

New York City's Far-Reaching Housing Proposals Are Still Not Ambitious Enough

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Introduction

In the fall of 2022, New York City's Department of City Planning (DCP) began public outreach on a series of ambitious changes to the text of the city's Zoning Resolution, called "Zoning for Housing Opportunity," intended to address the ongoing housing crisis. This paper explains how these changes might work and what effects they might have. It argues that the proposed changes are useful and form an important part of the solution. However, without additional changes, both to zoning and to other applicable laws that constrain the supply of housing in the city, the crisis will continue. Additionally, speed of change is of the essence, and the procedural impediments to solving the crisis quickly need to be removed.

Housing conditions in New York City are grim for those seeking rental housing. Market rents are softening a bit but, as of fall 2022, remain near record highs.¹ Rising interest rates are leading to softness in housing prices, and this, in turn, affects rents, since rental and owner housing are close substitutes.² Vacancy rates for market-rate units remain extremely low, as apartments are snapped up as soon as they come on the market.³ Rent-stabilized housing is hard to find, with a substantial number of units being held off the market, following 2019 changes to the state's rent laws eliminating vacancy rent allowances.⁴ Those units made available for rent often require steep brokers' fees, which are likely shared with the landlord to supplement legal rents.⁵ City-supported affordable housing starts are falling, due to price inflation and staffing shortages.⁶ The city's homeless population has shot up, exacerbated by an influx of asylum seekers bused into New York from other states.⁷

At the root of the city's housing crisis is a long-standing supply shortfall. NYC's population has continual upward momentum because of natural increase (more births than deaths) and in-migration that, in most years, nearly offsets the number of people who move out. The city needs to construct large numbers of housing units each year just to meet the needs of new

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residents.⁸ While the city’s housing construction seems numerically large, as a percentage of the base housing stock, it is comparatively small. Other relatively dense, economically strong, cities have produced new housing at a much faster rate.⁹

New York City had a brief respite from its housing crunch in 2020, as employment plummeted and the number of households leaving the city greatly exceeded those moving in. However, that trend reversed with a revived economy in 2021, and the crunch returned in full force. By September 2022, the city’s employment was back to about the level of the same month in 2018—not quite the peak of 2019 but still indicative of considerable upward momentum.¹⁰

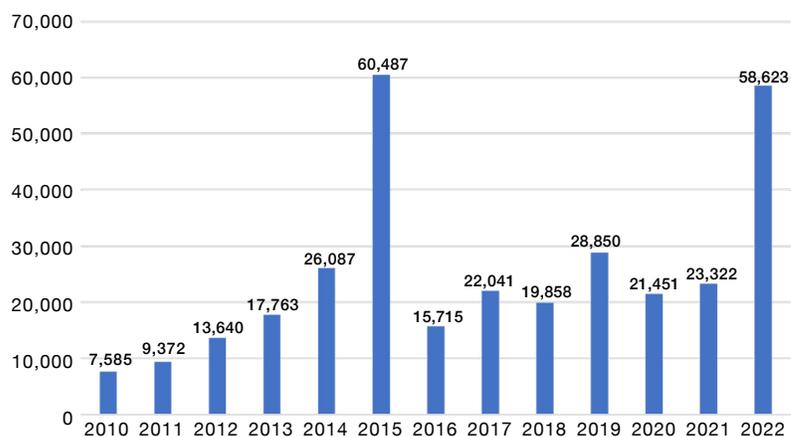
For new housing construction to be responsive to the population pressure created by renewed economic growth, much needs to change. NYC’s new housing permitting follows a cycle determined by the periodic expiration dates for the Section 421-a¹¹ tax-exemption program, which are set by the state legislature. (Section 421-a, in its recent versions, was designed to achieve two goals. First, it reduced property taxes on new rental residential buildings to equalize the treatment of rental buildings and condominiums; the latter are otherwise more favorably taxed under state property-tax law. Second, it provided an incentive to include income-restricted units at below-market rents. The uncertainty as to a future version of the program caused property owners to rush to commence construction of new residential buildings, thus vesting their rights to a tax exemption.)

According to data compiled by DCP, the last burst of permits (more than 60,000 units permitted) happened in 2015, at the last expiration before 2022, as property owners rushed to lock in benefits (Figure 1). This only brings new housing permitting forward, however; the next year, there was a sharp drop in new housing units, with fewer than 16,000 permitted.¹² Housing completions peaked for that cycle in 2018, at 28,600 units.¹³

A similar burst of housing permitting happened in the first half of 2022, as 421-a expired again, with more than 58,000 new housing units permitted. DCP, in November 2022, noted: “It is more uncertain than usual how many permits will actually result in completed units, as the current economic environment may make it difficult to finish this number of projects by the tax benefit’s four-year deadline,” and “past trends suggest permitting activity will drop steeply following the expiration of the 421-a tax benefit in June.”¹⁴

Figure 1

Permitted Housing Units in New Buildings in NYC, by Year



Source: New York City Dept. of City Planning, “New Housing Permits in the First Half of 2022”
 Note: Data for 2022 are for January–June.

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Both New York State's and New York City's finances depend on the continued growth in the city's economy. This growth is threatened by the housing crunch, which makes it hard for workers to move to the city to take jobs and for businesses to recruit. Thus, one might think that both would be undertaking urgent measures to make housing available in as short a time frame as possible. However, that has not been happening.

Lost Opportunities for Pro-Housing Changes

Governor Kathy Hochul had proposed a promising set of pro-housing changes in the 2022 legislative session,¹⁵ but none were enacted. All hopes for action were displaced to the upcoming legislative session and the state budget adoption at the end of March 2023.

The city is more active, but not urgently enough. Its leaders tout city approval of land-use applications for several large new housing developments.¹⁶ However, as discussed below, the affordability conditions attached to these approvals call their viability into question. The city has also begun public outreach for amendments to its Zoning Resolution, called "Zoning for Housing Opportunity," as part of its "City of Yes" initiative. The outreach began with an online public presentation by DCP on October 17, 2022.¹⁷

The city's zoning proposals are vague in details, but the general direction is promising, if incomplete. Unfortunately, the timeline for these zoning amendments is extremely long, with a voluminous, costly environmental review followed by the city's seven-month land-use review process. New Yorkers will be fortunate to have these amendments in place by the end of 2024.

The "Zoning for Housing Opportunity" proposals would merely *amend the text* of the Zoning Resolution—the rules that apply to specific zoning districts. Some of these amendments may have effects similar to amending the zoning map—changing which districts are mapped where. However, the choice of the text-amendment mechanism makes achieving satisfactory results more difficult. Changing the zoning district on the map provides clarity and precision regarding the rules affecting development, while amending the zoning text so that the same zoning district has different sets of rules, depending on specified conditions (as DCP proposes), may create confusion and unintended consequences.

Another problem is the omission of changes that address key shortcomings of the city's current zoning. For much of its housing production from 2010 to 2020, NYC actually relied on key zoning map amendments that were made in the previous decade (2000–10).¹⁸ Unfortunately, comparably effective zoning map changes were not put into place during the 2010–20 period, failing to set the stage for housing growth in the current period. The current Adams administration's proposed reliance on a wide-ranging zoning text amendment—and slow rollout of proposed areawide zoning map changes, with a continuing commitment to economically unrealistic affordability requirements—represents another lost opportunity and will potentially prolong the housing crisis.

Shaping “Zoning for Housing Opportunity” for Maximum Effectiveness

DCP’s housing presentation,¹⁹ narrated by John Mangin, the department’s housing director, opens with a promise that the changes to be presented promote “housing equity” and a credit to “Where We Live,” a de Blasio administration report²⁰ that was intended to execute the Obama administration’s “Affirmatively Furthering Fair Housing” rule, despite the revocation of that rule by the Trump administration.²¹ The “Where We Live” report is a long (and useful) data compendium but is short on recommendations that can effectively address the city’s housing crisis. The one recommendation that addresses housing supply is to “facilitate equitable housing development in New York City and the region,”²² and the strategies underlying this goal largely relate to the production of “affordable,” i.e., below-market-rate, housing.²³

Topline Housing Availability

While “Where We Live” foreshadows some of the components of DCP’s proposals, its focus specifically on the production of income-restricted, below-market-rate housing is misplaced. The first goal of any housing plan should be to ensure that the overall stock of housing is sufficient to house the population at all income levels, including anticipated growth in households. Strategies need to be targeted at the topline number of housing units that the city needs, and not just at the segment of the population that needs governmental assistance.

Avoiding the discussion of overall housing needs and focusing on affordable housing leads to a misdiagnosis of the problem and thus, the design of inadequate solutions. Housing planners typically use “rent burden” (the percentage of households paying more than 30% of income for rent) and “severe rent burden” (the percentage paying more than 50%) as indicators of affordable housing needs. However, I noted in a 2021 study: “New York City, even compared with other high-cost metros, is a national outlier in the share of rent-burdened households, which results in costly efforts to fund new affordable housing for those who, in most of the country, are routinely served by the private market.”²⁴ The city and the state have both selected a mix of policies that suppress supply (e.g., restrictive zoning) while pumping up the demand for housing (with draconian rent controls that guarantee low vacancy rates). This combination effectively imposes “rent burden” on an unusually large share of the population. To have a reasonable chance of ameliorating the housing crisis, NYC’s housing policies need to focus not only on increasing the number of below-market units produced but on increasing the supply of housing at market rents and sales prices. By doing so, the city can move its housing-market conditions closer to the national norm, in which a much larger portion of the income spectrum is adequately housed without the need for public subsidy. The city’s limited affordable housing resources can then be targeted to those households whose needs cannot be met even in a well-functioning private housing market.

By declining to establish goals for overall housing growth and focusing on production of affordable housing, the de Blasio administration ensured that despite a vastly enhanced funding commitment to affordable housing, overall housing production was hardly affected at all.²⁵ Because the level of housing production was so inadequate, existing housing “filtered up” to higher-income households, setting the stage for this decade’s crisis.

Infeasible Affordability Conditions

In the framework for “Where We Live,” increased private investment in new housing is a valid objective only insofar as its profits can be redistributed to subsidize below-market-rate units:

[The city should create] a citywide framework for future land use changes to implement Mandatory Inclusionary Housing and other tools that encourage growth and affordability. This citywide strategy will take a[n] ... equity-centered approach to planning for the creation of new housing.²⁶

Mandatory Inclusionary Housing (MIH) is de Blasio’s signature zoning initiative, which requires, for most new housing in rezoned areas, that a substantial percentage of units be income-restricted at below-market rents.²⁷ In a 2020 report, I discussed the shortcomings of the program, which was designed to be economically feasible for developers only in the city’s strongest-market areas, and then, only where developments were eligible for Section 421-a tax exemptions. Outside those strong-market areas, MIH developments need additional public subsidies to be feasible.²⁸ Because of the MIH program’s design flaws, few mixed-income developments requiring only tax exemptions—and no additional public subsidies—have been constructed.²⁹ Even fewer are likely to be initiated in future years unless 421-a is reinstated in a workable form.

Had de Blasio been pragmatic about affordability mandates, rezoned more aggressively, and embraced reform of the city’s sclerotic land-use approval process, more new housing could have been constructed in the decade and existing housing might have “filtered up” less. The city might present opportunities today for newcomers at a range of incomes, not just the highest-paid. That might have served housing equity goals far better than the policies that were pursued during de Blasio’s tenure, or those that are suggested in “Where We Live.”

The Adams administration shouldn’t view the blinkered perspective of “Where We Live” on housing policy as establishing the bounds of its potential initiatives. Proposing ambitious zoning reforms while tethering new housing that utilizes those reforms to the same MIH policies won’t help housing supply much. It’s possible that DCP, under a new mayor, has a less ideologically driven, more pragmatic view of “equity” and the policies that might move the city closer to such goals. Many of the new proposals don’t inherently require that MIH-level affordability requirements be attached. However, as we discuss the specific proposals, it’s important to keep in mind that the potential of any change to zoning can be negated, if saddled with infeasible affordability conditions.

Evaluating “Zoning for Housing Opportunity”

DCP’s October 17 presentation included a number of bullet points describing potential subject matter for zoning changes, while offering few specifics. **Figure 2** is a summary slide of these potential changes.

Figure 2

Department of City Planning Potential Zoning Changes

Types of Changes to Achieve our Goals

- Allow housing types that serve everyone – such as ADUs, smaller units, and shared housing
- Ease conversions of obsolete and underutilized buildings to housing
- Reduce or eliminate unnecessary parking requirements to unlock housing potential
- Give all supportive and affordable housing the same preference given to affordable senior housing (AIRS)
- Make it easier for owners of homes and small buildings to alter and update their buildings over time

Source: New York City Dept. of City Planning, “City of Yes Info Session,” Oct. 17, 2022

The several components of DCP’s zoning proposal are evaluated below.

1. “Allow housing types that serve everyone—such as ADUs, smaller units, and shared housing.”

In 2021, about a third of New York City’s 3.3 million occupied housing units had a household consisting of one person, living alone. An additional 273,000 units had two or more unrelated persons living together.³⁰ It’s likely that many of the latter residents would like to live alone, but the city has been slow in liberalizing rules meant to discourage the types of housing that might be appropriate for single-person households. By making housing suitable for single persons more widely available, the city can grow its labor force while freeing larger units for families.

ADUs

ADUs, or “additional dwelling units,” are second, or even third, units on lots historically occupied by one home in zoning districts where such units are not permitted. These include second units in single-family residence districts³¹ and backyard units in all districts.

NYC has many, probably tens of thousands, of ADUs. A large percentage were carved illegally (without obtaining a permit) out of a single-family home, or its garage. In early 2022, Governor Hochul proposed legislation (which failed to advance) that would allow ADUs statewide and provide an amnesty for ADUs and other illegal dwelling units in small homes in NYC.³² The December 2022 report of the “New” New York Panel, a group of civic leaders convened by the governor and mayor, endorsed the enactment of similar measures in the next legislative session.³³ Allowing ADUs legally would likely increase the number of such units.

The city can achieve many of the changes that Governor Hochul proposed through local zoning and legislative actions, except for those areas that require amending the state’s Multiple Dwelling Law, which applies to buildings with three or more units (including any units legalized through an amnesty). The city would need to decide on health and safety standards for new ADUs, as

well as those being amnestied. The costs of meeting the city's codes have long been a major deterrent to obtaining a permit for a second unit in a small home, even where such a unit could be legal. The city would need to take a position on legalizing cellar apartments (spaces with more than half their height below grade). In many cases, cellar apartments have only one means of egress (through the entrance door), since the windows are often small and high up on the wall and cannot be used to escape from a fire. Additionally, following the experience of Hurricane Ida in September 2021, city officials rightly have a heightened concern about flood risk in cellar apartments during severe storms.

If cellar apartments are excluded from the city's proposal, it could still allow ADUs in basements (spaces with more than half the height above grade) and in backyards, generally in the space currently occupied by a garage. The latter would be a throwback to the early years of motoring, when wealthy families provided housing for their chauffeurs in a room above the garage. These spaces remain visible in older single-family-home neighborhoods such as Kew Gardens in Queens. Any ADU provision would need to waive any off-street parking requirement for the new unit, as well as allowing the discontinuance of the garage parking in the case of conversions.

One drawback of increasing the number of ADUs is to increase population in the most car-dependent areas of the city. Unlike most apartment buildings, many small-home lots are not within walking distance of neighborhood services. DCP could address this problem by allowing a "corner store" use in residence districts. These districts already allow nonresidential community facilities such as houses of worship and day care, but not retail stores. Corner stores should be limited in size, perhaps to 5,000 square feet, and required to devote a majority of floor space to groceries. No off-street parking would be permitted. These stores should also be limited as to location, perhaps to street corners where one fronting street is also a local bus route, and thus already has foot traffic. By allowing corner stores, the city can reduce the need for residents of ADUs to own and use cars.

Small Units

NYC's zoning generally controls the number of dwelling units in a building by requiring a specified average floor area per dwelling unit.³⁴ These requirements are calibrated so that apartment buildings cannot be entirely studios; a building with a large number of studios needs to balance them out with larger units.

The zoning waives maximum unit density calculations for affordable senior housing and supportive housing, allowing all-studio buildings.³⁵ Additionally, pre-1961 zoning did not have density controls and allowed any mix of apartments within a building; thus, buildings composed entirely of small apartments exist from that era.

The drafters of the 1961 Zoning Resolution sought housing-unit size diversity within neighborhoods and viewed density controls as a way to achieve that objective. They wrote in 1958:

The best planned urban residential neighborhoods have been those which have taken into account the diverse ways in which city residents choose to live. The needs of different types of families vary. Old couples, young couples, families with many children, and single persons must all be provided for in the City. Zoning regulations should not be drawn to force these family types into separate areas. Rather, the regulations should be framed to permit the maximum amount of choice of . . . sizes of apartments . . ., while still maintaining adequate standards of density. . . . Such variety and flexibility within a district create neighborhood stability because they permit a family to remain in a neighborhood as its need for space changes.³⁶

This rationale for maximum zoning densities seems designed to forestall the creation of neighborhoods oriented to singles—a new phenomenon at the time but certainly one that should no longer faze anyone in NYC. In contrast, neighborhoods with large units oriented to families were always possible, since there was no minimum density. Today, these rules seem unnecessary, since the very thing that they were intended to prevent has happened widely, anyway. Allowing all-studio buildings would increase housing choice and make more large apartments available for families.

Shared Housing

New York City once had a variety of shared housing types that were a resource for low-income people. These housing types, including “rooming houses,” “lodging houses,” and “single room occupancy,” live on as definitions in the state’s Multiple Dwelling Law³⁷ but are no longer widely found in the city’s neighborhoods. These types have in common the rental of sleeping rooms to individual tenants without full kitchens and baths.

The reasons for the decline in these housing types are well understood. Much of the legacy shared housing was located in neighborhoods that were highly marketable and was demolished or converted for more lucrative uses. Concurrently, local law³⁸ prohibited the construction of new “rooming units,” a defined term that generally covers a similar category of dwellings. The law has exceptions for new rooming units operated by nonprofit institutions, as well as those constructed with substantial governmental assistance. In 2019, the city’s Department of Housing Preservation and Development (HPD) announced a shared housing pilot program, utilizing its existing legal options.³⁹

New rooming units are subject to additional regulations in the state’s Multiple Dwelling Law. Among other provisions, these prohibit the conversion of frame buildings to rooming units, require that each resident have unimpeded access to two means of egress (or require sprinklers in all corridors as an alternative), and permit cooking only in complying kitchen spaces, while prohibiting it (on portable devices such as hot plates) in sleeping rooms.⁴⁰

The city’s Zoning Resolution permits rooming units in any district that allows residences but has no specific regulations pertaining to new rooming units, given the limited routes that now exist to develop them. For example, regulations specifying the maximum number of units on a lot and requiring off-street parking apply only to dwelling units.

Since shared housing is largely regulated outside of zoning, much can change, if the city council is persuaded. The existing prohibitions can be attributed to concerns that for-profit rooming units were inherently substandard and exploitative. That danger certainly remains, as the resident population is typically low-income and has few other living options. In a 2021 report, I suggested lifting the prohibition on new rooming units that are developed by for-profit entities but do not receive substantial government assistance.⁴¹ The requirement for HPD approval, which exists for some of the current exceptions to the general prohibition on new rooming units, should be retained for any new for-profit option, in order to protect residents.

It is not clear that an economically viable prototype exists for unsubsidized new rooming units meeting all applicable codes; this is something that the city would need to determine through study. Additional regulatory changes may be needed at the local or state level. However, if such a prototype can be established, it may represent a useful new tool for housing single persons with limited incomes.

2. “Ease conversions of obsolete and underutilized buildings to housing”

New York City's zoning has special regulations that facilitate the conversion of nonresidential buildings to residences, even where such buildings do not comply with the underlying provisions capping residential floor area and requiring open areas, such as rear yards and minimum distances from windows to lot lines.⁴² These rules, which work in tandem with provisions of the Multiple Dwelling Law,⁴³ have allowed, over the years, the creation of thousands of housing units in former industrial loft buildings, offices, hotels, and stores.

The special conversion rules are complicated. The state rules apply only in NYC and to buildings that existed on January 1, 1977, but only where specified by local zoning. The city's Zoning Resolution applies the rules in parts of lower Manhattan to buildings that existed on that date. In the remainder of lower Manhattan's Community District 1, as well as 11 other community districts in Manhattan, Brooklyn, and Queens, the rules apply to buildings that existed on December 15, 1961. The special conversion rules also apply outside these community districts in four special zoning districts. These specify the 1977 date.⁴⁴

The city's “Zoning for Housing Opportunity” presentation mentions two issues with building conversion. The first is the inconsistency of applicability dates and the failure to update state law.

The city should clearly amend its zoning to make January 1, 1977, the applicable date for special conversion rules wherever these rules apply. There is no logic in treating buildings in downtown Jamaica more flexibly than, for example, downtown Brooklyn. However, the year 1977 is now well in the past, and there are likely aging buildings, particularly in Manhattan, that were completed after January 1, 1977, but that are suitable for residential conversion. This issue is particularly salient due to the reduction in commercial real-estate values in the wake of the Covid-19 pandemic. With more people working from home and residential demand unabated, some building owners may be more receptive to residential conversion than they would have been pre-pandemic.

While expanding eligibility, an updated state law should exclude the most recent and modern office buildings from residential conversion. The “New” New York Panel endorsed moving the applicability date up to 1990.⁴⁵ That would be helpful, but seems insufficiently ambitious. A reasonable updating of the state law would create a moving 20-year age requirement for eligibility. Thus, for example, if the law were amended in the 2023 legislative session, buildings existing on January 1, 2003, would be eligible for the special rules. On January 1, 2024, buildings existing on January 1, 2004, would become eligible, and this sliding eligibility window would continue in subsequent years. The city should then align its zoning rules with state law. These changes could have great potential for new housing production if the city can sensibly do so without imposing stringent affordability requirements. Under current city policies, zoning text amendments that result in new housing that was not previously allowed trigger MIH. However, even when Section 421-a existed, residential conversions were not eligible. With no tax exemption to offset the cost of affordable units, there were no MIH conversions. Imposing MIH might be ideologically satisfying for some but would lead to little or no new housing.

The second issue cited in the presentation is that the special conversion rules in zoning apply only to residences and not to supportive housing, which is considered a “philanthropic or non-profit institution with sleeping accommodations” (NPISA), a community facility use⁴⁶ (this problem does not exist in state law). Zoning can be amended to address this oversight, but the main reason the NPISA use is designated is to avoid the density provisions for residences, which prohibit buildings composed entirely of small units. If this issue is addressed, as DCP also proposes, supportive housing can be treated as a residence without triggering problematic zoning provisions.

3. “Reduce or eliminate unnecessary parking requirements to unlock housing potential.”

In recent years, a nationwide movement has gathered momentum to repeal minimum off-street parking requirements for new construction, both residential and nonresidential.⁴⁷ Off-street parking requirements were widely adopted by U.S. localities after World War II as rapidly escalating car ownership led to concerns about congestion and the inadequacy of the car storage options available to the public, in the absence of regulation.⁴⁸

The argument against off-street parking requirements is straightforward. Governments are bad at establishing the “right” number of off-street parking spaces that are needed. Presumably, such a number would reflect the “demand” for parking by residents or, for nonresidential buildings, workers and visitors. The problem is that the demand for parking, like most services, is affected by price: if parking is free, demand will be much higher than if parking is costly. Off-street parking mandates make sense only if the locality wishes to have more off-street parking provided than private developers would build of their own volition (based on their evaluation of how much they could sell or rent at a profit). Otherwise, local planners should simply let the market decide on the amount of parking. But this must mean that the locality is ensuring that off-street parking will be cheaper than the unregulated market price. By making parking cheaper, localities are therefore encouraging car ownership and use and discouraging the use of public transit—creating the very demand that off-street parking is intended to serve. Parking minimums also discourage building densely because required parking is much more expensive to build in structures than in open parking lots. That, in turn, leads to sprawl, car dependency, and environmental degradation.⁴⁹

Opposition to the elimination of off-street parking mandates often comes from members of the public who own cars and are concerned that the price of rented off-street parking will go up, or that free on-street parking will be harder to find. Such opposition has surprising political salience in NYC, where fewer than half of households have a car.⁵⁰ That’s probably because members of community boards and city council members tend to be drawn from the car-owning strata of the population. In New York politics, as elsewhere, it’s very difficult to take privileges away from those who have them. This accounts for the tentativeness with which DCP inserted “unnecessary” into its description of this proposal. Many cities, even small ones, have decided that all off-street parking minimums are “unnecessary.”⁵¹

NYC’s off-street parking regulations have been much tweaked over the years and currently are a complicated and inconsistent jumble. In some cases, requirements, or the absence thereof, relate to geographic areas, while in others, requirements relate to the specific zoning district mapped. In two parts of the city—the Manhattan Core, defined as Community Districts 1–8; and an area of Long Island City—no off-street parking is required for any use, including residences.⁵² Within the “Transit Zone,” off-street parking requirements for certain types of affordable housing are eliminated, while outside the zone, parking requirements are reduced, compared with the generally applicable requirements in the underlying zoning districts.⁵³ The Transit Zone generally corresponds to the portions of the city served by the subway, but small pieces of the city’s proposed zone were removed by the city council when the scheme was adopted in 2016, creating gaps where reduced off-street parking requirements continue to apply in subway-served areas. In contrast, “lower density growth management areas,” designated on Staten Island and in Community District 10 in the Bronx, have much higher off-street parking requirements than the underlying zoning districts. These parking requirements combine with other restrictions to stifle housing growth.⁵⁴

In most parts of the city, off-street parking is required by the underlying zoning district⁵⁵ for at least some types of residential development, at widely varying ratios to the number of dwelling units.⁵⁶ However, depending on the district, off-street parking requirements may be reduced or waived based on the small size of the lot, or the small number of required spaces.⁵⁷

Nonresidential parking requirements also vary widely. Commercial and manufacturing districts where no off-street parking is required for any nonresidential use are mapped more widely than the Manhattan Core and Long Island City. However, districts with extremely high parking requirements are also common, often in locations where new commercial development would be oriented to pedestrians and transit users, not drivers. These parking requirements often serve as a deterrent to the construction of new apartment buildings with ground-floor retail along existing retail corridors. The combined commercial and residential parking requirements are, in many cases, too high to be economically feasible.⁵⁸

In many neighborhoods, inconsistent off-street parking requirements apply, depending literally on which side of the street one's lot is on. These differences often relate not to parking demand but to the specific political context in which the zoning was mapped. The 1961 comprehensive revision of the city's Zoning Resolution greatly increased off-street parking requirements. This legacy endures, as many parts of the city have never been rezoned. Subsequent zoning plans intended to spur growth reduced or eliminated off-street parking minimums, while zoning changes intended to stop growth, at the behest of local elected officials and community activists, increased them.

What would a more rational regulatory framework look like? A 2009 DCP study⁵⁹ analyzed the patterns of residential car ownership within the city.⁶⁰ Car ownership tends to increase as one moves farther from the Manhattan Core. It also tends to decrease as built density increases. Residents of small homes and small multifamily buildings are more likely to own cars, while residents of larger apartment buildings are less likely. However, among residents of apartment buildings, those in recently constructed buildings are more likely to own cars.

Income and family structure underpin these geographic patterns. Households with higher incomes are more likely to own cars, and family households (two or more related persons living together) are more likely to own cars than nonfamily (single-person) households. Family households with children are even more likely to own cars.⁶¹

A second DCP study,⁶² from 2013, looked at the "Inner Ring," an area of the city outside the Manhattan Core but close to it and well served by transit. In these areas, small new residential buildings can waive out of required off-street parking, taking advantage of zoning waivers for small lots and a small number of required spaces; nonetheless, such buildings had a higher rate of car ownership, on average, than larger new buildings, although the latter provided more off-street parking. However, the averages masked wide variation from building to building. A survey of vehicle-owning Inner Ring residents found that more than half parked on the street, a fifth parked at a location not their residence, and just under a fifth parked at their residence.

These studies are dated but indicate the difficulty of engineering the exact correct percentage of off-street parking spaces (to meet "demand") through regulation. In the denser parts of New York City, where apartment buildings predominate, parking is always "unbundled" from housing and is rented or sold separately, which makes New York different from other cities. Street parking is free but usually scarce. Some, but not all, residents own cars for convenience, even where good public transit connections exist. Some car owners will endure the inconvenience of hunting for on-street parking because it's free; others will pay for off-street parking, to avoid having to search for street parking.

Under these circumstances, requiring new parking in larger new residential buildings does not ensure that there will be off-street parking to accommodate the cars owned by residents. Rather, it makes car ownership somewhat cheaper—and more convenient—on a neighborhood basis than it would be if parking were permitted but not required and if market forces were to determine how much would be provided. It's reasonable to presume that where off-street parking represents a profit center independent of the housing, developers will provide it, even

at levels in excess of the zoning requirement.⁶³ Requiring parking affects only those buildings where off-street parking would not otherwise be considered profitable by the developer. The benefits of an increased parking supply to a relatively affluent minority need to be offset against the externalities (congestion and pollution) of added car ownership and use. Additionally, where required parking is unprofitable, the new housing rents or sales prices are subsidizing it. Lifting parking mandates will make some housing developments profitable that weren't when parking was required. Thus, more new housing will be constructed.

Given the relatively low rates of car ownership in large apartment buildings, as well as the ability of the market to respond to economic demand for off-street parking, eliminating off-street parking requirements for all buildings in the zoning districts permitting large apartment buildings makes sense.⁶⁴ In addition, ground-floor retail space in apartment buildings should be exempt from required off-street parking, since the local residential population provides a walk-in clientele in those neighborhoods.

These changes would make housing construction cheaper because new housing rents and sales prices will no longer be required to subsidize uneconomic parking construction. Combined with DCP's other proposed zoning text changes, as well as appropriate zoning map changes, this can have a large positive impact on new housing construction.

4. "Give all supportive and affordable housing the same preference given to affordable senior housing (AIRS)."

New York City's zoning provides floor area incentives under several different provisions to buildings that include affordable housing. Affordable Independent Residences for Seniors (AIRS) are buildings that provide housing for low-income seniors, in which small apartments are combined with common areas for daytime activities and medical and social services. AIRS have the most generous incentives, applying citywide in all districts that permit multifamily housing.⁶⁵

The current definition and zoning rules for AIRS have been in effect since 2016. The revised rules have enabled the city to respond to the high demand for affordable senior housing by increasing the supply. The demand results from the need to relocate low-income seniors to age-appropriate housing. Many aging New Yorkers live in housing units, such as walkup apartments and homes with interior stairs, that are not adapted to their increasing frailty, or are beyond their economic means to maintain. New AIRS buildings are heavily subsidized, usually with federal low-income housing tax credits supplemented with city funds.

New York City operates several zoning-based "inclusionary housing" programs that also provide additional floor area (over the otherwise maximum allowable density under the applicable zoning rules) in exchange for affordable housing. Unlike AIRS, some of these programs mix affordable units with market-rate units and attract private investment with tax benefits but no cash subsidies. Two older programs are often categorized as Voluntary Inclusionary Housing (VIH).⁶⁶ The R10 program applies in the highest-density residential district, R10, and commercial equivalents. It provides a 20% floor area bonus (from 10 to 12 floor area ratio, or FAR).⁶⁷ Inclusionary Housing Designated Areas (IHDAs) were created and mapped during the Bloomberg mayoral administration. These districts specify a base FAR for buildings that include no affordable units and a higher "bonus" FAR (approximately 33% higher) for those that do.⁶⁸ Affordable units in buildings using the bonus FAR are required to be permanent.

When I worked for DCP, I argued for the superiority of the voluntary approach for inclusionary zoning programs over the mandatory approach later favored by the de Blasio administration. My view was that the city would feel an obligation to make a voluntary program work economically; if it didn't work, no one would use the floor area incentive for including a share of affordable

units. Politicians would want to point to success and so would make the changes needed to make the incentives work. In contrast, in a mandatory program, politicians would imagine themselves as having the upper hand over developers. Economic feasibility would be a secondary consideration to anti-developer ideology; politicians would bid against one another to make the required percentage of low-income units as large as they could, regardless of economic feasibility. Rather than supplementing the city's subsidies, an MIH program would end up draining the city's limited resources, requiring subsidies even in areas where the housing market could support new construction.

This view turned out to be prescient. The IHDA program reached its apogee between 2006 and 2015, when the zoning incentives were coordinated with tax incentives under the Section 421-a program. In an area known as the Geographic Exclusion Area (GEA), which included Manhattan and specified areas in the other boroughs, using the floor area bonus also unlocked the tax exemption. That combination proved potent. In areas outside the GEA, where tax exemptions were available regardless of whether affordable units were provided, the floor area bonus was less likely to be used. After that version of Section 421-a expired in June 2015, a new version was enacted by the state legislature, which did not effectively link zoning floor area incentives and tax exemptions, except in Manhattan. This largely ended new entrants to the IHDA program in the other boroughs.⁶⁹

The de Blasio administration happily took credit for IHDA affordable housing, much of which was constructed without public subsidy (other than the Section 421-a tax exemption). However, its policy was to apply its own, much less effective, invention (MIH) to all new rezonings. As of December 2022, the Adams administration was continuing to apply MIH to rezonings, despite the program's need for tax exemptions, which are no longer available, and public subsidies for most sites. MIH generally applies the "bonus" FARs of the IHDA as the maximum for buildings that include affordable housing. In the special case of small buildings that are exempt from affordability requirements, the underlying FAR of the district applies.

This panoply of FARs in the same district is confusing and hard to justify as rational land-use policy. **Figure 3** shows how the different FARs work in the widely mapped R6 district. Similar ranges exist in other districts that permit apartment buildings.

Figure 3

Applicable FARs in New York City R6 District

Zoning Regulation	FAR
"Basic" or "Height Factor"	0.78–2.43, based on number of stories and amount of open space on lot
"Quality Housing" Underlying District	
For zoning lots, or portions thereof, located within 100 feet of a "wide street" (75 feet or wider) outside the Manhattan Core (Community Districts 1–8)	3.0
For zoning lots inside the Manhattan Core located within 100 feet of a wide street	2.43
For zoning lots, or portions thereof, not located within 100 feet of a wide street	2.2
AIRS	3.9
IHDA	

Base, and bonus, for zoning lots, or portions thereof, within 100 feet of a wide street	2.7–3.6
Base, and bonus, for zoning lots, or portions thereof, beyond 100 feet of a wide street	2.2–2.42
MIH	
Includes affordable units	3.6
Does not include affordable units	As per Quality Housing underlying district rules above

Source: New York City Zoning Resolution, §§23-151, 23-153 to 23-155

The Adams administration's "Zoning for Housing Opportunity" proposal potentially amounts to a citywide voluntary inclusionary housing program. This idea has several virtues: it will result in the more intensive use of land, providing more housing on any given site. It could offer additional below-market housing, beyond what the city is able to finance through federal and state aid and its own capital budget allocations. And the voluntary design provides the city with an incentive to make the program work economically—as it did for the IHDA program during the Bloomberg administration.

The program has to be designed carefully, however, to account for the following considerations:

- The floor area bonus needs to be coordinated with a new version of the Section 421-a tax exemption, enacted by the state legislature. Utilization of the floor area bonus should make new mixed-income housing developments eligible for tax benefits; and developments that could use the floor area bonus, but do not, should not be eligible for tax benefits. If no tax benefits are available for new mixed-income buildings, the floor area bonus will be utilized only by heavily subsidized all-affordable buildings,⁷⁰ limiting the number of new dwelling units that it can produce.
- The relation between the "base" FAR and the "bonus," on the one hand, and the percentage and required affordability levels of the below-market units, on the other hand, needs to be calibrated so that the program is economically feasible for developers. For this to be the case, the net present value of the tax exemption needs to be sufficient to subsidize the construction of the affordable units. The IHDA program worked prior to 2015 in some areas to produce new affordable units with only the tax exemption and no other subsidies because developers in the GEA found that the tax benefit adequately compensated them for the requirements of the program.⁷¹ The floor area bonus alone turned out to be a relatively weak incentive to construct low-income affordable units, and when the GEA tax-benefit linkage was discontinued post-2015, developers eschewed using the bonus. The de Blasio administration and the city council, in enacting MIH in 2016, both increased the required percentage of affordable units and lowered eligible incomes. This made the MIH program economically infeasible without deep public subsidies, even with the tax exemption, in many of the same neighborhoods where the IHDA bonus program had been economically feasible.
- It's desirable that the proposed citywide base and bonus floor area track some of the existing options, rather than creating yet more. If possible, the proposal should also aim to simplify the present confused jumble of zoning by folding in IHDAs—which were effectively nullified outside Manhattan by the last round of 421-a changes—and MIH areas, most of which are dependent on future provision of deep city subsidies and, given limited resources, cannot produce the promised amount of housing in any reasonable time frame.

It has proved easy, during the de Blasio administration and in the first year of the Adams administration, for city council members to demand high levels of affordability in exchange for land-use approvals. As a result, MIH sites all over the city, some very large, are competing for the same limited (and eroding, in inflation-adjusted terms) pool of public subsidy dollars. The city's commitment to these projects is, at best, long-term; and, in the short term, materially increasing housing production through rezoning is impossible. DCP's idea for a de facto citywide inclusionary housing bonus has the potential to increase both the number of new affordable units and the number of new units overall but only if the mayor and the city council can negotiate program parameters that do not require public subsidy beyond tax benefits in neighborhoods where market conditions are favorable.

5. "Make it easier for owners of homes and small buildings to alter and update their buildings over time."

Apartments over Stores

This component of DCP's proposal includes a change that could potentially be among the most ambitious and impactful. This would be to allow apartment buildings within commercial zoning districts that currently allow only small homes.

DCP's proposal is a throwback to the pre-1961 zoning, which permitted apartment buildings almost everywhere. Although the zoning was more permissive on height, apartment buildings were effectively capped by the state Multiple Dwelling Law at six stories in all except the wealthiest parts of the city.⁷² Thus we find, for example, a lone six-story, 50-unit building, completed in 1961, on Hillside Avenue at 259th Street, at the eastern edge of Queens.⁷³ The building is an artifact of once-permissive zoning. Since 1961, zoning has precluded building apartments above stores in the surrounding commercial zoning district.⁷⁴

Designating commercial streets to accommodate additional housing density solves two problems. First, many of the city's high-opportunity community districts are very restrictively zoned. I have written of the unbalanced character of the city's housing construction in the 2010–20 decade, with new housing concentrated in just a few community districts, and the need for proposed solutions to the city's housing crisis to ensure that the burdens of growth are widely shared.⁷⁵ At once, allowing apartments along commercial corridors would open large areas to housing.

The second problem is that planners' desire for more new housing sites needs to be balanced against many New Yorkers' protective feelings toward the character of low-density residential neighborhoods. In truth, these represent attractive options for those who can afford them. Targeting new apartment buildings to commercial streets may be a good way to address the city's housing needs while allowing leafy side streets to retain their small-home character. Commercial streets also often have subway and commuter rail stations, or bus routes that feed into rail transit lines. With rail transit ridership reduced post-pandemic because of increased work-from-home, adding population along commercial corridors potentially fills unused transit capacity and helps stabilize the finances of the Metropolitan Transportation Authority.⁷⁶

Seeking this balance appears to have inspired recent state legislation in California, known as AB 2011, which provides for a ministerial approval process (exempt from environmental review or local discretionary approvals) for mixed-income multifamily projects on commercially zoned land.⁷⁷ California's legislation specifies densities up to 80 units an acre in the most urban parts of the state.

DCP has not yet suggested which underlying residential districts would be covered by its proposal, or which densities would be appropriate. The districts affected should include all those where the desired residential prototype is impossible to build. A good model would be the pre-1961

six-story apartment building. To achieve five residential stories above ground-floor retail, at a typical lot coverage⁷⁸ (above the ground floor) of 50%, would require a residential FAR of 2.5, additive to the commercial FAR, typically 1. An alternative prototype places three stories above retail; that would require a residential FAR of 1.5, plus the 1 FAR of commercial space.⁷⁹ **Figure 4** is a slide from DCP's presentation that illustrates the latter prototype.

Figure 4

Three Stories of Apartments Above Stores, New York City

Example 2

Lower density -Small apartment buildings

Omar wants to redevelop his family's 1-story retail strip into a classic NYC building type: A few stories of residential on top of a commercial ground floor.

He finds out that the combined parking requirement, FAR limits, and height limits would make that impossible.

Adjustments to lower-density commercial districts could make this housing type possible again.



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Source: "City of Yes Info Session"

Conceptually, the six-story prototype should be allowed in areas that are well served by the subway system or that offer fast and reliable bus transfers. DCP may find it easier to draw geographic boundaries for this rule to be applicable, rather than to select from the city's inconsistently mapped zoning districts. To make this area as large as possible, the city should designate new bus lanes and the MTA should implement other measures, such as all-door boarding, to speed trips by public transit. The four-story prototype should be allowed in a second tier, where public transit is less convenient but still available. It's important that at least the second tier penetrate to the portion of Staten Island south of the Staten Island Expressway, where successive mayoral administrations have virtually shut down new housing construction, as well as high-opportunity outlying areas of the Bronx, Brooklyn, and Queens, where little housing was built in the 2010–20 decade.

Small Home Conversions and Enlargements

DCP's presentation also suggests possible changes to regulations affecting development in neighborhoods of small homes. To forestall repeated demands by local community activists and city council members for more restrictive zoning, in 2010 the city adopted zoning amendments requiring an additional parking space for new units created by conversion or enlargement of an existing home in widely mapped small-home districts.⁸⁰ Because locating another parking space on a lot with an existing house was often impossible, the amendment effectively precluded converting many single-family homes into two-family homes, even when this was, in theory, allowed by zoning.

In many of the affected districts, even if this restriction were lifted, other rules also make creating a second unit difficult. For example, in many of the same districts affected by the parking provision, one unit in a two-unit home needs to be at least 925 square feet.⁸¹ Because many NYC houses are small by suburban standards, this rule often precludes the most logical way to create two units out of a single-family home, in which one unit would be located on the first floor and the other unit on the second. Enlargements—adding floor space onto a house—are also hindered by very tight height and setback regulations in small-home districts.⁸² For example, height and setback regulations are modeled on an assumption of minimum-standard eight-foot floor-to-ceiling heights, which is less than many existing houses currently have and less than what homeowners want in an enlargement.

The problem of adding units in conversions or enlargements that, in theory, are allowed by the underlying zoning is very closely related to that of permitting ADUs. In both cases, homeowners often resort to construction without a valid building permit or certificate of occupancy. Creating viable zoning options for what entrepreneurial homeowners have been doing for decades won't end the problem, as illegal construction will remain cheaper. However, it will ameliorate it, since having a proper certificate of occupancy for one's house probably adds value. Moreover, renters will have more opportunity to rent safe, legal apartments.

“Missing Middle” Housing

“Missing middle” housing is a term to cover small multifamily buildings, bigger than a single-family house but smaller than an elevator apartment building.⁸³ These housing types are viewed by city planners as compatible with a low-scale neighborhood character but offering more residential density as well as diverse housing options, compared with a typical American neighborhood of single-family detached homes.

NYC enacted a quantitatively successful, but aesthetically dubious, “missing middle” zoning option called “infill zoning” in the early 1970s.⁸⁴ The key aspects of “infill zoning” that made it effective at encouraging housing construction were a higher FAR and a lower off-street parking requirement than the underlying zoning districts. Beginning in the 1980s, the applicability of these rules was greatly scaled back, by changing the conditions in which they could be used, as well as “downzonings” to more restrictive zoning districts. Concurrently, the parameters of “infill zoning” were tweaked to make the buildings better neighbors.⁸⁵

Today, the legacy of “infill zoning” can be seen in neighborhoods like Sheepshead Bay in Brooklyn, where it has been used to enlarge homes and create small multiunit buildings. However, because its applicability is so constrained, many neighborhoods where infill zoning could help meet housing demand do not have it available.

While considering identifying currently low-density districts where apartment buildings could be built over retail along commercial streets, DCP should also consider whether “infill zoning” should apply more widely in nearby residential blocks. Existing and improved transit corridors can serve not only added population in the primary commercial corridor but, on a more modest scale, an increased population living on secondary streets within walking distance of transit and neighborhood services. The form of this new multifamily housing would be consistent with the existing low-scale character of residential streets.

All That and More: What New York City Also Needs

Setting a Housing Target

The city needs to be frank with the public about how much more housing supply the city needs to alleviate its crisis. Otherwise, it is in danger of running into a storm of public opposition to its ambitious proposed zoning changes without good arguments about the importance of unblocking housing supply.

Other cities set targets, and then track the results. Boston, for example, set a goal in 2014 of producing 53,000 new housing units by 2030, with production targets also at various income levels. After experiencing higher than expected population growth, the city revised the target in 2018, to 69,000 new units by 2030.⁸⁶ Seattle's comprehensive plan sets a housing target of 70,000 units by 2035.⁸⁷ NYC is much bigger than either of those cities, and its housing target should certainly be a multiple of these.

In a December 2022 speech, Mayor Eric Adams announced a “moonshot” goal of 500,000 new housing units in the next decade.⁸⁸ Five hundred thousand housing units represents about a 14% increase in housing units over a decade, compared with a 7.3% increase between 2010 and 2020.⁸⁹ That's not an impossible goal: America's fastest-growing dense, large cities, Seattle and Washington, D.C., both grew housing at a faster pace in the last census decade.⁹⁰

Adams and other city officials were vague about how that goal could be reached. They need to reveal more detail in the future. Any realistic evaluation of the path to 500,000 units in a decade will conclude that it can't be done with the current Mandatory Inclusionary Housing policies in place, as is discussed below.

Setting housing targets is an art, not a science, because the demand for housing is continually changing, based on population dynamics and economic conditions. However, that is no reason not to set a goal; the city needs one, based on the best forecasting practices established by other cities, so that it can design credible policies to meet it, and then track and evaluate actual housing construction. Targets can be updated periodically, as appropriate. An ambitious housing growth target will justify zoning and other changes, while also helping to attract and retain businesses, spur the city's economic recovery with new investment, and restore NYC's standing as a place of opportunity for upward-striving people from throughout the nation and, indeed, the world. The Adams administration is right to make an explicit housing target part of its communications strategy as its housing plan moves forward.

Zoning Map Changes

The city's proposed zoning text changes threaten to make its Zoning Resolution—which is extraordinarily hard for nonexperts to understand—even more complex. DCP should try to make things easier by relating text changes to specific mapped zoning districts rather than new boundaries shown on separate appendix maps, like the “Transit Zone” defining where parking is waived for affordable housing. Where that is not feasible in the existing framework (for example, when allowing apartment buildings in some currently low-density commercial overlays or eliminating commercial off-street parking requirements in others), the zoning map should be changed to reflect new rules.

Moreover, the zoning map requires other changes. It includes a large number of commercial and manufacturing zoning districts where housing is prohibited but should not be.⁹¹ The proposed text amendments won't change that. DCP needs to take on identifying and rezoning these districts. Finally, the mapping of residential zoning districts throughout the city is both inconsistent and inadequate. There are locations where apartment buildings are allowed but where higher residential densities are appropriate. Other areas, zoned for small homes but not within commercial overlays, are appropriate for apartment buildings, yet the proposed zoning text amendments would not affect them. Zoning needs to be more flexible in many ways, and changes to the zoning map need to be part of the toolbox.

Late in 2022, Adams announced proposals for city-initiated zoning map changes in the East Bronx areas where new Metro-North stations are proposed and in an area including portions of Crown Heights and Bedford-Stuyvesant, Brooklyn, where housing is currently not allowed.⁹²

The proposed Brooklyn rezoning area is perhaps close enough to high-rent downtown Brooklyn for market rents to permit MIH to work economically with only renewed 421-a tax exemptions and no additional subsidies. Unfortunately, under MIH, as proposed, the East Bronx map changes would likely not have the potential to increase private housing production. Rather, they would compete with previously rezoned and restricted areas for scarce public subsidies. Many additional map changes are needed, with more realistic parameters so that they can be effective at increasing housing production.

Getting Real About Housing Affordability Mandates

The Adams administration has continued the de Blasio administration's practice of imposing stringent affordability requirements on rezonings in parts of the city where those levels of affordability can be achieved only with long-term tax exemptions and additional deep public subsidies. These rezonings produce good publicity but no meaningful increases in housing production. Housing subsidies are finite, and the land-use review process has become a competitive grab by council members for a bigger share of a limited pool of funding. However, only a few can win this game each year.

Some activists and council members may believe that the backlog of promised affordable housing will force a large increase in the capital budget allocation for HPD.⁹³ That has not happened thus far and, with the post-pandemic fiscal constraints on the city, is not likely to happen in the foreseeable future.

Imposing heavy zoning exactions on private housing construction may also be seen by some left-leaning activists as a step on the road to "decommodification" of housing, which drives away the profit motive and ensures that all housing is either publicly operated or controlled by nonprofit entities dependent on public largesse. As I wrote in 2019, "decommodification" is always a dead end.⁹⁴ It is based on the assumption that some level of government will come up with the money to build and maintain housing at scale without the need for profit-motivated investment. However, its advocates can never supply a plausible theory of how that would work. Pointing to successful examples of publicly operated housing in countries with very different political systems does not explain how housing decommodification in one city can be made to work in the context of the American constitutional framework. That framework gives disproportionate political power at the federal level to small states and rural residents, who care little about big cities, while requiring state and local balanced budgets.

It would be best, as discussed above, for the city to discontinue the MIH framework entirely and fold its zoning-based inclusionary housing efforts into a single voluntary program coordinated with tax incentives. Failing this, the city needs to become realistic about what it can squeeze from private developers.

What would getting realistic about housing affordability look like? In the absence of Section 421-a, or a similar tax-exemption program, mixed-income housing—where a private for-profit developer builds but forgoes profit from a percentage of the units—is very unlikely to be financially feasible. Buildings with 100% affordable housing do qualify for other tax exemptions that are not subject to expiration. However, securing deep housing subsidies cannot be the only route to building housing after a rezoning. In that situation, few private-property owners will apply for a rezoning, while city-initiated rezonings will simply freeze most rezoned land in its current use.

In consideration of the unreasonable burdens that MIH rezonings have imposed, the city should create a ministerial process to waive affordability requirements for developments that are subject to full property taxes.⁹⁵ That would include rental developments in MIH areas, in the absence of a 421-a replacement. The waiver would also apply to other types of development, such as conversions of nonresidential buildings and small buildings eligible for a cash payment in lieu of providing affordable housing. Such sites are subject to MIH requirements but have never been eligible to receive compensating benefits. Not surprisingly, these provisions have not been used.⁹⁶

For developments that do qualify for a tax benefit but nonetheless want to apply through the existing Board of Standards and Appeals (BSA) special permit process for a waiver or reduction of MIH requirements, the city should make the process less costly and more predictable. First, the BSA special permit should be added to the city's supplemental list of "Type II" actions, i.e., actions exempt from environmental review.⁹⁷ In addition, the city should clarify the conditions under which such developments would be considered economically infeasible. Currently, applicants have no guidance on the criteria that HPD might use when advising BSA whether to grant an applicant's requested relief.

If a 421-a replacement is enacted by the state legislature, the MIH program should be revised so that it aligns with the new tax-exemption program. There are some areas of the city where the housing market is too weak to support new private for-profit housing construction, even with long-term tax benefits. In those areas, housing will not be built without additional subsidy. However, in those parts of the city where private for-profit construction is feasible under the revised tax-exemption program, MIH should not impose additional financial impediments. Affordability requirements should never be so strict that private property needs to be kept in limbo for years in neighborhoods with favorable housing markets, awaiting the availability of subsidies from public agencies.

What New York State Should Do

Section 421-a Replacement

The NYS legislature should enact a new Section 421-a program.⁹⁸ For continuity's sake, the new program should be much like the old, with only a few changes. First, Option C, the most generous combination of long-term tax benefits and moderate affordability requirements, should not be available in locations where existing IHDAs can support new mixed-income housing construction with only the floor area bonus and the tax exemption. This new GEA should also include locations where a new citywide floor area bonus applies and can similarly support new mixed-income housing construction without cash subsidies.

Second, Option C remains important as a means to ensure that new rental housing is widely developed in middle-income neighborhoods (for example, the currently low-density commercial corridors where DCP's proposal would permit apartment buildings). However, it should be

made less generous in the areas where it would continue to apply (outside the new GEA). Currently, the city is forgoing an unduly large amount of tax revenue that is not producing any public benefits. The best way to right-size the tax exemption is to shorten the benefit period.⁹⁹

Third, the city should have the flexibility to tailor the boundaries where different versions of the tax exemption apply, in order to maximize housing construction while limiting unnecessary revenue loss. A state legislative process that only occurs once or twice a decade cannot substitute for city officials' knowledge of current conditions in the housing market.

Environmental Review Reform

The legislature should amend the Environmental Conservation Law to state clearly that actions related to the construction of housing in cities with more than 1 million in population and with a declared housing emergency¹⁰⁰ are exempt from environmental review. Currently, the state Department of Environmental Conservation maintains a statewide "Type II list" of exempt actions,¹⁰¹ and the city also maintains a supplemental list that applies in NYC only. The state list exempts construction of one-, two-, and three-family homes from environmental review.

In December 2022, Adams indicated that the city is considering using its regulatory authority to exempt new housing construction of up to about 200 units from environmental review.¹⁰² The city would need to document that residential developments up to the threshold size were unlikely to have the potential to result in significant environmental impacts.

It's important to keep in mind that the environmental review framework for housing construction in NYC is problematic for developments of any size.¹⁰³ Environmental reviews always compare the impacts of new housing construction to the as-of-right development *on the same site*. If a parcel of land is zoned for small homes and is rezoned to allow apartment buildings, the small homes represent the baseline for environmental review. That's often the wrong baseline because the demand for housing continues to exist even if a proposed development does not get built. Environmental review guidelines do not allow for consideration of the inherent environmental benefits of satisfying housing demand by building housing within dense cities, rather than in a location on the edge of the metropolitan area. Nor do they allow for consideration of the environmental costs of building an inadequate amount of housing within cities, resulting in rising rents, increased homelessness, and decreased opportunity for all but the highest-income potential in-migrants. Thus the review will tend to overstate the environmental impacts of building the proposed housing.

Because environmental review of new housing construction in NYC is so conceptually flawed, it often doesn't supply good or useful information to the public, the City Planning Commission, or the city council. The legislature should require NYC to describe a citywide residential zoning framework and how that framework is consistent with mitigating the housing emergency and achieving state environmental sustainability goals.¹⁰⁴ Having done that, the city should then be allowed to get zoning changes under way forthwith, without having to spend years and millions of dollars on consultants to undertake Environmental Impact Statement analyses of dubious worth.

Multiple Dwelling Law (MDW)

The city's housing crunch can be mitigated by a number of changes to this important but little-understood state law. I have already noted above the need for changes to the applicability date for special rules that facilitate conversions of nonresidential buildings to residences. Also discussed above, any changes that the city makes to local prohibitions on private for-profit shared housing need to be coordinated with a reexamination of the law's provisions for single-room-occupancy dwellings.

Another important provision that should be amended is the cap of 12 FAR on new residential buildings.¹⁰⁵ Unlike the case with many provisions of this law, the city is unable to modify the cap via a zoning amendment. This prohibition dates to a 1961 political deal that helped pave the way to a new NYC zoning resolution. It should no longer have relevance. If the City Planning Commission and the city council agree on a residential FAR above 12 in a specific area, they should be able to enact it via local authority.¹⁰⁶

Amnesty for Dwelling Units Constructed Without a Permit

As part of the state fiscal year 2023 Executive Budget, Governor Hochul proposed legislation requiring that NYC create an amnesty program legalizing dwelling units on the same lot as small homes and created without permits.¹⁰⁷ As part of a ministerial legalization process, the city would be permitted to waive applicable provisions of the state Multiple Dwelling Law, as well as zoning and other local laws. While this proposal was not enacted, its rationale is sound. An amnesty program would provide the city government with accurate information on the number and location of these units and permit accurate property-tax assessments. Tenants would gain legal rights and improved housing conditions. Owners' home values would rise with legal status for all units on their lot. This proposal should be reintroduced and enacted by the legislature.

Vacancy Reform

Probably the single most important action that the state legislature could take to put large numbers of housing units on the market quickly is to allow vacancy rent increases that provide landlords with an economic return on vacant apartment renovations.¹⁰⁸ The problem of vacant, unrehabilitated units not being offered for rent was created by the legislature's punitive 2019 rent law amendments, which eliminated vacancy allowances and capped rent increases for apartment renovations at a very low amount.

The arguments against passing something similar to what the landlords say that they need are very weak. One is that it would reward the landlords for keeping units off the market. That makes housing policy into a test of wills between landlords and the legislature, where backing down shows legislative weakness. That's not what policy should be based on; it should be the best policy for the state. If a provision of law doesn't work, it should be changed.

The second argument against doing this is another version of the "decommodification" argument: that the actual objective of the rent laws is to devalue private rental housing so much that it falls into public ownership, or nonprofit ownership dependent on public largesse. This is both irresponsible—neither the city nor the state is in a financial position to take financing responsibility for the rent-stabilized housing stock—and wildly overoptimistic about the administrative capacity of these two levels of government. In fact, in a past episode of a wild lack of realism, the city in the late 1970s stopped auctioning off tax-foreclosed apartment buildings and took on the responsibility of being the landlord of last resort. The city's property-management effort—effectively, a second Housing Authority—was ruinously expensive and not very effective at managing widely scattered, distressed apartment buildings. The occupied "in rem" housing stock was ultimately returned to private landlords during the Giuliani mayoralty in the 1990s.¹⁰⁹ No fiscally responsible mayor would want to reassume that burden. The legislature instead should let the landlords get a return on their vacant apartment renovation investments.

Conclusion

The “Zoning for Housing Opportunity” proposals floated by the city face a daunting public and city council review process. There is no indication at present that the city council is prepared to turn pragmatic and to make its priority to get housing built. Rather, the priority has been symbolic expressions of anti-developer sentiment and competition among members to lock in scarce subsidy dollars with high mandated levels of housing affordability. Similarly, at the state level, there is no sign that legislators are willing to take political risks to help solve the housing-supply crisis in the state’s largest and richest city.

Nonetheless, pragmatism is what is needed, and the job of housing-supply advocates is to persuade the council to enact the full range of reforms outlined in this paper. By going for the full package, decision-makers can ensure that the burden of housing growth is widely shared and that the public will be able to see the results quickly—important when New York State has an election every two years and New York City every four. Moreover, increased housing construction in the city will lead to a jump in employment and increased tax revenue, via income taxes paid by construction workers and sales taxes on construction materials and apartment fixtures. The city and state share these revenues.

Finally, unblocking the city’s housing supply will mitigate the trend of ever-increasing rents and sales prices and create opportunities for people who did not attend top colleges—or who do not work in the highest-paying occupations—to live in NYC. The “housing equity” that the “Where We Live” report aspires to, but couldn’t identify policies to achieve, will be closer to realization.

The big losers from the package of reforms outlined here will be incumbent homeowners and landlords of unregulated housing units (many of whom are also owners of small homes), whom current policies have made rich. Owning a home will still be a good investment in a New York City with less constrained housing supply. The city is wealthy and experiences economic growth most of the time. However, housing prices would, in the future, rise more in keeping with changes in incomes and would no longer be artificially pumped up by scarcity produced by restrictive zoning and punitive rent regulations. Homeowners are capitalists, too, and it’s ironic that self-proclaimed socialism-friendly politicians have catered so diligently to building their wealth. If elected officials begin showing more concern to create opportunities for people who do not now own homes in the city but who might want to own or rent in the future, the city can resume its historical role as a beacon of hope for ambitious, striving people everywhere.

Endnotes

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- ² Miller Samuel Real Estate Appraisers and Consultants, “Elliman Report: Manhattan, NY Sales,” 3Q:2022.
- ³ Miller Samuel, “Elliman Report: Manhattan, Brooklyn and Queens Rentals.”
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- ⁵ Eric Kober, “The Return of ‘Key Money,’” *City Journal*, June 9, 2022,.
- ⁶ Janaki Chadha, “Affordable Housing Production Drops in New York City, Report Shows,” *PoliticoPro*, Sept. 16, 2022.
- ⁷ NYC Dept. of Homeless Services, “Daily Report,” Oct. 21, 2022; Andy Newman and Emma G. Fitzsimmons, “New York Faces Record Homelessness as Mayor Declares Migrant Emergency,” *New York Times*, Oct. 7, 2022, updated Oct. 13, 2022.
- ⁸ Eric Kober, “Can’t Keep a Great City Down: What the 2020 Census Tells Us About New York,” Manhattan Institute, Nov. 4, 2021.
- ⁹ Eric Kober, “How Large Cities Can Grow Denser and Flourish: What the 2020 Census Reveals About Urban Sprawl,” Manhattan Institute, Jan. 20, 2022.
- ¹⁰ NYS Dept. of Labor, “Current Employment Statistics,” Nonfarm Employment for New York City, Not Seasonally Adjusted Table.
- ¹¹ NYC Dept. of Housing Preservation and Development (NYC HPD), “Tax Credits and Incentives: 421-a.”
- ¹² NYC Dept. of City Planning (NYC DCP), “New Housing Permits in the First Half of 2022,” November 2022.
- ¹³ NYC Rent Guidelines Board, “2022 Housing Supply Report,” May 26, 2022, p. 19.
- ¹⁴ NYC DCP, “New Housing Permits in the First Half of 2022.”
- ¹⁵ Eric Kober, “Hinging on the Details,” *City Journal*, Jan. 20, 2022.
- ¹⁶ NYC DCP, “Building a City of Yes: Accomplishments and Work Ahead,” video, October 2022.
- ¹⁷ NYC DCP, “Public Info Session for City of Yes,” video.
- ¹⁸ NYC DCP, “Info Brief: Net Change in Housing Units, 2010–2020,” February 2021.

- ¹⁹ NYC DCP, “Public Info Session for City of Yes”; presentation begins at approximately 50:25 in the video.
- ²⁰ City of New York, “Where We Live NYC: Fair Housing Together,” October 2020.
- ²¹ For background of the political context of this revocation, see Danielle Kurtzleben, “Seeking Suburban Votes, Trump to Repeal Rule Combating Racial Bias in Housing,” NPR, July 21, 2020.
- ²² City of New York, “Where We Live NYC,” p. 192.
- ²³ City of New York, “Where We Live NYC.” The strategies include “Increase housing opportunities, particularly for low-income New Yorkers, in amenity-rich neighborhoods”; “Remove legislative and process barriers that slow or limit the development of affordable housing, particularly in areas with few affordable options”; and “Open publicly supported housing to more New Yorkers.”
- ²⁴ Eric Kober, “A Growth-Oriented Housing Plan for the Next Mayor,” Manhattan Institute, Feb. 24, 2021.
- ²⁵ “Even in an economic boom period, the city issued building permits for slightly fewer new housing units in the 2011–20 decade (219,700) than it did in the 2001–10 decade (222,900) while its population grew much faster”; Eric Kober, “NYC’s Population Actually Grew During COVID—and It Needs Housing Fast,” *New York Post*, Nov. 13, 2021.
- ²⁶ City of New York, “Where We Live NYC,” p. 194.
- ²⁷ NYC DCP, “Mandatory Inclusionary Housing.”
- ²⁸ Eric Kober, “De Blasio’s Mandatory Inclusionary Housing Program: What Is Wrong, and How It Can Be Made Right,” Manhattan Institute, Jan. 16, 2020.
- ²⁹ HPD maintains a map (“HPD Inclusionary Housing Sites”) that indicates Mandatory Inclusionary Housing (MIH) sites. However, the map does not provide data on project status or funding. Further research is required at the NYC Dept. of Buildings website to determine whether the development is in construction or completed: <https://a810-dobnow.nyc.gov/publish/Index.html#!>. Furthermore, to determine whether government agency regulatory agreements exist for public subsidies, one needs to undertake research in the NYC Dept. of Finance ACRIS database: <https://www.nyc.gov/site/finance/taxes/acris.page>.
- ³⁰ U.S. Census Bureau, American Community Survey, “Table S2501, Occupancy Characteristics,” New York City, NY, 2021 ACS 1-Year Estimates, downloaded from <https://data.census.gov/cedsci>.
- ³¹ NYC’s single-family districts have the prefix R1 and R2. About 15% of the city’s residentially zoned land is within these districts: Emily Badger and Quoc Trung Bui, “Cities Start to Question an American Ideal: A House with a Yard on Every Lot,” *New York Times*, June 18, 2019.
- ³² See Kober, “Hinging on the Details.”
- ³³ “New” New York Panel, “Making New York Work for Everyone,” December 2022, p. 118.

- ³⁴ NYC Zoning Resolution, §23-22. The calculation dividing total floor area by the Dwelling Unit Factor includes floor area used for common spaces in the numerator, and thus the factor should not be considered an “average unit size.”
- ³⁵ The Bloomberg mayoral administration sponsored the “Adapt NYC” all-studio apartment building (not senior or supportive housing) on a city-owned site in Manhattan. This prototype would not be replicable without zoning changes. See ArchDaily, “adAPT NYC: The Latest Architecture and News.”
- ³⁶ Voorhees, Walker, Smith & Smith, “Zoning New York City,” August 1958, p. 42.
- ³⁷ New York Multiple Dwelling Law (MDW), §4, Definitions.
- ³⁸ NYC Housing Maintenance Code, §27-2077 (Conversions to rooming units prohibited).
- ³⁹ NYC HPD, “City Reveals Selected Shared Housing Development Proposals,” Oct. 8, 2019.
- ⁴⁰ MDW §248, Single Room Occupancy.
- ⁴¹ Kober, “A Growth-Oriented Housing Plan for the Next Mayor.”
- ⁴² New York City Zoning Resolution, Article I, Chapter 5.
- ⁴³ MDW §277, Occupancy Permitted.
- ⁴⁴ The Special Mixed Use District, which is mapped in 23 separate locations, specifies an applicability date of Dec. 10, 1997, for the special conversion rules (New York City Zoning Resolution, §123-67). However, this provision, as local zoning, cannot override the 1977 date in MDW §277, so any conversions of buildings constructed after that date would need to comply with the underlying provisions for multiple dwellings.
- ⁴⁵ “Making New York Work for Everyone,” p. 57.
- ⁴⁶ New York City Zoning Resolution, §22-13.
- ⁴⁷ Patrick Siegman, “Analysis: The Decline and Fall of Mandatory Parking Minimums,” *Streetsblog USA*, Jan. 31, 2022.
- ⁴⁸ Eric Kober, “End of the Road for Parking Requirements,” *City Journal*, May 24, 2021.
- ⁴⁹ These arguments are most clearly articulated by UCLA professor and author Donald Shoup. See Evan Goldin, “A Cheat Sheet on Professor Donald Shoup’s Groundbreaking Work,” *Parkade*, Oct. 1, 2022.
- ⁵⁰ NYC Economic Development Corporation, “New Yorkers and Their Cars,” Apr. 5, 2018.
- ⁵¹ See, e.g., Marc Levy, “Developers Will Have to Explain Their Decisions, but Law to Abolish Parking Minimums Proceeds,” *Cambridge Day*, Oct. 4, 2022.
- ⁵² NYC Zoning Resolution, Article I, Chapters 3 and 6.
- ⁵³ NYC Zoning Resolution: the Transit Zone is defined in §12-10 and mapped in appendix I. The parking requirements for specific types of new affordable housing within and outside the Transit Zone are found in §25-25.

- 54 “Lower density growth management areas” are defined in NYC Zoning Resolution, §12-10. Special off-street parking requirements are in §§25-22 and 25-23.
- 55 Just to complicate matters further, in some areas special zoning districts modify the underlying district requirements (usually to require more off-street parking; but, in the case of downtown Brooklyn, to require less).
- 56 The lowest ratio is 0.2, and the highest is one space per dwelling unit. For zoning districts permitting apartment buildings, required parking is usually less than one space per dwelling unit, and off-street parking is sold or rented separately from dwellings.
- 57 NYC Zoning Resolution, §§25-20 to 24 and 25-26.
- 58 For a discussion of how this problem impedes new housing in high-opportunity neighborhoods, see Eric Kober, “How to Solve New York City’s Housing Crisis: Building New Housing in Restricted High-Opportunity Neighborhoods,” Manhattan Institute, June 1, 2022.
- 59 NYC DCP, “Residential Parking Study: Automobile Ownership Rates and Off-Street Parking Requirements in Portions of New York City: Manhattan CDs 9–12, the Bronx, Queens and Brooklyn,” March 2009.
- 60 These patterns are based on a study of registered private cars by address, with data provided by the NYS Division of Motor Vehicles.
- 61 These attributes are derived from the Census Bureau’s American Community Survey, since the vehicle registration data do not include any information about the owners.
- 62 NYC DCP, “Inner Ring Residential Parking Study,” December 2013.
- 63 For example, the owner of a site at 263 Prospect Avenue in Brooklyn, formerly the location of the Grand Prospect Hall banquet facility, was reported to be intending to construct 180 parking spaces in a new 147-unit residential building, more than double the zoning requirement. Vanessa Londono, “Permits Filed for 263 Prospect Avenue in Greenwood Heights, Brooklyn,” *New York Imby* (blog), Feb. 2, 2022.
- 64 Under current zoning, these districts are R6 through R10, including all suffixes and commercial and mixed-use equivalents. Some of DCP’s proposals would extend the ability to build apartment buildings to commercially zoned portions of lower-density zoning districts.
- 65 NYC Zoning Resolution, definition in §12-10, floor area provisions in §§23-144 and 23-155.
- 66 NYC DCP, “Rules for Special Areas: Inclusionary Housing Program.”
- 67 FAR, or the floor area ratio, is the maximum amount of floor area allowed on a given lot, expressed as a multiple of the lot area. E.g., with a FAR of 5, 50,000 square feet of floor area would be permitted on a 10,000-square-foot lot.
- 68 Maps of IHDA are found in NYC Zoning Resolution, appendix F. The floor area regulations are found in §23-154(b). Other applicable provisions are found in §23-90.
- 69 See Eric Kober, “Zoning, Taxes, and Affordable Housing: Lessons from Bloomberg’s Final Term,” Manhattan Institute, May 20, 2020.

- ⁷⁰ These are eligible for reduced property taxes under other provisions of law that do not expire periodically.
- ⁷¹ IHDA required that 20% of the units be affordable at 80% of Area Median Income (AMI), an income level set by the U.S. Dept. of Housing and Urban Development (see NYC Dept. of Housing Preservation and Development, “Area Median Income”).
- ⁷² Buildings up to six stories could be “semi-fireproof” (partly constructed of wood). Taller buildings had to be built of noncombustible materials, which was more costly.
- ⁷³ 259-10 Hillside Avenue.
- ⁷⁴ NYC DCP, “Historical Zoning Maps 15c.” The Hillside Avenue commercial district was zoned R2, permitting only single-family homes, in 1961. In 2013, it was rezoned to R3-2, which permits a variety of housing types but is capped at two and a half stories. Because of the interaction between commercial and residential FAR in the zoning, any lot that already has a store lacks enough additional floor area to permit the construction of even one floor of residences above.
- ⁷⁵ See Kober, “Can’t Keep a Great City Down”; idem, “How to Solve New York City’s Housing Crisis: Building New Housing in Restricted High-Opportunity Neighborhoods,” Manhattan Institute, June 1, 2022.
- ⁷⁶ This point has been best articulated by Alex Armlovich of the Niskanen Center. See Niskanen Center, “Webinar: Future of Hybrid Work and the Housing Crisis: Opportunities and Threats,” Sept. 21, 2022.
- ⁷⁷ Daniel R. Golub et al., “California Legislature Creates Pathways for Residential Development on Commercially Zoned Land,” Holland & Knight, Sept. 1, 2022.
- ⁷⁸ Lot coverage is the percentage of the lot occupied by a building, when viewed from above. Ground floors with retail stores typically cover the full lot along neighborhood commercial streets with apartments above in NYC.
- ⁷⁹ NYC’s zoning is so restrictive that the underlying zoning in most of the city outside Manhattan can’t re-create the pre-1961 six-story apartment building with ground-floor retail—which was allowed widely, and built, prior to 1961. The zoning districts with prefixes of R7 through R10 all allow floor area in excess of the pre-1961 prototype. R6, without a letter suffix, does as well if a small amount of community facility space is included in the building. All the other residential districts, when mapped with commercial overlays, should potentially be affected by this zoning change. R6A, with FAR of 3, comes close to the six-story prototype but does not quite achieve pre-1961 bulk. Neither R6B (with FAR of 2) nor any of the zoning districts with prefixes of R1 to R5 (FAR 0.5 to 2) achieves enough bulk to build either the six-story or the four-story prototype.
- ⁸⁰ City Planning Commission, “Residential Streetscapes Preservation Text,” N 100139, Feb. 24, 2010.
- ⁸¹ NYC Zoning Resolution, §23-23(b).
- ⁸² NYC Zoning Resolution, §23-631(b).
- ⁸³ See “Missing Middle Housing.”

- ⁸⁴ The regulations applied in “predominantly built-up areas” in R4 and R5 districts.
- ⁸⁵ Current rules for R4 infill are described by DCP at NYC Dept. of Planning, “Residence Districts: R4 - R4 Infill - R4-1 - R4A - R4B”; R5 infill rules are described at NYC Dept. of Planning, “Residence Districts: R5 - R5 infill - R5A - R5B - R5D.”
- ⁸⁶ City of Boston, “Housing Boston 2030: 2018 Update,” September 2018.
- ⁸⁷ City of Seattle, “Seattle 2035: Comprehensive Plan,” November 2020.
- ⁸⁸ City of New York, Office of the Mayor, “Transcript: Mayor Eric Adams Delivers Address on New York City’s Affordable Housing Crisis and Holds Q-and-A,” Dec. 8, 2022.
- ⁸⁹ NYC DCP, “2020 Census Results for New York City,” August 2021, p. 41.
- ⁹⁰ Kober, “How Large Cities Can Grow Denser and Flourish.
- ⁹¹ In a recent report looking at housing opportunities in six relatively high-income community districts that had seen little new housing between 2010 and 2020, I identified several such areas; Kober, “How to Solve New York City’s Housing Crisis.”
- ⁹² NYC DCP, “Bronx Metro North Plan Fact Sheet”; NYC DCP, “Atlantic Avenue Mixed-Use Plan Fact Sheet.”
- ⁹³ NYC’s capital budget, financed mainly with long-term bonds, is used to finance investments with long life spans, including affordable housing and more traditional concerns like bridges, schools, and fire trucks.
- ⁹⁴ Eric Kober, “‘Decommodifying’ Housing and Other Magical Thinking,” *E21* (blog), Dec. 11, 2019.
- ⁹⁵ There is currently a discretionary Board of Standards and Appeals special permit to modify or waive MIH requirements (New York City Zoning Resolution, §73-624). Like any special permit, applications are costly and uncertain, and this special permit has never been used. Its use is furthermore limited by potential applicants’ concern about jeopardizing the success of future zoning change applications and other interactions with city agencies and the city council.
- ⁹⁶ Some housing activists may claim that the rezoning itself creates “windfall” land value that should be “captured” by the city in the form of affordable housing. The city’s inability to obtain affordable housing from private developers, except where a compensating tax exemption is available, should cause it to treat such views skeptically. In any event, the “value” that could be “captured” is far less than the current MIH requirements.
- ⁹⁷ Rules of the City of New York, Title 62, Chapter 5, §5-05(c), Jan. 26, 2014.
- ⁹⁸ This is endorsed, in general terms, by the “New” New York Panel report. See, “Making New York Work for Everyone,” p. 118.
- ⁹⁹ In the expired program, there was a 100% property-tax exemption during the first 25 years and an exemption equal to the percentage of affordable units during the last 10 years. NYC HPD, “Tax Credits and Incentives: 421-a.”

- ¹⁰⁰ NYC is the only city with a population of more than 1 million in the state. The city council is required by law to make periodic reaffirmations of the existence of a housing emergency, so that rent stabilization continues in effect. It last did so in Local Law 2022/069, June 27, 2022.
- ¹⁰¹ NYS Dept. of Environmental Conservation, “Appendix: Environmental Review Laws and Regulations,” 6 NYCRR §617.5.
- ¹⁰² Sally Goldenberg and Janaki Chadha, “Facing Acute Housing Shortage, Adams Looks to a Policy Change,” *Politico*, Oct. 26, 2022.
- ¹⁰³ The “New” New York Panel recognizes this issue, endorsing “environmental review reform” in general terms, “Making New York Work for Everyone,” p. 118.
- ¹⁰⁴ See State of New York, Climate Act, “Our Progress.”
- ¹⁰⁵ MDW §26.3.
- ¹⁰⁶ The “New” New York Panel endorses lifting the floor area cap, “Making New York Work for Everyone,” pp. 57–58.
- ¹⁰⁷ The legislation would have amended the Real Property Law. “FY 2023 New York State Executive Budget: Education, Labor and Family Assistance Article VII Legislation,” Part AA.
- ¹⁰⁸ Suzannah Cavanaugh, “Landlords Offer to Re-Open 20K Warehoused Apartments,” *Real Deal*, Apr. 6, 2022.
- ¹⁰⁹ In 1995, at the beginning of the Giuliani program, the city was managing nearly 39,000 units of occupied “in rem” (tax-foreclosed) housing and 12,700 vacant units. David Reiss, “Neighborhood Entrepreneurs Program in New York City,” *Journal of Affordable Housing & Community Development Law* 5, no. 4 (Summer 1996): 325–46.