

## Touro College Jacob D. Fuchsberg Law Center

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From the Selected Works of Michael E Lewyn

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# Midat Sodom and the Housing Affordability Crisis

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Available at: <https://works.bepress.com/lewyn/176/>

Tosefta Sotah 3:3

The people of Sodom [said]: "Since food comes out of our land, and silver and gold, and precious stones and pearls [all come] from our land, we have no need that other people will come to us to diminish [our valuables]. Let us rise and prevent the wayfarers to enter our cities [banot]!" The Holy One of Blessing said to them: "I gave goodness to you, and you seek to forget the wayfarers from your cities?! I will forget the wayfarers in your midst [beinechem] and I will forget you from the world!"

I. OUR PROBLEM: NOT ENOUGH HOUSING TO ACCOMMODATE NEW RESIDENTS ("WAYFARERS"?)

"The people who live in coastal urban cities tend to be a pretty liberal bunch. We're leading the country on **minimum wage laws, paid sick leave, climate change mitigation**, and a host of **other important issues**. ....

But when we look beyond the words to the results of our housing policy choices, we see almost nothing but incredible, unmitigated failure. .. [liberal coastal cities have become] out of reach for lower-income, working class, and even many middle class households. This has had a disparate impact on people of color, the elderly, and other disadvantaged or vulnerable populations—and it's happening in exactly the places that claim to care most about supporting these individuals. **Rents rose faster than incomes in more liberal, coastal U.S. cities, while incomes rose faster than rents in more conservative cities such as Houston and Atlanta.**

..., consider the different approaches that liberals take to immigration into our country versus migration into our cities.

On the one hand we offer our full-throated support for liberalizing federal immigration laws and creating paths to citizenship for undocumented workers. ....

On the other hand, when a person wants to move to any of our thriving coastal cities in search of greater opportunity—whether they're citizens or not, rich or poor, immigrant or migrant—well sorry, pal, but we're all full up. We understand that the United States is a symbol of hope and aspiration for people around the world, and we welcome immigrants to our shores with open arms, but only so far as the borders of our city. If they want past *this* border, they're gonna have to earn enough to displace a poor person, because we're damned well not building any new housing for them to live in.

(Better Institutions)

CITIES WITH MORE CONSTRUCTION HAVE LOWER RENTS



\*affordability defined as percentage of monthly income spent on rent by renters  
<https://www.zillow.com/blog/newcomers-outpace-new-housing-172547/>

## II. WHY NOT ENOUGH NEW HOUSING? GOVERNMENT EXCLUDES THROUGH ZONING

“Each year, thousands of neighbors, and others, appear before zoning boards to voice support, or more commonly, opposition to zoning changes... [Usually] Their goal is to prevent or at least slow neighborhood development, and, overall, these efforts are successful. For example, in San Francisco, despite the significant demand for housing, neighborhood insistence upon regulations to limit density severely restricts new development. In 2011, the city, which has among the highest housing costs in the nation, added just 269 housing units...

In Seattle, Mayor Ed Murray had to disavow his administration’s draft housing plan, which proposed allowing multifamily dwellings in many of the city’s single-family zones.”

Profs. Wendell Pritchett and Shitong Quio, Southern California Law Review

Los Angeles: Zoning Capacity (maximum allowed by zoning) vs. actual population

	1960	2015
Actual population	2.48 million ppl	3.79 million

zoning capacity      10 million      4.33 million  
<https://twitter.com/gregmorrow/status/832789890651693057>

### III. COUNTERARGUMENTS

- a) "Concerns that new housing will cause or exacerbate gentrification" (Vicki Been, Journal of Land Use)- is NYC under Bloomberg an example?
  - i) But NYC downzoned as much as it upzoned: "[In New York under Bloomberg] more parcels were down-zoned, to place greater restrictions on potential future development, than the number of parcels that were 'up-zoned'." (Pritchett et al)
  - ii) See chart above (cities that built more housing MORE affordable, not less)
- b) "Developers in my city are only building luxury housing. They're not building anything that ordinary people can afford... say those who favor maintaining strict local limits on the use, height, and intensity of development, to those who would relax such limits. If only well-to-do people who can already afford nice homes will benefit from new construction, why risk your community's character and stability and quality of life just to let developers make more money? (Daniel Herriges, Strong Town Blog)

Responses: i) "the problem is not greed. The development industry is not choosing to build only for the rich because that's better, they are behaving exactly the way we would expect any industry to respond to an artificial cap on their production volume. The same thing would happen in the auto industry: if we limited Toyota to only 100,000 cars per year, they might well choose to keep the Lexus and scrap the Camry, even though, at volume, the Camry is more profitable." (Rick Jacobus, Shelterforce) (NOTE: by odd coincidence cheapest cities have cheapest new housing, for example a Zillow search uncovered 3 yr old houses in Kansas City for below 100k; new condo in Brooklyn's poorest area starts around 400k)

ii) "As a building ages, it often becomes more affordable. The aesthetics are a bit dated; the place needs maintenance; the neighborhood that was once up and coming is now less so. Thus, older housing tends to "filter" down to a lower income bracket: the rich are buying the new stuff."(Herriges)

c) "When you build a new luxury housing complex, new residents move into it. For the most part, they result in net additions to the number of people in the city: If the person who buys a new condo moves out of a rental unit, someone else will move into that rental. "  
(Redmond, 48 Hills)

Response: "[this argument] assumes that neighborhoods and jurisdictions are perfect substitutes and that there are no constraints on the ability and willingness of households to move. This is clearly unrealistic. Moving homes is not like driving a few extra miles. Any additional demand for housing is limited by personal and economic constraints on the ability and willingness of households to move, restrictions on immigration, and uncertainty about all the other factors that may determine a market's trajectory. " (Been)

d) But what about traffic/transit/other infrastructure? (Example: Los Angeles neighborhood association writes: "We are against overly aggressive upzoning that would result in a localized population surge that is far more than the [subway] can support.")

Response: If you make housing go elsewhere it will strain another place's infrastructure. So this is a "beggar thy neighbor" argument.

e) Community character: home buyers purchase not just land, but "intangible qualities such as neighborhood ambiance, aesthetics, and the physical environment." and any change frustrates their reliance because "the neighborhood is taking the first step toward becoming something other than the neighborhood where [the residents] chose to live." (Bradley Karkkainen, Journal of Land Use and Environmental Law)

Response: If housing forced to some other neighborhood, doesn't it change THEIR character?

Also- many of the arbiters of taste [in the 1920s] believed those new bungalow neighborhoods "ruined" the character of the places they were built, just as new apartment buildings are maligned today." (Hertz, City Observatory blog)

IV. UNANSWERED QUESTION: Even if we bring rents down to the levels of low-cost cities, won't we still have people too poor to afford those rents? If so what can we do about THAT?

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Tim Redmond, Why Market Rate Housing Makes the Problem Worse, at

<https://48hills.org/2015/06/why-market-rate-housing-makes-the-crisis-worse/>

More detailed reading list at

<https://opennewyork.city/learn.html>

GET INVOLVED: <https://opennewyork.city/> (organization lobbying for increased housing supply)

