

January 2021

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ISSUE BRIEF

INDUSTRIAL REZONING IN U.S. CITIES

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Introduction

In many of America's most expensive cities, desirable commercial and residential buildings abut areas filled with stagnant, unproductive, and often decrepit industries. This is not an accident: it is the product of land-use and zoning codes, which often prohibit nonindustrial uses of large, centrally located areas that would otherwise be in high demand for residential and commercial redevelopment. These policies are supposedly a bulwark against gentrification and the depredations of housing developers, as well as a means of preserving high-paying industrial jobs. But these benefits are often illusory, and they are far outweighed by severe but harder-to-see consequences: tax revenue shortfalls, massive harms to urban economies, and housing unaffordability.

Though industrial zoning has largely escaped critical scholarly attention, one exception is a law review article by Roderick M. Hills, Jr. and David Schleicher, which provides a historical overview of industrial zoning and an analysis of its main justifications. Their article is the source for most of this introduction.¹

Though zoning codes generally date to the 1920s (the Supreme Court explicitly declared them constitutional in 1926), exclusive industrial zoning appeared only in the 1950s. Prewar zoning codes were "cumulative": they ranked land uses from most desirable (single-family houses) to least desirable (heavy industry) and specified the least desirable use possible in every zone, but imposed no further restrictions. Thus, building houses in an area designated for commercial or industrial use was permissible, but building a factory in a residential zone was not permissible. Cumulative zoning was justified by prewar legal views of zoning as an outgrowth of nuisance law: a polluting factory could be a nuisance to a house, but not vice versa.

In the postwar era, however, many factories in traditional central industrial districts moved to suburban areas with better access to long-distance transport, alarming city politicians and union leaders who wanted to preserve industrial jobs. New York Mayor Robert Wagner, for example, pressed to have the city's industrial districts designated as industrial-only in the city's 1961 zoning code, as New York City industries were moving to locations in New Jersey better equipped for containerized freight and shipping. Courts were initially skeptical of industrial-only zoning but eventually decided that it did not infringe on property rights, although the first state supreme court to uphold a noncumulative zoning code, the California Court of Appeals, did so by extending the old theory, finding that industrial-only zoning was justified to protect hypothetical residential areas in industrial zones from becoming blighted.

How, then, does industrial-only zoning protect industry? Hills and Schleicher cite two main rationales, both of which crop up frequently in city planning documents. The first is legal: industries in residential areas would worry about being sued for creating nuisances. Even if they could argue that residents of residential areas consented to, and thus had no right to sue over, the nuisances that existed when they moved in, the threat of litigation might constrain industrial land users' ability to change or expand their operations.

The second rationale is economic: industrial zoning protects industries from competition with residential and commercial users who could pay more for their land, as well as the higher property taxes that would result if land valuations accounted for lucrative potential nonindustrial uses. In this lens, industrial zoning is a sort of subsidy: city governments forgo tax revenue from more profitable land uses in order to offset industries' costs.

Basic economic theory presumes that subsidies are unjustified. Residential and commercial developers who can outbid industrial users for industrial land can presumably afford to pay more because their intended land uses are more economically productive. Policies to protect industries from competition thus impose large “deadweight losses” of forgone economic productivity, in addition to lost property-tax revenue. These losses can take several forms, such as higher housing and commercial rents from the restriction of building supply, as well as higher taxes on other economic sectors to make up for the loss of property-tax revenue.

The effect on taxes can be substantial: a 1986 paper by two researchers in Vancouver, Canada, estimated that rezoning less than 3% of Vancouver’s land area to increase the supply of industrial land by half would increase the effective average tax rate of land in Vancouver by about 5%, under a wide range of modeling assumptions.² Hidden subsidies in zoning codes are especially pernicious, Hills and Schleicher note, because they are determined by a far less transparent and democratic process than explicit subsidies in city budgets would be, making them easier to enact and likelier to persist when unjustified.

There are two reasons, though, that subsidies might be economically justified. One, mentioned only in passing by Hills and Schleicher but cited frequently by urban planners, is economic fairness: industrial jobs typically pay less educated workers much better than the low-end service jobs available in residential and commercial areas.

The difficulty with this justification, Hills and Schleicher note, is that zoning cannot distinguish between high- and low-wage employers and restrict industrial zones to the former: “Conventional legal doctrine bars municipalities from regulating land use based on the nature of the user rather than the activity pursued on the parcel.”³ Furthermore, industrial zones provide fewer jobs on a given land area than high-density commercial development, which may outweigh the fact that the jobs are individually better-paying. And other drawbacks of industrial zoning, such as higher housing prices, are suffered by all workers.

The second possible justification for industrial subsidies is “agglomeration” or “spillover” effects: in some industrial sectors, the geographic concentration of workers increases all workers’ and firms’ profitability. If firms make individually profitable decisions to sell their land and move to cheaper remote areas, they might harm the overall productivity of the industry. Thus, the spillover effects of subsidies to keep industries from moving might outweigh their deadweight losses. But, Hills and Schleicher note, spillover effects are highly sector-specific. Manufacturing as a whole does not benefit from substantial spillover effects, and zoning codes cannot treat high- and low-spillover sectors differently. Moreover, spillovers are hardly limited to heavy industry: they also exist in nonindustrial economic sectors that might themselves be threatened by the generalized economic costs of industrial zoning.

This report looks briefly at several industrial districts located in central areas or along principal mass transit lines in five cities with high demand for new housing. Industrial zones in all cities show strong signs of market demand for residential or commercial redevelopment; in many cases, these areas have ideal geographic locations for residential or commercial use while being awkwardly located for industrial uses. Moreover, these industrial zones have a high preponderance of low-productivity, relatively unskilled industries, or even tangentially related businesses such as retail—a far cry from the manufacturing businesses that city planners want to promote when designating industrial districts. Redesignation of these areas for dense residential and commercial use—or modern mixed-use developments with high-intensity, low-nuisance industrial activity—could go a long way toward improving cities’ economies and ameliorating housing shortages.

San Francisco, CA

No American city has a worse housing crisis than San Francisco. The Bay Area has the most expensive housing of any metropolitan area in the nation; in San Francisco proper, the average house now sells for \$1.4 million, according to Zillow Research.⁴ San Francisco has had a housing unaffordability problem for decades—in 1996, the earliest year covered by Zillow’s data, average prices in the San Francisco metropolitan area were more than twice the national average. The massive demand for housing over the last decades has motivated San Francisco to protect industrial land ever more doggedly from redevelopment, even as industry has largely moved to areas in the East Bay with better access to ports and long-distance land transportation.

San Francisco's zoning code enumerates seven industrial zones, divided into two general categories: traditional heavy and light industry; and Production, Distribution, and Repair (PDR) districts, for industries such as small-scale manufacturing and repair of machinery. The city's traditional industrial zones total 1.20 square miles, mostly by the docks on the city's eastern shore. The city's 1.74 square miles of PDR districts, meanwhile, are scattered throughout the east and southeast of the city, mostly in three clusters: one straddling the SoMa, Mission, and Potrero Hill neighborhoods; a larger cluster farther south, in the Dogpatch; and a third in Bayview, in the southeast corner of the city.

These zones are in some of the city's most desirable areas. SoMa, the Mission District, and Potrero Hill are virtually adjacent to downtown San Francisco and include some of the city's most expensive residential space. PDR areas are also near two mass transit lines: the T-Third line on San Francisco's "Muni" network, which gives a direct connection to downtown San Francisco; and the Caltrain commuter rail line, which connects San Francisco with Silicon Valley and San Jose to the south.

PDR districts were designated in a series of planning documents called the Eastern Neighborhoods Plans,⁵ drafted beginning in 2001 and formally adopted in 2009 (with interim policies imposed by the city planning department in 2004 and 2005). During this period, the demand for housing in San Francisco was increasing, as tech companies set up offices in San Francisco rather than the Silicon Valley suburbs, and reverse-commuting from San Francisco to Silicon Valley became popular among tech workers. The plan called for large amounts of industrial land to be redeveloped as housing but also prioritized the preservation of the remaining industrial land, which paid higher wages than service industries.⁶ PDR regulations have since been slightly liberalized to allow office construction, under a restrictive assortment of regulations and cross-subsidies that prevent the further loss of industrial space.

The effects of PDR designation are best shown by a look around a few stops on the T-Third line that would be ideal locations for concentrated residential and commercial construction. Consider the 23rd Street stop, for example, mostly surrounded by a PDR zone and within walking distance to the 22nd Street Caltrain station. The block immediately northeast of the station is occupied by a three-story light manufacturing facility and its associated surface parking lot. To the south, much of the land is occupied by space-consuming automotive-oriented businesses. The entire block southwest of the station is occupied by a Ryder Truck Rental facility; the four blocks south of that include a gas station, an auto dismantling shop, and more car, truck, and van rentals, together occupying about half their area. None of the commercial buildings in this area exceeds two stories, a likely consequence of the maximum Floor Area Ratio (FAR) of 2.5 imposed in PDR zones.⁷

Two stops and slightly less than a mile farther south along the T-Third line is the Evans Avenue station, also located within a large PDR zone. Adjacent to the station are, among other businesses, two gas stations, construction supply shops, and a large low-rise light industrial park essentially blocked off from pedestrian access. Heavy industry areas exist along the waterfront, much of which is taken up by visibly derelict industrial buildings with missing windows. The 10.9-acre vacant lot at 420 23rd Street,⁸ within walking distance of a Muni stop, is valued at \$47.7 million, according to its most recent tax assessment. These industrial areas would be prime targets for residential redevelopment, given their relative proximity to downtown and the amenity of views of San Francisco Bay—in fact, one formerly industrial area along the bay shore, Hunters Point, was redeveloped as (relatively low-density) housing in the 2000s.

New York, NY

New York City was once an industrial center, with an especially large concentration of industries along the waterfront in Brooklyn, but industries largely left for areas in New Jersey with better transportation access. In addition to the heavy industry that was concentrated along the waterfront, some areas—such as Williamsburg, with light manufacturing—featured heavily bespoke manufacturing that encouraged the presence of artists and designers. The presence of artists in those areas encouraged further gentrification; today, Williamsburg has been largely redeveloped for residential use, including many

areas that formerly had heavy industry or industrial contamination.⁹ Nevertheless, large portions of Brooklyn, Queens, and the Bronx, especially along the waterfront, are filled with low-rise industrial buildings, many of them obviously derelict. In industrial areas such as East Williamsburg, many parcels in industrial zones are vacant.

Many of these areas would be prime candidates for high-density redevelopment. The most promising is undoubtedly Gowanus, an industrial area only two miles from downtown Brooklyn and adjacent to highly desirable neighborhoods such as Carroll Gardens and Park Slope. Gowanus has several direct subway connections to downtown Brooklyn and Manhattan. Nevertheless, most of Gowanus comprises self-storage facilities, industrial supply stores, auto repair shops, and truck rental lots. One block a few hundred yards from a subway stop is occupied mostly by a five-acre U-Haul facility. All these businesses have large amounts of surface parking.

Retention of industry has been a central goal of NYC zoning policy. In 2006, for example, the city council designated several Industrial Business Zones (IBZs), in which manufacturing businesses received special tax incentives.¹⁰ Nonindustrial land use—including other types of commercial use—in these areas has been increasingly regulated. In late 2017, for example, the city council banned the construction of new self-storage facilities in IBZs.¹¹ In 2019, the city zoning code was amended to require special permits for hotel construction in M1 light manufacturing districts, where they had previously been allowed by right—a longtime goal of Mayor Bill de Blasio, who was supported by the union for workers in NYC's extant hotels.¹²

A rezoning of Gowanus for new housing is currently being debated, but attempts to rezone other industrial areas have foundered over industrial retention concerns. A rezoning of Industry City, a set of relatively high-density industrial and commercial buildings along the Brooklyn waterfront, was also scuttled because of opposition from many politicians, including Carlos Menchaca, the city councilman representing the area.¹³ Menchaca had at first offered conditional support for the rezoning in exchange for many concessions, including exclusion of hotel development and a guarantee of space for manufacturing uses;¹⁴ the developers, however, eventually balked at the demand to remove hotels. Menchaca justified his opposition with concerns about industrial retention, saying, "This is not the time for a luxury mall to rise up and grow on the working waterfront in an industrial zone."¹⁵ Councilman Antonio Reynoso similarly blocked a planned rezoning of a low-density industrial section of North Brooklyn, which would have allowed more office and mixed-use development, again on industrial retention grounds.¹⁶ More recently, Councilman Brad Lander has advocated requiring special permits for e-commerce warehouses in industrial zones.¹⁷

Boston, MA

Boston has experienced severe pressures on its housing stock over the last decades, thanks to the growth of the software and biotechnology industries around its many universities, especially Harvard and MIT in the neighboring city of Cambridge. Nevertheless, zoning and historical preservation laws have forestalled substantial redevelopment in Boston and its surrounding cities—with two substantial exceptions. Downtown Boston has seen additional residential development, and the adjacent Seaport district—a formerly industrial zone east of downtown—has seen extensive mid- and high-rise redevelopment, including new apartments, offices, and a convention center.

Like San Francisco and New York, though, Boston has zoned for industrial use a lot of land that would otherwise be promising for redevelopment. These areas include two clusters of large industrial districts that consume much of the un-redeveloped land in South Boston and the Seaport, as well as roughly 140 acres in Roxbury, both within two miles of downtown. The city also prohibits housing construction in 46 Local Industrial Districts (LIDs) included within specific neighborhood zoning plans, each of which has its own distinct set of allowed uses. Individual LIDs are typically small (the largest is only 121 acres, and all but two are half that size), and their area totals 1.34 square miles. The location of LIDs, however, makes them prime candidates for redevelopment: most of them are lined up along major roads with frequent bus service or are located near major job centers.

As in other cities, the small-scale industrial businesses protected by LIDs and other industrial zones are typically space-consuming and not especially valuable. The industrial-zoned areas in the Seaport, for example, contain several dozen vast acres of surface parking. The 14-acre E Street LID in the Seaport is almost entirely surface parking; the only

businesses it contains are a hardware store, a distribution center, a truck rental lot, and a self-storage facility—directly adjacent to high-density redevelopment projects.

Industrial zones elsewhere in the city also guarantee that much of the city's best, most transit-accessible land is wasted on low-value uses. Both sides of the Dorchester Avenue thoroughfare in the South End, between the Broadway and Andrew stops on the Red Line subway route, are zoned industrial, populated mostly by construction supply stores, self-storage facilities, and—only 200 feet from the Andrew stop—a nine-acre vacant lot currently used for truck parking. Industrial uses thus consume most of the land accessible from these stops. Given their proximity to the Red Line, which directly serves important job centers in Boston and Cambridge such as downtown Boston, Massachusetts General Hospital, MIT, the Kendall Square startup hub, and Harvard University, these areas would be prime candidates for residential use.

Several LIDs along the Orange Line subway in Roxbury, an inner residential district of Boston, protect similarly low-value land uses. Just north of the Roxbury Crossing stop is a 7.7-acre LID that is entirely surface parking, with the exception of an electric substation and a parking garage for MBTA employees. An 8.2-acre LID just to the south, along Terrace Street, contains largely vacant lots and auto repair shops—along with a few crafts businesses such as glassblowing and custom home furnishings.

Portland, OR

Portland city planners have considered industrial land preservation an important goal for decades. Since its first comprehensive land-use plan in 1980, the city has declared some regions “industrial sanctuaries,” to be preserved from nonindustrial development. Today, Portland has a large amount of exclusively industrial land, most of which is in large industrial districts totaling several square miles, along major freight rail lines at the banks of the Columbia and Willamette Rivers.

These industrial sanctuaries are generally in areas with freight rail and river access that are more suited for industrial than residential uses. One major exception is the Central Eastside Industrial District (CEID), one of the city's oldest industrial regions, which was declared an industrial sanctuary in 1981. This area of East Portland, totaling 373 acres, just across the Willamette River from downtown Portland and within easy bicycling or walking distance, comprises almost all of East Portland except for a corridor three blocks wide along a light rail line. The region is ill-suited for large-scale manufacturing, as it has poor freight transportation access. The small parts of East Portland not in the industrial zone, meanwhile, have seen substantial mid-rise development. Though zoning within the CEID has been loosened somewhat to allow new office development, it has remained relatively restrictive, as business owners feared that redevelopment would cause gentrification and increase land prices—similar to what happened in the Pearl District, another close-in industrial area that was redeveloped in the 1990s.¹⁸

East Portland's industrial land is relatively well utilized, with few of the massive surface parking lots or derelict buildings seen in other cities. The dominant activity, however, is retail; there is little manufacturing activity in the area. Take, for example, a representative strip of seven blocks in east Portland, inside the industrial zone and just outside the rezoned area along the light rail line: between 6th and 7th Avenues, and Belmont to Clay Streets. This area, with about seven blocks of buildable area, contains approximately two dozen businesses as well as two apartment complexes, which are permitted in the prevailing zoning only under a conditional use permit. There are a few small-scale manufacturing businesses, such as a printing shop and a signage manufacturer. But others are retail (much of it consumer- rather than industry-oriented), including three office-furniture stores, a plumbing supply store, window and door stores, a men's clothing shop, and—as is common with other industrial areas—small-scale auto repair shops, of which there are three. The area also contains three restaurants as well as other specialty food sellers. These are all worthy businesses, but most are only vaguely industrial in nature, and the consumer-oriented nature of many of them suggests that the region would be better suited with zoning that encourages residential and commercial use. One study finds that similar economic trends have taken place throughout the CEID: in 1981, warehouses and light manufacturing made up 42% and 12%, respectively, of the land area in a different part of the CEID; by 2014, they took up only 24% and 5%. Sales, meanwhile, grew from 10% to 14%.¹⁹

Chicago, IL

Chicago's zoning code designates two types of industrial parcels. First, there are several hundred parcels zoned for "manufacturing" (essentially, heavy industry), totaling 25.8 square miles. These are generally small, scattered around the city, and somewhat concentrated in more remote areas. Second, 15 larger "planned manufacturing districts" (PMDs) total 14.7 square miles, encompassing Chicago's older industrial areas. Each PMD has its own set of allowed land uses, chosen for compatibility with previous existing industry. Most PMDs are along freight rail lines that also host commuter rail service, making them potentially some of the most transit-accessible land in the city.

Haley Jordahl has written an excellent history and analysis of Chicago's planned manufacturing districts.²⁰ During Richard J. Daley's tenure as mayor, industry in Chicago heavily suburbanized while the city government focused on attracting large corporate offices to the central business district (CBD) and also encouraged the development of near-CBD industrial and residential use—a policy continued by Daley's successors. Residential conversion pressure was especially strong on the north side of the city, where several industrial areas abut the CBD and expensive residential areas such as Lincoln Park. In order to preserve industrial jobs, therefore, the city government in the 1980s worked with neighborhood and industry organizations to encourage preservation of industrial land, culminating in the designation of PMDs, the first of them in 1988.

Four of these PMDs comprise the "North Branch Industrial Corridor," a region of about 511 acres extending along the north branch of the Chicago River, from the edge of downtown and about 2.5 miles to the northwest. This corridor includes large parts of the land within walking distance of several commuter rail and L stops. The "Kinzie Corridor" PMD is 632 acres—almost a square mile—immediately west of the Chicago CBD, extending along a commuter trunk line and the green line of the L.

Land in Chicago's near-CBD PMDs is scarcely fallow: most is occupied by actively used low-rise buildings, and there are few vacant lots. Nevertheless, PMDs have not stopped the substantial decline and suburbanization of industry. Jordahl notes that overall employment growth in most PMDs has exceeded that of the city, but manufacturing employment growth has stagnated; in three PMDs close to downtown, total manufacturing employment fell from 3,979 workers in 2005 to just 2,044 in 2013, a loss of 49%, compared with just 27% in Chicago as a whole.²¹ Jordahl attributes this pattern to, among other things, "encroachment of incompatible uses on the peripheries of PMDs" and "a preference among manufacturers for larger sites." The decline was especially strong in the Goose Island PMD, which lost 93% of its industrial employment, thanks to the closure of its main employer, the A. Finkl & Sons steel plant, which relocated to a less central industrial corridor on the South Side.

These observations are backed up by a study commissioned by the Chicago Plan Commission in 2017, which noted that from 1990 to 2016, manufacturing declined from 75% of the land use in PMDs in the North Branch Industrial Corridor to 27%. Meanwhile, commercial uses increased from 3% to 14% of the land, and transportation went from 12% to 38%.²²

Jordahl, though generally supportive of PMDs to protect industrial users from local real-estate pressures, admits that "the PMDs are not structured to ensure that the jobs they support are high quality or accessible."²³ The city government, for its part, is moving away from PMDs. Much land in the North Branch Industrial Corridor, including the former Finkl site, is slated for mixed-use redevelopment; and at least as of 2017, the Chicago Plan Commission had proposed rezoning much of the North Branch Industrial Corridor as "downtown," enabling denser residential and commercial development.²⁴ More recently, the alderman representing Fulton Market—a near-downtown area that has seen a boom in restaurants but where redevelopment has been limited by industrial zoning restrictions, including the Kinzie Corridor PMD—has dropped his opposition to residential redevelopment, motivated by a pressing need for more tax revenue to make up for shortfalls induced by the Covid-19 pandemic.²⁵

Conclusion

A healthy industrial sector can be valuable for cities' and regions' economies, and even cities with predominantly commercial economies need some industrial space for distribution centers or building-maintenance supplies. But exclusive industrial zones are often a bad way to promote economic well-being, especially when they occupy central or transit-accessible land. Whatever advantages industries might receive from being given subsidized, centrally located land, they are outweighed by the economic costs of taking land off the market for residential and commercial uses that would derive greater benefits from these central locations, as well as by slowing down industrial turnover from less to more productive industries. Justifications for exclusive industrial zones are typically based on narrow considerations of what policies would be good for industries that already exist, while ignoring the vital issue of opportunity costs.

In the past few decades, many cities have reconsidered industrial zoning and have centrally located industrial land for residential use—examples include the Jewelry District in Providence, Rhode Island; the Pearl District in Portland, Oregon; and Long Island City in Queens, New York. But these are far from the only promising redevelopment candidates. Many American cities have substantial industrial zones on land that should be a prime candidate for redevelopment as commercial or residential. Several of these industrial zones—especially San Francisco, Boston, and New York—protect industries that produce little economic value and few well-paying jobs for the amount of land that they occupy—and therefore are hardly deserving of subsidies to keep them from relocating to more affordable areas. Some industrial zoning in these areas may be justified, but rezoning of many industrial zones—or even the wholesale adoption of cumulative zoning codes—should certainly be considered, with an analytic framework that pays attention to trade-offs rather than narrowly focusing on the needs of a few industrial users.

As they consider whether to rezone these areas, cities should keep in mind that protection of industrial jobs does not necessarily require industrial zoning. Houston has no zoning code; its city charter requires any new zoning code to be approved by a supermajority in a referendum, and several referenda over the decades have failed. Though Houston's land-use code does impose stringent limits on matters such as building height, setbacks from the street, and off-street parking—and the city government enforces private deed restrictions by which a supermajority of residents in a neighborhood can prohibit certain land uses—city laws do not themselves restrict the possible uses for any parcel in the city. Yet Houston's industrial sector is quite strong, employing a greater share of the city's workers than in any of the five case studies in this paper, save Portland. Indeed, Houston is one of only four large cities in the U.S. in which industrial employment grew on net from 2004 to 2015.²⁶ And nuisance litigation against industrial land users from encroaching on residential regions seems to be basically unheard of.

For encouraging industrial growth, furthermore, there are better tools than blanket restrictive zoning. Stephen Smith, a real-estate analyst in New York, has pointed out that many of the problems that New York's industries face are direct consequences of the city's zoning code.²⁷ The low maximum densities everywhere in the city, for example, dry up the supply of possible projects for the construction industry—one of the dominant businesses in industrial areas of Brooklyn and Queens. Other zoning code provisions mandate inefficient uses of space in industrial areas: stringent caps on floor-area ratio and high minimums for off-street parking, coupled with a difficult-to-circumvent ban on the rooftop parking decks common in other cities' industrial zones. These regulations practically ban modern, high-efficiency multistory industrial buildings. The burden imposed by parking minimums is especially noxious for a city in which the working class overwhelmingly does not own cars. Nevertheless, Smith notes, many thriving light industries in Brooklyn and Queens, such as small-scale garment manufacturing, are not especially land-intensive and could fit well into legacy industrial or mixed-use zones.

In many cities, innovative building forms and permissive zoning codes have enabled redevelopment of industrial areas in ways that preserve much industrial space while also unlocking potential residential or commercial uses. One recent project in South Vancouver, for example, is a pair of 93-foot-high buildings that will provide two floors of office space and four for light industry, with an underground parking deck; the buildings have innovative architectural features to reduce interference between industrial and commercial uses.²⁸ As Smith has noted, this project would be illegal in most New York City industrial regions because of its density and comparatively high amount of parking.²⁹

There remains the issue of how to protect industrial users in mixed-use zones from nuisance litigation. Even Hills and Schleicher admit some difficulty with ensuring that industries can expand or change their operations without provoking lawsuits. They propose that a slate of general regulations detailing maximum levels of nuisance, such as noise and odor production, could be made flexible enough to allow industries to expand while also granting them a “regulatory compliance” defense to nuisance litigation. Such matters are difficult to discuss in the abstract and would likely have to be set case by case, by industry, or by area. Still, the potential economic rewards for adopting a regulatory standard more accommodating for mixed-use areas are great enough that cities and states with severe housing shortages and re-developable industrial parcels would be well advised to investigate the possibility.



Endnotes

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