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Make New York Affordable Again

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Make New York Affordable Again

By Michael Lewyn

Metropolitan New York City is one of the most expensive regions in the United States. Median rent throughout the region (including its suburbs) is \$2500 per month—45% of median household income, higher than in any other large metropolitan area.¹ Someone paying the national median rent could only rent 398 square feet in New York, as opposed to 447 square feet in San Francisco (the second most expensive market) and 1,111 square feet in Houston.² Homelessness in New York has increased by 41% since 2007, even though homelessness declined in the majority of states.³



Michael Lewyn

What went wrong, and what can be done? This article suggests that New York City's high costs are in part caused by government-induced supply restrictions, and suggests a variety of pro-housing reforms.

In particular, Part I of the article explains why zoning may be a major culprit for high housing prices. Part II discusses possible objections to the argument made in Part I. Part III suggests reforms, and Part IV discusses possible objections to the proposals outlined in Part III.

I. Zoning, Zoning, Zoning

Why is New York so expensive? One likely reason is that there simply not enough housing to go around: the city's rental vacancy rate is only 3.4%, well below the national average of 6.1%.⁴

Why is there not enough housing to go around? Zoning limits the amount of housing that can be placed on a given parcel, thus artificially capping the number of housing units in a city. For example, Brooklyn's East New York neighborhood is surrounded by public transit, yet the neighborhood is zoned for low-density development.⁵ Parts of the neighborhood are zoned exclusively for light industrial and commercial development, thus completely excluding new housing.⁶

Admittedly, zoning is virtually universal in the United States.⁷ But New York City zoning is unusually restrictive in a variety of ways. First, New York City has created community boards for neighborhoods; each board has the right to comment upon new development proposals, thus creating an additional means for housing opponents to delay new supply.⁸

By contrast, in some cities the only bodies voting on a zoning change are a citywide zoning board and/or a city council.⁹ Second, in New York City, a borough president also has the right to review a rezoning, thus creating yet another potential "veto point" for housing.¹⁰ As a result of these policies, even a noncontroversial rezoning takes more than six months, twice as long as in other cities.¹¹ Third, New York's State Environmental Quality Review Act (SEQRA),¹² unlike comparable statutes in all but one other state,¹³ requires the creation of an environmental impact statement (EIS) for major zoning changes.¹⁴ Although this requirement need not prevent new housing, it does delay such housing by forcing landowners to spend years going through the EIS process. For example, in 2006 New York City issued an EIS for one large project in Brooklyn;¹⁵ a court ordered the creation of a supplemental EIS in 2012, six years later.¹⁶

How do we know that New York's strict housing policies affect housing prices? First, it appears that as zoning has become more stringent, housing construction has declined. Both SEQRA and community board review were instituted in the 1970s.¹⁷

Between 1960 and 1976, the number of new housing units completed per year ranged from just over 14,000 to over 60,000, and exceeded 20,000 in all but four years.¹⁸ In the 41 years since 1976, the number of new units exceeded 20,000 in only six years (2006-10, 2016-17) and was above 14,000 for only 12 years (1989, 2002, 2004-10, 2015-17).¹⁹ Meanwhile, demand for housing has increased: between 2006 and 2014 alone, the citywide renter population grew by 600,000.²⁰

Second, evidence from other cities suggests that the absence of housing construction affects prices. A 2004 study by several economists showed that regions with the highest home price growth tended to have lower home supply growth.²¹ Conversely, increased construction eventually leads to higher vacancy rates and lower prices. For example, in Seattle rents decreased by 1.6% in 2017 when the city added 8,400 housing units.²² If New York (which has a population more than 13 times that of Seattle)²³ had added as many housing units per person as Seattle, it would have added roughly 110,000 housing units—more than four times the number New York actually added in 2017.²⁴

Third, the gap between construction prices and housing costs is additional evidence that limited supply affects prices. Construction is a highly competitive industry, so in low-regulation cities, housing costs are comparable to construction costs.²⁵ But in Manhattan, housing costs are triple the construction costs—evidence that some other factor (such as government regulation) is distorting the market.²⁶ It could be argued that high consumer demand for housing has caused housing costs to exceed construction costs—but if this was the case, landowners should have accommodated that demand by building even more housing as housing costs rose.

In sum, it seems likely that New York's high rents are linked to low vacancy rates, and that those low vacancy rates are related to government regulation that discourages housing construction. And if this is the case, it logically follows that eliminating those regulations will lead to more housing and lower rents.

II. Counterarguments, or, Does Supply Really Matter?

Despite the evidence discussed above, some commentators argue that new housing supply will not reduce rents or housing prices, because (1) developers build housing only for the wealthy, (2) demand for high-cost cities is essentially infinite, (3) increased supply will lead to increased land prices, thus raising rents, and (4) increased housing supply increases demand for housing, thus causing gentrification and displacement rather than lower housing costs. Each of these arguments will be addressed in turn.

A. The "Luxury Housing Only" Argument

A *New York Times* article on rising rents quoted (without any rebuttal) a housing activist's statement that "as long as there are upper-income renters looking for apartments, there is no incentive to build anything other than expensive units."²⁷ This argument does not justify restrictive zoning for three reasons.

First, the argument assumes that low-cost housing must be newer housing. But in New York, over 90% of housing units were built before 2000, and about 99% were built before 2010.²⁸ Thus, the effect of new housing on the cost of older housing is more relevant to affordability than the cost of new housing.

Common sense dictates that where lots of new housing is built, demand for older housing will decline, causing such housing to become less expensive. For example, suppose that a city has 1,000 occupied units, only 30 of which are vacant. A landowner builds 300 new units, causing the city's total housing stock to increase by 30%. Other things being equal, 300 of the older units will become vacant, causing rents to fall. This concept is known as "filtering"—as new housing

is built, older housing "filters" downward to lower-income renters and buyers.²⁹ So if enough new housing is built, older housing will become more affordable—no matter how expensive the new housing is.

But where restrictive zoning limits the supply of new housing, the overall housing supply is insufficient to meet demand, causing even older housing to stay expensive instead of filtering to less affluent renters and buyers. A study by Stuart Rosenthal of Syracuse University shows that American rental housing filters down at a rate of roughly 2.5% a year; that is, the income of an arriving occupant of a one-year-old unit will be 98% of the income of a new unit's occupant,³⁰ and that as a result the inflation-adjusted income of a renter of a 50-year-old unit will typically be 30% of the income of a new unit's occupant.³¹ The same study shows, however, that filtering occurs less rapidly in the most expensive markets: in New England and the Pacific (where housing prices have increased far more rapidly than in other regions) filtering occurs at a rate below 2%.³²

Second, when the "new housing is for the rich" argument is used to justify restrictive zoning, it becomes a self-fulfilling prophecy. A lower supply of new housing means that new housing will also be more expensive, and thus will be reserved for the most affluent renters. By contrast, in low-cost cities, even new housing is not particularly expensive. For example, in low-cost Houston, new housing units can rent for as little as \$875³³—far below New York City averages.³⁴ Even in high-cost New York, new housing can be relatively affordable if it is in a low-demand area. My search on the real estate website zillow.com found one Staten Island house that was built in 2019 and yet rents for only \$1250 per month.³⁵ If new non-luxury housing was never economically feasible, these houses and apartments would not exist; conversely, their existence suggests that the law of supply and demand is relevant even in high-cost markets such as New York.

B. The "Insatiable Demand" Argument

It has been argued that the law of supply and demand does not apply to expensive cities such as New York, because in such cities demand for housing is virtually unlimited.³⁶ If this argument made sense, the fastest-growing cities would have the highest housing prices, since population growth increases demand for housing. But Table 1 shows otherwise.

Table 1: Population Growth vs. Housing Price Growth: Most Expensive Major Metropolitan Areas vs. Fastest Growing Metropolitan Areas³⁷

	Median home prices (in thousands) ³⁸	Percentage population growth, 2000-2014 ³⁹
Most Expensive		
San Jose	1100	12.5
San Francisco	860	11.4
Los Angeles	634	7.3
Honolulu	600	13.2
Oxnard	589	12.3
Fastest Growing		
Raleigh	246	55.9
Austin	290	55.5
Las Vegas	266	50.4
Orlando	220	41.2
Charlotte	204	38.6

Table 1 shows that the most expensive regions in fact grew quite slowly, while less expensive regions grew more rapidly. Thus, exploding demand alone has not caused the high prices of cities such as New York and Los Angeles. In fact, all of the expensive regions grew *less* rapidly than the U.S. as a whole; the national population grew by 13.3% between 2000 and 2014,⁴⁰ more than all of the expensive regions listed above. Yet New York home prices nearly doubled during this period, while home prices in fast-growing regions such as Raleigh and Austin grew by less than 25%.⁴¹

It could be argued that income growth rather than population growth predicts demand. However, New York's regional income grew by only 65% between 2000 and 2012; by contrast, income in Raleigh, Austin, Las Vegas and Orlando grew by between 80% (Las Vegas) and 102% (Austin).⁴²

C. The "Land Prices" Argument

It could be argued that if land is upzoned for new development, land will become a more attractive investment and land prices will rise, thus causing increased housing prices.⁴³ This argument is unpersuasive for two reasons.

First, the argument leads to preposterous results. If new housing increases prices, prohibiting new housing lowers prices. And if prohibiting new housing lowers price, demolishing the existing housing supply would lower prices even more—obviously an absurd result. Although no growing city has actually demolished most of its housing supply, the failure of downzoning in Los Angeles suggests that such a policy would not reduce rents or home prices. In 1960, the city was zoned to support 10 million people.⁴⁴ By contrast, today the city is zoned for roughly its current population, which means that almost any new construction will require a rezoning.⁴⁵ And yet rents, adjusted for inflation, have risen by 55 percent, while median renter income has grown by only 13 percent.⁴⁶ Land prices also exploded, rising from \$86,229 per house in 1984 to \$483,692 in 2014.⁴⁷ Thus, freezing housing supply does not lower rents.

Second, the argument is based on the assumption that a city can create stable, permanent increases in land prices. But in fact, land prices are quite volatile: in the New York City metro area, the land price (apparently per house) swung from \$99,916 at the end of 1996 to \$418,592 at the end of 2006, down to under \$225,000 in early 2012, and up to \$250,187 in 2014.⁴⁸

Third, as a matter of theory, increased land values need not lead to increased rents: if my parcel was worth \$100,000 but now is worth \$200,000, I can build one \$200,000 unit on my land—but I can also build two \$100,000 units, or increase the housing supply by building multiple units costing less than \$100,000. Only zoning limits the number of units that can be built.

D. What About Displacement?

For decades, neighborhood activists have opposed new housing on the ground that increased population density will reduce property values.⁴⁹ But today's neighborhood activists are more inventive, arguing that new housing should be excluded because it might *increase* property values. They reason as follows: new housing will make the neighborhood more popular, leading to rising rents and even displacement of the neighborhood's existing residents.⁵⁰ For example, imagine the neighborhood of Slumville, full of decaying but inexpensive apartments. The city rezones the area to allow landowners to build new, well-maintained buildings. Because the new buildings' tenants have more disposable income, new shops and other amenities arise to serve them, which in turn makes Slumville more desirable to affluent renters. In turn, the increased demand for Slumville causes even the least valuable dwellings to become dramatically more expensive.

This argument may have some validity within a neighborhood.⁵¹ But citywide, increased demand for one neighborhood should ordinarily reduce demand for other areas. For example, suppose that Slumville is in a city with 1,000 people and two neighborhoods: Slumville and Richville. If 100 people suddenly move from Richville to Slumville because of the new apartments, suddenly Richville will have 100 vacant apartments, thus causing Richville rents to fall.

So why have rents increased over time in expensive cities such as New York? Because zoning limits the supply of apartments even in New York's versions of Richville, causing a citywide housing shortage that inflates rents in all types of neighborhoods. In fact, a leading exponent of the "displacement" theory implicitly admits as much, complaining that New York rezonings have allowed "for more luxury development in lower-income neighborhoods of color *while limiting that same type of development in more affluent and predominantly white neighborhoods.*"⁵² When only a few neighborhoods are rezoned for more housing, new housing floods into those neighborhoods, causing people who want new housing to move to those neighborhoods. To put the matter another way, concerns about displacement, when used to justify exclusionary policies, create a vicious circle: regulation leads to limited supply, which leads to higher rents, which itself leads to displacement, which causes neighborhood activists to op-

pose new housing based on their fear of displacement, which in turn creates limited supply and higher rents and more displacement.

Having said that, rents in New York's versions of Richville have not risen as rapidly as in other areas—a fact which suggests that the law of supply and demand applies even in the city's richest areas. For example, between 2000 and 2012, rents rose by 76.1% in Greenpoint/ Williamsburg (one of New York's most rapidly gentrifying neighborhoods)⁵³ but increased by only 7.3% in the Upper East Side.⁵⁴ So it seems likely that if housing supply increased sufficiently citywide, rents would fall in many neighborhoods.

III. What to Do About It?

A. The Status Quo Isn't Good Enough

New York's current mayor, Bill de Blasio, has sought to expand housing supply through piecemeal rezonings of about a dozen neighborhoods.⁵⁵ Some of these rezonings may be either very modest or never occur at all. In fact, the city appears to have decided not to rezone at least one neighborhood.⁵⁶

It seems unlikely that neighborhood-by-neighborhood upzoning will produce a large number of housing units, for the simple reason that piecemeal zoning changes create a collective action problem: even though it is rational for the city as a whole to increase housing supply, it is not always rational for an individual neighborhood's residents to agree to such changes. This is the case for two reasons. First, current residents of a neighborhood (if they are homeowners) have no reason to favor lower housing prices. If they are homeowners, lower home prices and rents are a blow to their wallets. Second, even renters do not benefit if only a few neighborhoods are rezoned to allow new housing. In this situation, their neighborhood suffers the negative effects (if any) of new population,⁵⁷ but because the expanded supply may not be significant enough to reduce citywide rents, current tenants might not get the positive benefit of lower rent. In fact, rents might increase if the new housing makes the neighborhood more popular, thus increasing demand.⁵⁸

To prevent the latter result, I favor a citywide remedy to the housing shortage. The most aggressive (and thus helpful) remedy would be for the New York state legislature to simply eliminate New York City's power to limit new housing. The statute might say something like this: notwithstanding New York's zoning enabling act,⁵⁹ cities with over one million people (that is, New York City) may not limit the type or density of housing in any area zoned for any housing at all. This statute would allow the city to use zoning to protect residents from non-residential nuisance industries, but would forbid zoning that limits the housing supply.⁶⁰ And because new housing would generally not require a re-

zoning, laws that create obstacles to rezoning (such as SEQRA) would no longer be relevant. For the reasons stated above,⁶¹ the link between housing supply and rents appears to be strong enough that such a large-scale upzoning is likely to increase housing supply and thus stabilize rents and home prices. Because the city and its suburbs compete in the same housing market, the legislature might also wish to include suburban counties as well.

A more modest alternative would be for the city to bribe neighborhood activists into tolerating new development. For example, New York City could enact an ordinance providing that when the city allows a large amount of new housing in a neighborhood, some percentage of the property taxes generated by the new development could be given to the neighborhood's homeowners in the form of property tax rebates.⁶² However, such rebates might not be large enough to discourage neighborhood opposition: homeowners' fears of change might outweigh their desire for tax benefits.⁶³

Opponents of such proposals might argue that even if allowing so much new housing would reduce rents, it is nevertheless undesirable because large amounts of new housing (1) increase traffic and otherwise burden neighborhood infrastructure, (2) alter neighborhood character and (3) undermine homeowners' reliance interest in the status quo.

B. Traffic and Infrastructure

A common argument against new housing is that adding people to a neighborhood increases traffic congestion and otherwise burdens neighborhood infrastructure such as schools and public transit.⁶⁴

But this argument is a "beggar thy neighbor" argument. If new residents strain the infrastructure of New York City, new residents will also strain the infrastructure of its suburbs (or to another city). So if restrictive zoning causes 10,000 people to relocate to a suburb instead of to a city, such sprawl does not eliminate the social harm caused by school overcrowding or traffic congestion: instead, the harm is merely shifted from city to suburb.

In fact, when regulation limits housing supply in cities, regionwide traffic congestion may actually increase. Suburbs are generally more automobile-dependent than cities.⁶⁵ If high rents shift population from walkable cities to automobile-dependent suburbs, the overall amount of societal driving will increase; people who might not even own a car if they lived in New

York City might be forced to drive tens of thousands of miles per year if they moved to suburbia.

C. Neighborhood Character

It could be argued that restrictive zoning is necessary to prevent new housing from changing a neighborhood's existing character.⁶⁶ In fact, if urban zoning causes new housing to shift from developed cities to undeveloped suburbs, the latter area's character will change far more radically than the character of a more urban site: for example, a 200-home subdivision will change a cornfield more than it would change a neighborhood full of houses and apartment buildings.

Moreover, when urban housing costs increase, this too changes neighborhood character, as people who could have afforded a neighborhood in 1990 cannot afford it today. Thus, "neighborhood character" is an argument against, rather than for, the current zoning regime.

D. Reliance

It could be argued that homeowners should have veto power over new housing because they purchased houses in reliance on the status quo.⁶⁷ This argument is unpersuasive, for three reasons. First, it rests on a circular chain of logic: zoning rules freeze existing neighborhood densities, causing neighborhood reliance on those rules, which in turn justifies government's retention of the very same rules. But if a city abolished the rules, the reliance would end, thus eliminating the justification for the reliance argument.

Second, the argument proves too much. If homeowners rely on a neighborhood's existing environment, that reliance includes not only existing densities, but existing public facilities such as a neighborhood public library. But does that mean cities should never be allowed to close libraries or change library hours? Homeowners might also rely on a neighborhood's existing racial or religious composition. But does that mean that people who differ from a neighborhood's current residents in these respects should never be allowed into the neighborhood? To state such an argument is to refute it.

Third, discouraging new housing in already settled neighborhoods leads to absurd results. Compact urban neighborhoods by definition have many residents—residents who can credibly claim that they have relied on the status quo. By contrast, undeveloped parcels of rural and suburban land have far fewer neighbors. So if zoning policy is designed to protect the sensibilities of neighborhoods' existing residents, this means that almost no new housing can be built in most of New York City, while lots of new housing should be built in semirural suburbs. But suburban sprawl creates a variety of negative consequences. As noted above, suburbs tend to be more automobile-dependent than cities.⁶⁸ So

if most new housing is built in suburbia, auto use will increase, causing increased congestion and pollution. Suburban growth also creates environmental harms unrelated to air pollution. For example, as farmland and forests are turned into suburbia, wetlands are destroyed to create suburban houses and businesses. Suburban growth causes 51% of U.S. wetland losses.⁶⁹ Because wetlands include 50% of the animals and 33% of the plant species listed as endangered or threatened by the U.S. government,⁷⁰ suburban growth endangers these species by turning wildlife habitat into new subdivisions.

And if jobs follow homes to these automobile-dependent suburbs, nondrivers are deprived of access to jobs. Even in the transit-friendly New York City region, the average commuter can reach only 36% of suburban jobs by public transit within 90 minutes.⁷¹ Because lower-income workers are often unable to afford vehicles,⁷² this externality is especially harmful to the poor.

IV. Conclusion

Over the past several decades, housing construction in New York City has become more difficult, as legal obstacles to such construction have multiplied. Sluggish supply growth combined with growing demand has led to higher housing costs. Conversely, rents and housing costs will stabilize if the rules are changed to facilitate housing construction.

Endnotes

1. Geoff Boeing & Paul Waddell, *New Insights into Rental Housing Markets across the United States: Web Scraping and Analyzing Craigslist Rental Listings*, JOURNAL OF PLANNING EDUC. AND RESEARCH, Jan. 2017, at 13-14, available at https://www.researchgate.net/publication/306400541_New_Insights_into_Rental_Housing_Markets_across_the_United_States_Web_Scraping_and_Analyzing_Craigslist_Rental_Listings.
2. *Id.* at 14-15.
3. See U.S. Department of Housing and Urban Development, *The 2015 Annual Homeless Assessment Report (AHAR) to Congress*, Nov. 2015, at 12-13, available at <https://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf>.
4. See United States Census Bureau, American Factfinder, at <http://factfinder.census.gov> ("Factfinder").
5. See Nathan T. Boone, *Varying the Variance: How New York City Can Solve Its Housing Crisis and Optimize Land Use to Serve the Public Interest*, 81 BROOK. L. REV. 837, 846 (2016).
6. *Id.*
7. See Jonathan E. Cohen, *A Constitutional Safety Valve: The Variance in Zoning and Land Use-Based Environmental Controls*, 22 B.C. ENVTL. AFF. L. REV. 360-61 (1995) (zoning "nearly universal" in United States).
8. Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999, 2033 n.119 (2007) (describing boards, and noting that they may comment on all zoning actions).
9. See, e.g., City of Fort Worth, *Zoning Changes and Application Process*, available at <http://fortworthtexas.gov/zoning/process/>.
10. See John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91, 100 (2014).
11. Compare The Department of City Planning, *Uniform Land Use Review Procedure*, available at <http://www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/lur.pdf> (community board, borough president, and planning commission review take 150 days; in addition, city council and mayor spend two months considering rezoning); with City of Dallas, *Dallas Development Guide 21*, available at http://dallascityhall.com/departments/sustainabledevelopment/development_facilitation/Documents/Dallas%20Development%20Guide%202016.pdf (in Dallas, process typically takes 10-12 weeks).
12. N.Y. ENVTL. CONSERV. LAW § 8-0101 (McKinney 2013).
13. See Stewart E. Sterk, *Environmental Law in the Land Use Process: New York's Experience With SEQRA*, 13 CARDOZO L. REV. 2041, 2042-43 (1992) (only New York and California require environmental review for projects that require government permits, such as zoning changes).
14. In particular, the law requires EIS not only for projects significantly affecting the physical environment, but also for projects significantly affecting "existing patterns of population concentration, distribution or growth, and existing community or neighborhood character." N.Y. ENVTL. CONSERV. LAW § 8-0105(6). Since a large apartment building or subdivision is likely to change a neighborhood's character by adding new residents, this means that a zoning change that significantly increases the housing supply is likely to require an EIS.
15. See Empire State Dev. Corp., *SEQRA Findings Statement 5-6*, available at https://cdn.esd.ny.gov/Subsidiaries_Projects/AYP/AtlanticYards/AdditionalResources/SEQRAFindingsStatement.pdf.
16. See *Develop Don't Destroy v. Empire State Development Corp.*, 942 N.Y.S. 2d 477 (App. Div. 2012).
17. See Pace Law School Library, *New York Environmental Legal Research Guide: State Environmental Quality Review Act (SEQRA)*, available at <http://libraryguides.law.pace.edu/c.php?g=319391&p=2133260> (Last Updated: Jan 23, 2019 4:31 PM) (SEQRA enacted in 1975); Tom Angotti, *Land Use and the New York City Charter 4*, available at <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf> (community boards created in 1975).
18. See New York City Rent Guidelines Board, *2018 Housing Supply Report* at 19, at <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/18HSR.pdf> ("Guidelines Board") (city added just over 25,000 units in 2017).
19. *Id.*
20. See Ingrid Gould Ellen & Brian Karfunkel, *Renting in America's Largest Metropolitan Areas*, NYU FURMAN CENTER & CAPITAL ONE NATIONAL AFFORDABLE RENTAL HOUSING LANDSCAPE at 7, available at http://furmancenter.org/files/NYU_Furman_Center_Capital_One_National_Affordable_Rental_Housing_Landscape_2016_9JUNE2016.pdf (population grew from 4.6 million to 5.2 million). Suburban rental demand grew by a roughly equal amount, *Id.*, so to the extent suburbanites rent in the suburbs because they are priced out of the city, the above data actually underestimates the increase in demand for urban rental housing.
21. See Joseph Gyourko et. al., *Superstar Cities*, AMERICAN ECONOMIC JOURNAL 65 (2016) available at <http://www.nber.org/papers/w12355>.

22. See Christian Britschgi, *Booming Construction and Falling Rents in Seattle Show Laws of Supply and Demand Still Apply to Housing*, at <https://reason.com/2018/10/10/booming-construction-and-falling-rents-i/>.
23. See Factfinder, *supra* note 4 (New York has just over 8.1 million people, while Seattle has 608,000).
24. See Guidelines Board, *supra* note 18 (New York added just over 25,000 units that year).
25. See Edward L. Glaeser et. al., *Why Is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, JOURNAL OF LAW AND ECONOMICS 4-6, available at <http://www.nber.org/papers/w10124>.
26. *Id.* at 4.
27. Sheila Dewan, *In Many Cities, Rent Is Rising Out of Reach of Middle Class*, NEW YORK TIMES, April 14, 2014, at https://www.nytimes.com/2014/04/15/business/more-renters-find-30-affordability-ratio-unattainable.html?_r=0.
28. See Factfinder, *supra* note 4 (only 1.7% of housing units built after 2010, and 5.6% built during 2000s).
29. See Daniel Meyer, *Is Growth Share Working for New Jersey?*, 13 N.Y.U. J. LEGIS. & PUB. POL'Y 219, 230-31 (discussing filtering).
30. See Stuart Rosenthal, *Are Private Markets and Filtering a Viable Source of Low-Income Housing? Estimates from a "Repeat Income" Model 2*, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.232.4409&rep=rep1&type=pdf>.
31. *Id.* at 3.
32. *Id.* at 28.
33. See 3712 ½ Averill Street #B, https://www.zillow.com/homes/for_rent/Houston-TX/2085184086_zpid/39051_rid/0-906731_price/0-3500_mp/2016-_built/paymenta_sort/30.297017,-94.77768,29.335495,-96.069947_rect/9_zm/ (rent for apartment built in 2018).
34. See Anthony Noto, *Renting in N.Y.C? Here's the Median Pricing*, NEW YORK BUSINESS JOURNAL (Nov. 2, 2018), <https://www.bizjournals.com/newyork/news/2018/11/02/renting-in-n-y-c-heres-the-median-pricing.html> (median New York one-bedroom apartment rents for \$3070).
35. See El Camino Loop, Staten Island, NY Real Estate, https://www.zillow.com/homes/for_rent/Staten-Island-New-York-NY/27252_rid/2010-_built/paymenta_sort/40.677773,-73.992234,40.467323,-74.3153_rect/11_zm/.
36. See, e.g., Tim Redmond, Editor's Notes, SAN FRANCISCO BAY GUARDIAN ONLINE, (Feb. 21, 2012), <http://www.sfbg.com/2012/02/21/editors-notes/> ("in a city that has limited space and nearly unlimited demand... There's no way to build enough new affordable rental housing, or housing that middle-class families can buy, to keep up with the demand.") A related argument is that housing supply is being soaked up by super-rich people who do not live in the units, but merely use them as places to hoard capital. However, even in high-cost New York City, only 1554 units cost over \$5 million and were purchased by absentee owners—a tiny part of the region's housing supply. See Dana Rubenstein, *Could De Blasio Do a Pied-a-Terre Tax?*, CAPITAL NEW YORK (Sept. 2014), <http://www.capitalnewyork.com/article/city-hall/2014/09/8552990/could-de-blasio-do-pied-%C3%A0-terre-tax>.
37. By "major" I mean with a population of over 800,000.
38. See Kiplinger, *Home Prices in the 100 Largest Metropolitan Areas*, at <https://www.kiplinger.com/tool/real-estate/T010-S003-home-prices-in-100-top-u-s-metro-areas/index.php>.
39. See Sarah Janssen, ed., THE WORLD ALMANAC AND BOOK OF FACTS 2016, at 613 (listing San Francisco and Oakland as part of the same region). I note that one fast-growing metropolitan area listed in Janssen (McAllen, Texas, where population has grown by over 40% since 2000) is not in the table above, because it is not on the Kiplinger list. However, McAllen is even less expensive than the cities listed above. See Zillow, McAllen Home Prices & Values, at <https://www.zillow.com/mcallen-tx/home-values/>.
40. See Janssen, *supra* note 39, at 605.
41. See National Association of Home Builders, The NAHB/Wells Fargo Housing Opportunity Index: Complete History by Metropolitan Area (1991-Current) (March 27, 2013), available at http://web.archive.org/web/20130527113827/http://www.nahb.org/reference_list.aspx?sectionID=135. (median home prices doubled in New York from \$195,000 to \$400,000; by contrast, Raleigh median price increased from \$159,000 to \$194,000, Austin median from \$150,000 to \$184,000, Orlando from \$112,000 to \$115,000; Las Vegas median decreased, and no data available for McAllen).
42. See Michael Lewyn, GOVERNMENT INTERVENTION AND SUBURBAN SPRAWL: THE CASE FOR MARKET URBANISM 80 (2017) (citations omitted).
43. See, e.g. Thomas Angotti, ZONED OUT: RACE, DISPLACEMENT AND CITY PLANNING IN NEW YORK CITY 37 (2016).
44. See Gregory D. Morrow, THE HOMEOWNER REVOLUTION: DEMOCRACY, LAND USE AND THE LOS ANGELES SLOW-GROWTH MOVEMENT, 1965-1992, UNIVERSITY OF CALIFORNIA, at 3, available at <http://escholarship.org/uc/item/6k64g20f#page-1>.
45. *Id.*
46. See Andrew Woo, *How Have Rents Changed Since 1960?*, APARTMENT LIST (June. 14, 2016), <https://www.apartmentlist.com/rentonomics/rent-growth-since-1960>.
47. See Michael Lewyn, *Does the Threat of Gentrification Justify Restrictive Zoning?*, 46 REAL EST. L.J. 447, 457 (2017).
48. *Id.* at 458.
49. See, e.g., *Chatham Corp. v. Beltram*, 252 Md. 578, 584, (Md. Ct. App. 1969) (opponents of new apartment buildings argued that "increased density would depreciate their property values"; court rejected rezoning).
50. See, e.g., Bethany Y. Li, *Now Is the Time! Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 FORDHAM L. REV. 1189, 1191 (2016) (claiming that New York rezoning "allowing for more luxury development in lower-income communities" led to gentrification, which in turn decreased housing opportunities for low-income people).
51. See *infra* notes 56-57 (describing gentrification and rising rents in Brooklyn's Williamsburg neighborhood).
52. See Li, *supra* note 50, at 1191.
53. See Scott M. Stringer, *The Growing Gap: New York's Housing Affordability Challenge*, BUREAU OF FISCAL & BUDGET STUDIES at 16, http://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf (adding that number of households with incomes over \$100,000 more than doubled in this area).
54. *Id.* at 17.
55. See Abigail Sabitch-Lew, *Where Mayor De Blasio's Rezoning Proposals Stand*, CITY LIMITS (Jan. 5, 2017), <http://citylimits.org/2017/01/05/where-mayor-de-blasios-rezoning-proposals-stand>
56. *Id.* (rather than rezone Flushing in Queens, "local elected officials and the de Blasio administration put the kibosh on the plan"). In addition, the city has enacted a variety of other modest zoning changes that only indirectly increase density. See City of New York, MIH and ZQA City Council Modifications, at <http://council.nyc.gov/land-use/wp-content/uploads/sites/53/2016/05/MIH-ZQA-Council-Modifications-1.pdf> ("Zoning for Quality and Affordability")

ordinance reduces minimum parking requirements, raises height limits in some areas by up to 35 feet, and makes other changes).

57. See *infra* Parts III-B, C, D (describing alleged negative externalities of new housing).
58. See Li, *supra* note 50, at 1191 (claiming that 21st-century piecemeal upzonings had this effect).
59. See N.Y. TOWN LAW, § 261 (McKinney).
60. I note that such city-specific legislation is perfectly appropriate under New York law. See, e.g. MCKINNEY'S CONSTITUTION, art. 6, sec. 15 (regulating New York city court system); MCKINNEY'S MULT. DWELLING LAW SEC. 306(2) (authorizing special procedures related to illegal building alterations for New York city).
61. See Part I *supra* (making case that restrictive zoning increases housing costs); Part II *supra* (responding to counterarguments).
62. See David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1727-28 (2013).
63. See also Lewyn, *supra* note 42, at 90-93 (discussing other options for incremental reform).
64. See, e.g., *Watson v. Mayflower Property*, 223 So. 2d 368, 374 (Fla. 4th DCA 1969), writ discharged, 233 So. 2d 390 (Fla. 1970) (upholding density limits based on concerns about congestion).
65. See Adie Tomer et al. *Missed Opportunity: Transit and Jobs in Metropolitan America* 1, https://www.brookings.edu/wp-content/uploads/2016/06/0512_jobs_transit.pdf (cities are "uniformly better served by transit").
66. See, e.g., *Heffernan v. Missoula City Council*, 255 P.2d 80, 88, 360 Mont. 207, 214-15 (2011) (city opposed new development based on concern that additional population density "can have a significant negative impact ... on neighborhood character").

67. Cf. Bradley Karkkainen, *Zoning: A Reply to the Critics*, 10 J. LAND USE & ENVTL. L. 45, 69 (1994) (justifying zoning on ground that purchaser of house intends to purchase not only property but "intangible qualities such as neighborhood ambiance, aesthetics, and the physical environment.").
68. See *supra* note 65 and accompanying text.
69. Oliver Gillham, *THE LIMITLESS CITY: A PRIMER ON THE URBAN SPRAWL DEBATE* 90 (2002).
70. *Id.*
71. See Tomer et al., *supra* note 65 at 32 (explaining methodology), 36 (data).
72. See Nicole Stele Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 HARV. J. ON LEGIS. 173, 183 n.61 (2001) (some sources suggest that as few as 6% of welfare recipients own cars).

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