

# Rebooting the New York Housing Compact: What Are the Legislative Options in 2024?

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## Introduction

As the New York State Legislature prepares to return to session in January, it faces an ongoing housing crisis in the New York City metropolitan region. Last year, the legislature failed to act on an ambitious proposal from Governor Kathy Hochul,<sup>1</sup> the “New York Housing Compact,”<sup>2</sup> which would have overridden local control of residential zoning and substantially increased the amount of new housing permitted in NYC’s suburbs. When Hochul submits her budget proposal in the new year, she will have to decide whether to submit a revived version of that plan, even though we are now in an election year for both the Senate and the Assembly, making legislating even more contentious and difficult.

Analyzing Hochul’s 2023 proposals, I criticized, in particular, a provision in the law that would have required local governments to allow “transit-oriented development”—that is, apartment buildings, at up to 50 units an acre, within a defined radius around commuter rail stations.<sup>3</sup> The resulting population densities were not necessary to achieve Hochul’s housing production goals, I wrote, and local governments were unprepared to provide public services at such densities. The aggressiveness of the governor’s proposals would undercut any attempts at legislative compromise.

Hochul, for her part, has indicated that the proposal she submits in January will abandon the quantitative housing goals for each suburban community that were included in last year’s version.<sup>4</sup>

This issue brief argues that the governor should submit a new pro-housing legislative proposal in January. The state government has an obligation to address New York’s most significant challenges. However, Hochul also needs to grapple with voter sentiment and the practical possibilities of enacting legislation. Pragmatic progress in 2024 is better than repeated total failure. There is much to be done, short of mandating a land-use transformation in the suburbs and imposing big-city densities on low-scale towns and villages.

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At the same time, Hochul should hold out against proposed “compromises” that would exacerbate the state’s housing crisis as much as they would alleviate it. Statewide rent control—in the guise of “good cause eviction”—a cause that the legislature has pushed in past sessions, would stifle what little ability the rental housing market in the NYC region has now to respond to changes in demand. Hochul and the legislature should rely instead on abundant supply to keep housing affordable in the state.

In autumn 2023, amid a growing national economy, New York State was economically stagnant. As of September, a preliminary estimate put nonfarm employment in the state at 9,713,400—59,000 below the 2019 pre-pandemic peak for that month. In contrast, nonfarm employment nationally was 157 million—about 5.5 million, or 3.6%, higher than in August 2019.<sup>5</sup>

New York State has long combined an economically robust downstate region with a declining upstate.<sup>6</sup> Indeed, New York City in autumn 2023 was the only part of the state where nonfarm employment had exceeded 2019 levels. This threshold had been achieved in each of the months from March to September 2023.<sup>7</sup> In September, preliminary data indicated that the city had exceeded its September 2019 nonfarm employment by about 40,000 jobs, or just under 1%. In contrast, the downstate suburbs’ nonfarm employment remained below 2019 levels in August 2023. New York’s economic recovery has lagged even peer states like New Jersey, Connecticut, Massachusetts, and California, let alone rapidly growing states in the Sunbelt.<sup>8</sup>

Economic stagnation, combined with rapidly growing expenses, has contributed to a fiscal crunch for both the state and the city. In response to projected budget gaps, a September 2023 letter to state agency heads from the state’s budget director ordered a freeze on spending requests at the levels of the current fiscal year.<sup>9</sup> The most recent revision to the state’s financial plan projects a gap between spending and revenues of \$4.3 billion in fiscal year (FY) 2025 (beginning April 1, 2024), \$9.5 billion in FY 2026, and \$7.7 billion in FY 2027.<sup>10</sup>

NYC’s financial plan also projects large budget gaps in the city’s 2025, 2026, and 2027 fiscal years, amounting to \$7.1, \$6.5, and \$6.4 billion, respectively. (The city’s 2025 fiscal year begins on July 1, 2024).<sup>11</sup> In response to the city’s deteriorating finances, Mayor Eric Adams announced steep agency budget cuts and a hiring freeze in September 2023.<sup>12</sup>

In an op-ed in November 2023, New York State comptroller Thomas DiNapoli and Citizens Budget Commission president Andrew Rein wrote that “our organizations project [that NYC’s budget] gap for next year could be \$9.9 billion and possibly up to \$13.8 billion.” They attribute the city’s “fiscal cliff” only partially to the influx of asylum seekers and undocumented immigrants. “The major underlying cause of the budget gap comes from years of added and expanded city programs that—at best—were supported only for a short time by non-recurring revenue or—at worst—not funded at all.”<sup>13</sup>

## Never Let a Crisis Go to Waste

After peaking in summer 2023, market rents in Manhattan, Brooklyn, and northwest Queens have fallen off somewhat in the autumn. But that still leaves median rents at or above the already-elevated levels of a year ago, offering little relief to prospective renters.<sup>14</sup>

Unfortunately, as I explained in a May 2023 issue brief, the state legislature has been unmoved by the manifest inability of younger New Yorkers who are not employed in high-status occupations to find housing and make a life for themselves in the downstate region.<sup>15</sup> Record-high rents, a continuation of well-established trends, are the consequence of state and city policies that pump up housing demand in the downstate region while constraining housing supply.

On the demand side, in 2019 the state legislature enacted punitive rent controls, affecting NYC and smaller numbers of housing units in Nassau, Westchester, and Rockland Counties. These changes eliminated most of the mechanisms by which regulated rents were allowed to rise closer to market levels.<sup>16</sup> The desire to protect existing tenants from having to move involuntarily because of unaffordable rent increases is certainly popular, but the policy ignores at least two other concerns. One is to ensure that landlords have the financial resources to maintain the rental housing stock; if they cannot, the responsibility for doing so will fall increasingly to the public sector, which the cash-strapped city and state governments cannot easily take on. The second concern is the need to house people moving to the city, mainly to work. Since rent-stabilized tenants can more readily remain in their units, fewer rent-stabilized units are available to rent. Potential renters are thrown into the unregulated market, where rents are at or near all-time highs.

In a well-functioning housing market, rising rents would elicit more supply, bringing supply and demand into balance. However, in the downstate region, the supply response is constrained by restrictive zoning, both in the city and in the suburban counties. New York City is largely in control of its own zoning, but antidevelopment land-use politics has long kept housing in short supply. The city is also hindered by the stop-and-start nature of the Section 421a new housing tax-exemption program, in which periodic expiration dates result in bursts of construction, followed by new housing droughts. The 421a program's June 2022 expiration brought one of these bursts last year, as housing completions reportedly achieved an unusually high level in the first half of 2023, exceeding 16,000.<sup>17</sup> But we are now in the "drought" phase, with only 11,300 new construction permitted units projected for 2023.<sup>18</sup> In September 2023, Mayor Eric Adams proposed an ambitious zoning plan that could, if enacted via a lengthy public approval process that will extend through 2024, help ameliorate the supply shortfall.<sup>19</sup>

In the suburban counties, zoning is controlled by numerous large and small municipalities, many of which maintain strict controls on new housing. A recent NYC Department of City Planning analysis found that the broadly defined NYC metropolitan area<sup>20</sup> permitted only 29 new housing units per 1,000 residents from 2013 to 2022, and thus "fell behind fast-growing U.S. metros, namely those in the Sunbelt like Orlando, Houston, Dallas–Fort Worth, Phoenix, and Atlanta."<sup>21</sup> The New York area also was outperformed by Seattle and Washington, DC, higher-production metros in the West and the Northeast. The New York area's peers in terms of low housing production are rich metros that also suffer from chronic housing shortages, such as San Francisco, Los Angeles, and Boston, and poorer metros that do not generate strong housing demand, such as Philadelphia, Chicago, and Detroit. Even so, most new suburban housing construction occurs in more housing-friendly northern New Jersey.

Under these conditions, the legislature has two responsibilities with respect to housing and land use: first, to remove impediments that state law imposes on the ability of NYC and suburban communities to address their housing shortfalls; and second, to prod those communities to use the tools at their disposal to address those shortfalls. One can argue over the appropriate combination of incentives and penalties to achieve the latter goal, but simply deferring to the very local prerogatives that have produced the current crisis is irresponsible.

Hochul's 2023 "Housing Compact" proposals, although flawed, were intended to mirror reforms in other states that overrode restrictive local zoning. Despite failures in New York and some other states, 2023 was, in fact, a banner year for land-use reform at the state level. Four states (Washington, Montana, Vermont, and Rhode Island) passed major reform packages, and more

targeted pro-housing legislation passed in additional states.<sup>22</sup> California extended the legislature's record of passing legislation each recent year that incrementally continues the struggle to overcome local barriers to housing construction.<sup>23</sup> Hochul and the New York legislature therefore have many legislative models to follow.

I opined in May that the legislature probably would not act to address the state's housing crisis unless doing so represented a necessity to stabilize the state's finances:

From an extremely narrow fiscal perspective, the present system works well. The state extracts enormous revenues, by national standards, by sustaining privileged enclaves where affluent households enjoy a unique and sophisticated quality of life. Perhaps against logic, they are willing to pay New York taxes for the opportunity to access the experience of New York living.<sup>24</sup>

Perhaps we have reached that point. According to an analysis by Comptroller DiNapoli's office, personal income tax—by far the state's most important revenue source—is largely paid by a small number of wealthy taxpayers. According to preliminary data for 2021, taxpayers with incomes over \$1 million were 1.5% of all filers but accounted for 43.5% of total liability. However, these taxpayers had 74% of capital gains, dividend, and interest income. While nonresidents pay income tax on income earned in New York, residents are taxed on all their income, including capital gains, dividends, and interest. Therefore, the comptroller points out that “[personal income tax] is dependent on taxpayers being residents.” Yet New York is now recording an increased net outflow of wealthy taxpayers.<sup>25</sup>

The state has long had an unrecognized interest in becoming more welcoming to new working-age residents at a broad range of income levels, as well as to the businesses that would employ them. In 2024, this has become an imperative; the state needs to grow its way out of its budget problems or embrace widely unpopular austerity. Tax increases on the wealthy, the favorite alternative of the legislature's Democratic supermajorities, will just drive more outflow of high-income taxpayers to other states. Downstate New York is the state's economic engine, but it is hard to see how growth can happen unless the downstate housing market is unblocked.

That priority will not be served by “good cause eviction” legislation,<sup>26</sup> which caps permitted rent increases on units that are not currently rent-regulated. Such legislation would expand the class of favored incumbent tenants with a strong incentive to stay in place while stripping landlords of rental income. The legislature should want to demonstrate that New York State is open to private housing investment that will help grow the economy. It should not send the message that people foolish enough to have invested in the past will have their investment returns yanked away by the state.

New York City, as well, is at the end of the line of a fiscal model in which bountiful tax revenues underwrite excessive employment levels, high pay, low worker productivity, and generous benefits to as many people as possible.<sup>27</sup> The city needs to grow its tax revenues even as it begins to constrain spending. Building more housing generates sales taxes on construction materials and income taxes paid by construction workers. It can even generate property taxes, just as new housing does in a typical American city, if the state and city can collaborate on a revised property-tax regime that does not underwrite extravagant promises of new affordable housing with lavish tax giveaways.

# What Housing Production Legislation Should Hochul Propose?

A sound package of 2024 New York State housing legislation should fall into three categories:

- Legislation to support NYC’s “Zoning for Housing Opportunity” proposal
- Legislation that would help the city in future phases of zoning reform
- Legislation that would lead to land-use and zoning reform in the downstate region, outside the city, or perhaps statewide

## Legislation to support NYC’s “Zoning for Housing Opportunity” proposal

*421a reinstatement.* The Section 421a tax exemption<sup>28</sup> for newly constructed housing, which lapsed in June 2022, served two purposes. First, it helped equalize the property-tax disadvantage of new rental apartment buildings with more than 10 units, which otherwise would be taxed at a higher effective rate than smaller rental buildings of 10 units or less condominiums. Second, it supported the city’s efforts to promote—and, in some areas, to mandate—the inclusion of below-market units in new buildings that are otherwise market-rate.

The state legislature has periodically allowed 421a to lapse (most recently, in 2015 and 2022)—only to restart a new version of the program after a few years. This practice gives the legislature the whip hand over the city, but it is disastrous in several ways. As noted above, it creates a stop-and-start housing cycle, as a burst of permit applications seeking to “grandfather” under the expiring terms is followed by a years-long housing drought. Not all the grandfathered permits ultimately obtain financing in time to meet the construction completion deadline specified in the lapsed 421a legislation,<sup>29</sup> and those that do are forced to compete for scarce labor, materials, and equipment, forcing up costs. Moreover, reauthorizations of the program are done through secretive negotiations, which often come at the city’s fiscal expense. In the last go-round in 2016, for example, the negotiations created the widely used Option C,<sup>30</sup> which provides a 35-year, 100% post-construction tax exemption, applicable in most of the city, in exchange for “affordability” conditions requiring units to be rented at, or close to, market rates in many neighborhoods.<sup>31</sup> It is an ineffective system and a colossal backdoor cash drain on the city.

No sensible state legislature should want to tie the state’s largest city up in knots in this way, in the hope of extracting the governor’s signature on unrelated legislation that she would otherwise veto. Albany has a strong interest in the city’s prosperity and should want to give the public the impression that it is serious about solving the state’s problems.

Hochul should propose legislation that gives the city the permanent authority to grant property-tax exemptions to private developers that construct mixed-income housing. Flexible 421a replacement legislation would allow the city to balance, on the one hand, the need to offset the tax disadvantage for rental housing of more than 10 units (which is baked in to state law) and the desire to subsidize affordable housing with revenue-raising imperatives. The mayor and the city council have an interest in ensuring that these programs provide effective incentives and do

not unduly give away badly needed tax revenue. With the city facing large future budget gaps, the practice of making the private housing sector largely dependent on enormous backdoor tax subsidies has probably run its course.

The mayor and the city council should coordinate land-use regulation and property-tax policy so that unblocking new housing supply also helps restore budget balance. That means becoming more receptive to market-rate housing that pays property taxes and dialing down expectations about targeting a significant percentage of new housing to households at very low income levels. “Zoning for Housing Opportunity” proposes a citywide floor-area incentive for buildings that include affordable housing.<sup>32</sup> The city can support mixed-income housing production through that mechanism while significantly reducing the fiscal impact of future tax incentives.

*Conversion of nonresidential buildings.* The state Multiple Dwelling Law (MDL) includes special rules for the conversion of nonresidential buildings, such as office buildings, to residences.<sup>33</sup> Those rules apply only to buildings that existed in 1977. The city proposes to amend zoning to allow all nonresidential buildings constructed before 1990 to be converted to housing.<sup>34</sup> Since any such conversions must comply with both zoning and state law, the proposal needs companion state legislation to extend eligibility for the special conversion rules to buildings constructed between 1977 and 1990.

*Accessory Dwelling Units (ADUs).* The city proposes to create a new defined term, “Accessory Dwelling Unit,” indicating an additional small dwelling unit within, or on the same lot as, a single- or two-family home. New ADUs within an existing two-family home, however, would trigger the requirements of MDL, thereby incurring additional costs. The city seeks an exemption from MDL for such units.<sup>35</sup> This will facilitate the legalization of existing apartments carved out of basement garages and recreation rooms.

### **Legislation that would help the city in future phases of zoning reform**

*State Environmental Quality Review (SEQR) reform.* New York State regulations currently exempt construction of one-, two-, and three-family homes from environmental review<sup>36</sup> but subject denser new housing construction within cities to lengthy analyses that provide little useful information to the public. The methodologies of SEQR and its city equivalent, City Environmental Quality Review (CEQR), have no way of comparing the effects of a proposed pro-housing zoning change with the diffuse consequences of current policies, which induce workers with lower levels of skill and education to move to lower-productivity regions, where they will likely be paid less but can find affordable housing.<sup>37</sup> Regulatory constraints on property owners’ ability to supply more housing in the urban locations where it is in demand also lead to a range of less desirable outcomes, including gentrification and automobile-oriented suburban sprawl in the few communities that allow it.<sup>38</sup>

However, SEQR and CEQR do not explore these issues in depth. Rather, they focus on impacts at the micro level of the neighborhood or even the lot, in which the effects of growth are compared with the effects of current no-growth policies. It is axiomatic that more housing in a residential neighborhood means more traffic, more schoolchildren, more park users, and so forth. Environmental review provides worst-case numbers to attach to these impacts, and those numbers serve as a hook for organizing opponents, even though, in reality, the outcomes of zoning changes are much more uncertain. By overstating local effects, SEQR and CEQR create a built-in bias among political actors in favor of the status quo.

New York City will duly spend millions on an environmental impact study of “Zoning for Housing Opportunity,” delaying by many months the happy date on which the city might be able to issue building permits under the new zoning and begin to cut its housing-supply shortfall. But this is only the first of many zoning reforms that the city will need—and thus there will be many more costly and wasteful state-mandated studies to come. One important contribution that the state



could make toward easing the cost and compressing the timeline of locally initiated zoning reforms would be to exempt housing construction from environmental review. The exemption should be for any amount of housing in NYC, the best transit-served community in the United States. In other portions of the NY metropolitan area, the exemption should be increased substantially, perhaps to 1,000 units in cities and 200 in towns and villages.

Reforming environmental review would be a boon to local zoning-reform efforts, by reducing the existing burdensome procedural costs. Local governments can then limit environmental disclosure to whatever information is helpful in securing public support and approval from local legislative bodies.

*12 FAR cap.* As a carryover from an obscure political deal in 1961, the state MDL currently prevents NYC from enacting residential zoning that allows a Floor Area Ratio (FAR) of more than 12 in a new building.<sup>39</sup> The city and, more recently, the governor have sought removal of this cap, thus far unsuccessfully.

New York City has no similar restriction on the maximum size of office buildings, and in midtown and lower Manhattan, many exceed 12 FAR. Currently, by state law, pre-1977 office buildings may be converted to residential use, and the converted floor area may exceed 12 FAR. As noted above, the city is currently experiencing an office space surplus due to structural changes in the demand for space, stemming from the pandemic and evolving work-from-home practices. To shrink this surplus, the city is seeking to extend the more liberal state conversion rules to buildings constructed before 1990. Additionally, it is in the public interest to allow the demolition of obsolete office buildings that are not feasible to convert—because modern office floors tend to be much deeper than is typical for residences—with the same floor area being replaced in a new residential building. That requires eliminating the 12 FAR residential cap in state law for new buildings, as well as follow-up zoning changes. The most vocal opponents to this change are well-funded “preservationist” groups that oppose all zoning liberalization in Manhattan, the densest and best transit-served county in the United States. The legislature should not share their vision of a stagnant, ever-more-affluent Manhattan. Manhattan should be dynamic and growing, generating new jobs and tax revenue for both the city and the state.

### **Regional or statewide zoning reform**

The 2024 New York legislative session should demonstrate that New York State is capable of participating in the nationwide movement for zoning reform. An August 2023 brief by three Mercatus Center researchers at George Mason University outlines a helpful menu of options selected by various states and localities.<sup>40</sup> Many of these options are included in NYC’s “Zoning for Housing Opportunity” package but will not apply elsewhere in the state unless the legislature acts.

One of the most important themes of the city’s proposal is “making it possible to build a little bit more housing in every neighborhood.”<sup>41</sup> Hochul should take up this nonthreatening goal for the rest of the state. The Mercatus brief offers several options that would expand housing opportunities in affluent single-family-home-dominated suburbs while maintaining their leafy suburban character, which residents value. Among the most important are allowing ADUs, which are second, usually smaller, units on lots currently occupied by a single home. The Mercatus researchers point to recent legislation enacted in Montana<sup>42</sup> as a model. The Montana legislation allows one ADU on each single-family home lot, limits ADUs to 1,000 square feet, prohibits off-street parking requirements for ADUs, and allows both the ADU and the primary single-family home to be rented. AARP also produced a model state ADU act.<sup>43</sup> AARP’s advocacy recognizes the importance of providing aging homeowners with options to remain in the community in a more appropriately sized dwelling, while realizing the appreciated value of their former homes.

Another important action that the state can take is to limit minimum lot-size requirements for single-family homes where water and sewer service is available. (Homes dependent on septic systems for disposal of wastewater require large lots.) In a 2021 Manhattan Institute brief, M. Nolan Gray proposed a NYS cap on minimum lot size in such locations at 5,000 square feet.<sup>44</sup> These two reforms would allow four or more housing units on many lots where only one unit is presently allowed. Suburbs would still be suburban in character, but a larger and more diverse range of households would be able to live in them. Some less well-paid workers could live closer to their jobs, and communities would be more accommodating to young as well as older adults.

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## Conclusion

This brief outlines a sensible state legislative housing agenda that the governor might propose in the 2024 session. This agenda would meet New York City's current needs, support the city and the rest of the state in future zoning-reform efforts, and make initial progress toward ensuring that every community in the state be open to small amounts of housing growth and a more diverse range of housing opportunities.

Of course, no one should underestimate the cynicism and indifference of the legislature, which has, up to now, refused all opportunities to emulate its many housing reform-minded state peers. The legislature could demand poison-pill conditions, like the de facto statewide rent control known as "good cause eviction," to stymie statewide housing reform for another year. However, the costs of inaction are increasing as the state becomes uncompetitive as a business location or simply a place where households with choices want to live. The situation might be bad enough that the logic of reform can make headway. Next year may be the one in which a well-framed package of housing reforms can succeed.



## Endnotes

- <sup>1</sup> See Eric Kober, “NYC’s Housing Crisis: Next Steps After ‘New York Housing Compact’ Fails,” Manhattan Institute, May 18, 2023.
- <sup>2</sup> I discussed the elements of this plan in Eric Kober, “Hochul’s Land-Use Planning Revolution: No Little Plans for New York,” Manhattan Institute, Mar. 7, 2023.
- <sup>3</sup> Ibid.
- <sup>4</sup> Austin C. Jefferson, “Hochul Confirms She Won’t Pursue Suburban Housing Mandates in ‘An Election Year,’” *City & State New York*, Nov. 30, 2023.
- <sup>5</sup> Data are from U.S. Bureau of Labor Statistics (BLS), “Current Employment Survey (CES).” CES is a survey of employment at business establishments. Data for 2023 are subject to an annual upward adjustment, called “benchmarking” to correct for sampling error; see BLS, “CES National Benchmark Article.” The adjustment is likely to increase reported employment when the economy is growing, so the final CES estimate may indicate that the state had actually exceeded 2019 employment by September 2023.
- <sup>6</sup> For purposes of this analysis, downstate is defined as the counties in the Metropolitan Transportation Authority (MTA) service region (NYC and Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, and Dutchess Counties). Upstate is the remainder of the state.
- <sup>7</sup> Also, as per CES.
- <sup>8</sup> Office of NYS Comptroller, “Report on the State Fiscal Year 2023–24 Enacted Budget Financial Plan,” July 2023, 16.
- <sup>9</sup> Seamus Lyman, “New York Agencies Ordered to Freeze Spending in Budget Proposals amid Gap,” *Spectrum News*, Sept. 21, 2023.
- <sup>10</sup> NYS Division of the Budget, “Fiscal Year 2024 Enacted Budget Financial Plan: Mid-Year Update,” October 2023.
- <sup>11</sup> NYC Office of Management and Budget, “Financial Plan Update, Fiscal Years 2024–2027,” Nov. 16, 2023.
- <sup>12</sup> Jeff Coltin and Joe Anuta, “Citing NYC Migrant Crisis, Adams Calls for Steep Budget Cuts, Hiring Freeze,” *Politico*, Sept. 9, 2023.
- <sup>13</sup> Tom DiNapoli and Andrew Rein, “New York Is Teetering on a Fiscal Cliff,” *Crain’s New York Business*, Nov. 7, 2023.
- <sup>14</sup> Jennifer White Karp, “NYC Rents Slip Again as Listings for Available Apartments Pile Up,” *Brick Underground*, Nov. 9, 2023.
- <sup>15</sup> Kober, “NYC’s Housing Crisis.”
- <sup>16</sup> NYS, Homes and Community Renewal, “Housing Stability and Tenant Protection Act of 2019.”

- 17 Kathryn Brenzel, “New Housing Numbers Are Bleak. Unless You Look at Different Numbers,” *The Real Deal*, Nov. 16, 2023.
- 18 NY Building Congress, “2023–25 New York City Construction Outlook Report,” October 2023.
- 19 See NYC Dept. of City Planning (NYC DCP), “City of Yes for Housing Opportunity.” I discussed this proposal in Eric Kober, “NYC’s Mayor Adams Finally Faces Housing Crisis with Major Reforms,” Manhattan Institute, Nov. 21, 2023.
- 20 The geographic area analyzed includes the MTA service region, plus Ulster and Sullivan Counties in NY, western CT, and northern NJ.
- 21 NYC DCP, “NYC Thinking Regionally: Housing Production 2022,” September 2023.
- 22 Eli Kahn and Salim Furth, “Breaking Ground: An Examination of Effective State Housing Reforms in 2023,” Mercatus Center, Aug. 1, 2023.
- 23 Randy Shaw, “Housing Wins Big in California,” *BeyondChron*, Sept. 18, 2023.
- 24 Kober, “NYC’s Housing Crisis.”
- 25 Office of NYS Comptroller, “Report on the State Fiscal Year 2023–24 Enacted Budget Financial Plan,” 17–19.
- 26 David Winzelberg, “Business Groups Laud Failure of Good Cause Eviction Bill,” *Long Island Business News*, June 9, 2023.
- 27 Nicole Gelinas, “NYC Is on Verge of Fiscal Cliff Because Officials Spend Like Drunken Sailors,” *New York Post*, Nov. 9, 2023.
- 28 NYU Furman Center, Directory of Housing Programs, “421-a Tax Incentive.”
- 29 Hochul proposed in 2023 to extend the deadline for construction completion of buildings grandfathered under the expiring 421a tax exemption in 2022. The legislature also refused to do this.
- 30 According to a 2022 report by NYC comptroller Brad Lander, Option C accounts for 60% of the “affordable” units under the last iteration of 421a. See NYC Office of the Comptroller, “A Better Way than 421-a: The High-Rising Costs of New York City’s Unaffordable Tax Exemption Program,” Mar. 16, 2022.
- 31 See NYC Dept. of Housing Preservation and Development (HPD), “421a.” Option C requires that at least 30% of units be “affordable” at an income of 130% of AMI (\$165,230 for a family of three in 2023). The applicable rent level is \$4,130 for a two-bedroom unit. See NYC HPD, “Area Median Income.”
- 32 NYC DCP, “City of Yes for Housing Opportunity: Draft Scope of Work in Preparation of a Draft Environmental Impact Statement,” Sept. 26, 2023, 10–15.
- 33 NY Multiple Dwelling Law § 277. The provisions are necessary because nonresidential buildings are typically bulkier than residential buildings and, when converted, can’t comply with certain underlying requirements of the law, such as the dimensions of yards and courts.

- <sup>34</sup> NYC DCP, “City of Yes for Housing Opportunity: Draft Scope of Work,” 26.
- <sup>35</sup> *Ibid.*, 43–44.
- <sup>36</sup> NY Code of Rules and Regulations § 617.5 (c)(11). In December 2023, New York City proposed using its existing regulatory authority to expand the range of proposed housing developments that qualify for an environmental review exemption. Depending on the location, such proposals could be as large as 175 or 250 units. See NYC Office of the Mayor, “Mayor Adams Combats Housing Crisis With ‘Green Fast Track’ to Build More Sustainable Housing More Quickly,” press release, Dec. 11, 2023.
- <sup>37</sup> I wrote about this issue in Eric Kober, “The Jobs–Housing Mismatch: What It Means for U.S. Metropolitan Areas,” Manhattan Institute, July 7, 2021.
- <sup>38</sup> “Gentrification” describes the movement of higher-income households into what were previously lower-income neighborhoods. The city’s Draft Scope of Work acknowledges “displacement, gentrification, segregation and other ills” as a likely consequence of the “no-action” scenario; NYC DCP, “City of Yes for Housing Opportunity: Draft Scope of Work,” 58. A recent analysis by NYC DCP found that “just a handful of municipalities [in the NY region] have notably increased housing production in the recent 3-year cycle, and they’re mostly in New Jersey.” See NYC DCP, “Thinking Regionally, Data Spotlight: 2022 Housing Production.”
- <sup>39</sup> NY MDL § 26(3). The Floor Area Ratio (FAR) specifies the maximum floor area permitted in a new building, as a multiple of the lot area. E.g., if the residential FAR is 12, a 10,000-sq.-ft. lot may have 120,000 sq. ft. of floor area.
- <sup>40</sup> Salim Furth, Emily Hamilton, and Charles Gardner, “Housing Reform in the States: A Menu of Options for 2024,” Mercatus Center, George Mason University, Aug. 23, 2023.
- <sup>41</sup> NYC DCP, “City of Yes for Housing Opportunity.”
- <sup>42</sup> SB 0528 (MT, 2023).
- <sup>43</sup> AARP, “Accessory Dwelling Units: Model State Act and Local Ordinance,” January 2021.
- <sup>44</sup> M. Nolan Gray, “Rightsizing Lot-Size Rules in Metropolitan New York City,” Manhattan Institute, Sept. 21, 2021.