subsequent de jure and de facto racial and economic discrimination against African Americans, and the impact of these forces on living African Americans.”
- The State of California adopted a bill on September 30, 2020 to establish a task force to study and develop reparation proposals. The Task Force issued its interim report on June 1, 2022 with a final report scheduled to be released by July 1, 2023.
- Municipalities currently considering a process of reparations include: Amherst, Massachusetts; Asheville, North Carolina; Hartford, Connecticut; and Providence, Rhode Island. Voters in the City of Detroit recently approved a ballot referendum to establish a reparations commission.
- The City of Evanston adopted and is currently implementing a reparations program which offers eligible applicants up to \$25,000 for the purpose of purchasing a home, performance of home renovations or to provide mortgage assistance. One of the goals of the Evanston program is to retain Black residents as Evanston has seen a decrease in Black residency per the most recent census data.

# Oak Park Reparations Discussions

- The Oak Park public conversations began with a presentation before the Village Board from Walk the Walk on February 22, 2021. Since that time, Walk the Walk created an independent Oak Park Reparations Task Force which is partnering with Dominican University to develop a reparations survey.
- On June 14, 2021, the Village Board adopted its Board goals and included “continue to explore Reparations” as one of the goals under “Racial Equity.”

# Legal Test for Reparations

A municipal reparations program is subject to the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment was ratified after the Civil War on July 9, 1868 and it provides:

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

# Fourteenth Amendment Precedents

*City of Richmond v. Croson*, 488 U.S. 469 (1989):

- The United States Supreme Court reviewed the City of Richmond's Minority Business Utilization Plan in the *Croson* case. The Plan required prime contractors awarded city construction contracts to subcontract at least 30% of the dollar amount of the contract to one or more "Minority Business Enterprises" (MBE's). MBEs were required to be at least 51% owned by Black, Spanish-speaking, Asian, Native-American, Eskimo or Aleut citizens.
- The Court struck down the Plan under the Fourteenth Amendment's Equal Protection Clause.

# Strict Scrutiny Test

- The Court struck down Richmond's Plan under what is known as the "strict scrutiny" test. Under the test, government policies that classify people by race are presumptively invalid unless the government shows that favoring one race over another is necessary to achieve a compelling state interest.
- Even when the government can show it has a compelling interest, it must narrowly tailor its remedy to advance that interest.
- The strict scrutiny test is applicable to government policies at the state and local level. The Supreme Court held in the case of *Fullilove v. Klutznick*, 448 U.S. 448 (1980), that when Congress takes action to remedy a nationwide history of past discrimination, it legally may do so because Congress has a specific constitutional mandate to enforce the dictates of the Fourteenth Amendment. In *Fullilove*, the Court upheld a mandatory 10% set-aside for contracts under a federal public works program for minority business enterprises that was mandated by federal statute.

# Application of the *Croson* Decision – *Vitolo v. Guzman*

- The Sixth Circuit Court of Appeals applied the strict scrutiny test to a policy of the federal small Business Administration (“SBA”) in the case of *Vitolo v. Guzman*, 999 F.3 353.
- In the *Vitolo* case, Congress allocated \$29 billion in American Rescue Plan Act funds to help restaurant owners meet payroll and other expenses and the SBA processed applications and distributed the funds.
- During the first 21 days of the program, the SBA gave grants only to applicants who were at least 51% owned and controlled by women, veterans, or the “socially and economically disadvantaged,” which included “Black Americans,” “Hispanic Americans,” “Asian Pacific Americans,” “Native Americans,” and “Subcontinent Asian Americans.”
- The government did not identify incidents of past discrimination but rather pointed to societal discrimination as a whole.
- The government also did not show that it participated in the discrimination it sought to remedy. The court stated that “the government must identify prior discrimination by the governmental unit involved or passive participation in a system of racial exclusion.”
- The court struck down the program under the Equal Protection Clause of the Fourteenth Amendment following the Supreme Court’s holding in the *Croson* case.



# Takeaways from the *Croson* and *Vitolo* Cases

- A local reparations program must target a specific past discrimination by the governmental unit involved and cannot rest a generalized assertion of past discrimination. There must be evidence of past intentional discrimination.
- The governmental unit must have had a hand in the past discrimination it seeks to remedy. With regard to governmental contracting, the *Croson* decision established the need for a disparity study conducted to adopt a preference program for minority contractors. To support a program, such a study would need to show a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the governmental entity or the governmental entity's contractors. A similar study could be used to support a reparations program.
- The program must be narrowly tailored to remedy the discrimination and race neutral alternatives must be considered.

# Evanston Historical Harms

Historic local policies and practices served to facilitate the unequal and disparate housing situation we have today.

## NORTH SHORE TOWNS AROUSED.

Influx of Negroes Alarms the Residents of Evanston, Wilmette, Winnetka, and Glencoe.

The negro population of north shore towns steadily is increasing, and in Evanston the newcomers are deemed especially objectionable by the authorities, as there are four times as many cases of assault and larceny, according to police figures.

In Evanston, Wilmette, and Winnetka the negroes are occupying in some sections entire blocks. Glencoe residents are aroused over the influx of negroes. Out of a population of 1,200 it is estimated that more than 200 are colored.

As a solution of the problem suddenly presented, Evanston citizens are reviving the old scheme of a town for negroes, to be located near Niles Center. To this it is proposed to deport objectionable characters.

# Evanston Historical Harms

- Real estate agents practiced informal racial zoning, steering Black households to West Evanston while restricting them from other areas.
- In 1919, Evanston passed an ordinance that zoned almost every block where Black people lived outside of the west side for commercial uses. This resulted in public and private redevelopment demolishing dozens of Black occupied housing units in these areas.
- In the 1920s, Aldermen began approving permit applications to move homes to the 5th ward. It is understood that the majority of these homes were owned by Black families.

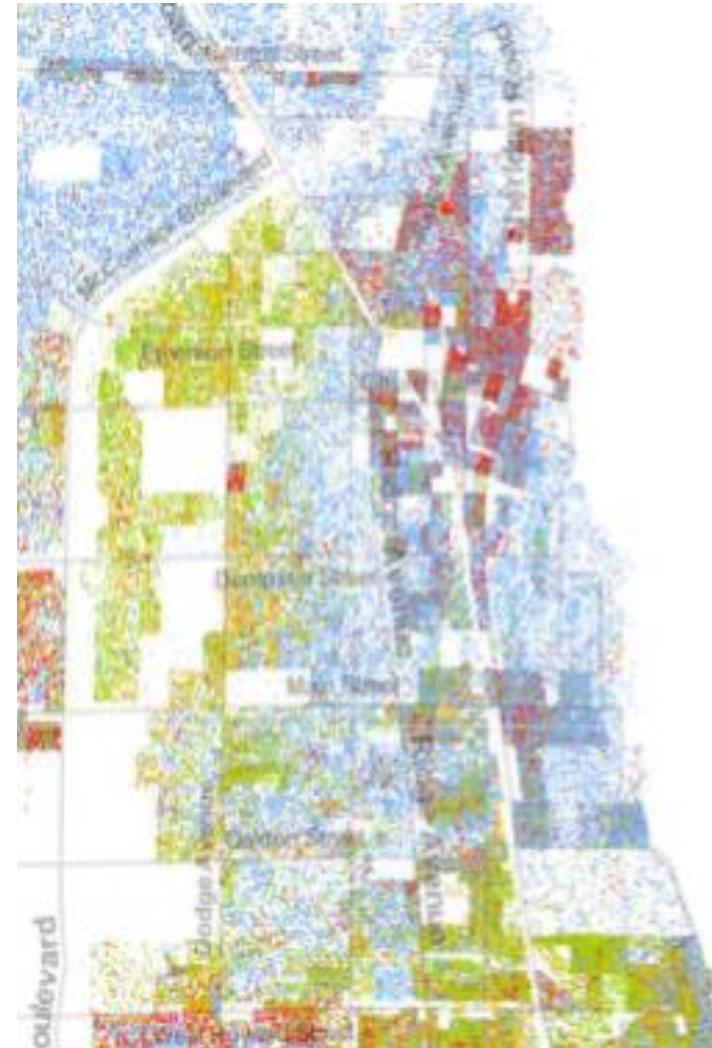
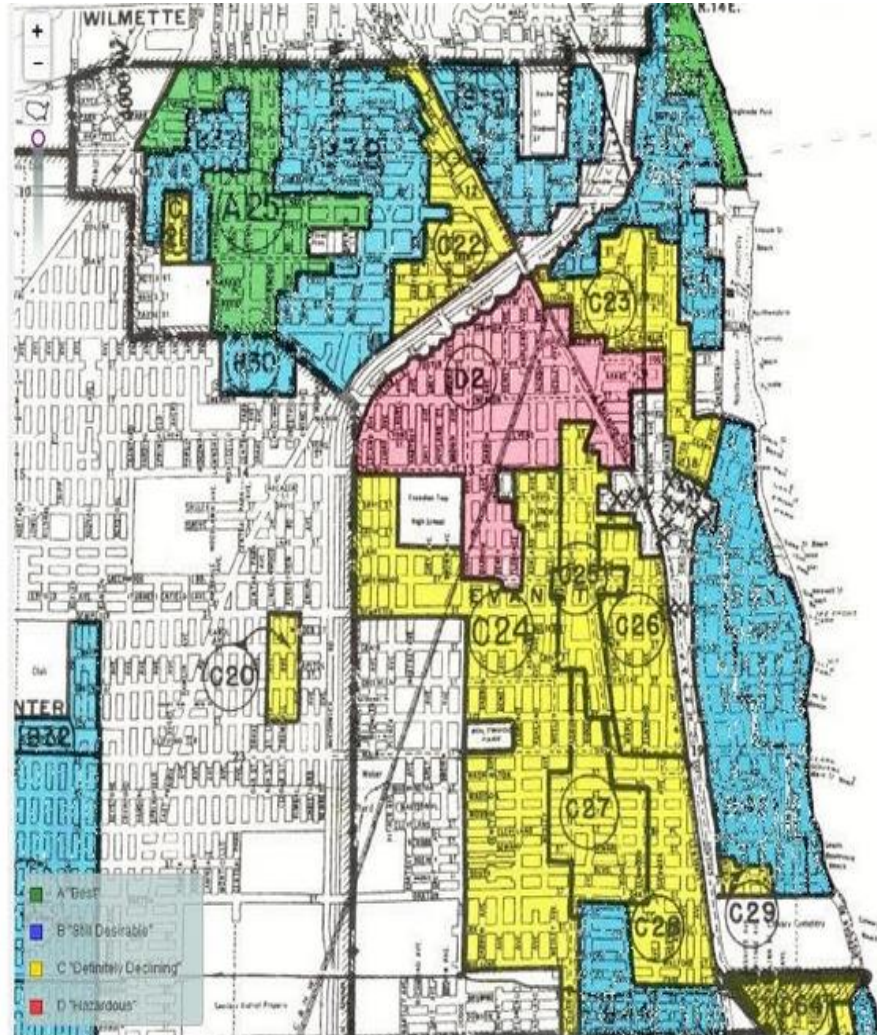
in the Recorder's Office of Cook County, Illinois, on February 4, 1921, as Document Number 7060292.  
Fifteen (15) foot building line, as shown on Plat of said Subdivision recorded in the Recorder's Office of Cook County, Illinois, as Document Number 8127208.  
Restrictions as to cost and location of buildings to be erected on said premises, as shown in Document Numbers 364149 and 361466.  
Restrictions that said premises shall not be conveyed, leased to, or occupied by anyone not a Caucasian, (servants excepted).  
Provides for reverter in case of breach thereof, as shown in Document Numbers 364149 and 361466.

*Example of a racial covenant for an Evanston home meant to exclude groups of people in certain neighborhoods and punished owners if they sold to anyone who wasn't "Caucasian"*



The City acknowledged that a redress program can not fully repair the harm from past city policies and their consequences. Reparations were the first step in a long process. Evanston's local reparations program is designed to help repair systemic discrimination including the divestment from Black Communities

1940 Map by the Homeowners Loan Corporation (HOLC)



2010 Census Block Data

1 Dot = 1 Person

- White
- Black
- Asian
- Hispanic
- Other Race / Native American / Multi-racial

What am I looking at...?

# Evanston Restorative Housing Program

Resolution 126-R-19 established a City of Evanston Funding Source devoted to Local Reparations. The Evanston City Council declared that the Cannabis 3% Retailers' Occupation Tax on adult/recreational cannabis sales within the City shall be designated solely for Evanston's Reparations Program. Evanston's Local Reparations programs will be funded by the first \$10 million dollars of the City's Municipal Cannabis Retailers' Occupation Tax.

As part of Resolution 126-R-19, the City Council formed a subcommittee of its Council members to conduct a feasibility study to determine the viability of several recommendations: 1) housing assistance and relief initiatives for Black residents in Evanston and; 2) various economic development programs and opportunities for Black residents and entrepreneurs in Evanston.

# Evanston Restorative Housing Program

Restorative Housing Reparations provide Black Evanstonians financial assistance to: (1) purchase real property located within Evanston city limits; (2) improve the quality of the existing property; and (3) reduce the principal mortgage amount, interest, and/or late penalties.

Restorative Housing Reparations is designed to offer monetary assistance to Black residents of Evanston or direct descendent of a Black Evanston resident who have suffered discrimination in housing as a result of City ordinance, policy or practice that were in effect between 1919 to 1969.

The Restorative Housing Reparations Home Improvement Program provides Black homeowners funds to repair, improve or modernize their homes. The home improvement assistance may be up to \$25,000 and may be layered with other City or external programs for which the recipient is eligible, including the CDBG Housing rehabilitation program. Homeowners must occupy homes subject to the assistance as their principal residence.



# Final Thoughts

- Legally speaking, a reparations program at the municipal level is possible, with Evanston's program being the only example thus far, and the threshold to establish a program under current United States Supreme Court precedents is high.
- Before establishing a program, compelling evidence has to be gathered in support of reparations per the *Croson* case.

# Questions?

