
Solving New York City's Housing Crisis by Counteracting the Growth Machine

Narrative: Three Recommendations for NYC's New York

By Roderick M. Hills, Jr., and William T. Comfort III

Professor of Law, New York University Law School and David N. Schleicher
Professor of Law, Yale Law School

February 2022



**QUESTION: HOW CAN NEW YORK CITY'S ZONING LAWS INCENTIVIZE
AFFORDABLE HOUSING DEVELOPMENT?**

WHY IMPORTANT:

1. New York City's supply of housing has not kept pace with demand, adding only 20,000 units per year over the last decade while jobs increased 22%.
2. Recent efforts to change zoning regulations under the de Blasio administration have not produced the desired number of affordable housing units.

RECOMMENDATIONS:

1. Push for affordable housing development especially in wealthier neighborhoods that historically oppose such efforts.
2. Create housing development coalitions, using (among other tools) transferable development rights (such as air rights), which brings more stakeholders into the arena.
3. Make small changes to existing zoning laws citywide that might increase development. For example, trade increased height restrictions for affordable housing development.

CONSTRAINTS:

1. Opposition to development from current property owners.
2. Opposition organized despite significant number of renters in housing market.



INTRODUCTION

THE HOUSING SHORTAGE

The United States suffers from a severe housing shortage. [Freddie Mac](#) estimates that our housing supply falls 2.5 million dwelling units short of meeting current demand. [The National Association of Realtors](#) found that we need 5.5 million more. [As President Biden's administration recently argued](#), the result of housing supply's falling so short of demand is that housing prices are soaring and young people cannot form their own households. Moreover, the housing shortage is most severe in regions where the demand for labor is most intense. Because there is not enough housing in rich and economically-thriving regions like San Francisco and Boston, people cannot move to jobs where they can be most productive, as shown by [Ganong and Shoag \(2017\)](#). This has a huge effect on the economy. [Chang-Tai Hsieh and Enrico Moretti \(2019\)](#) found that land-use restriction lowered aggregate U.S. growth by more than 50% from 1964 to 2009. This also contributes really substantially to economic inequality, [providing huge gains to owners of capital relative to workers \(Rognile 2015\)](#).

New York City is the epicenter of this crisis. [The Citizens Budget Committee reports](#) that housing stock increased only 4% over the last decade, an anemic 20,000 units per year, while the number of jobs in New York City increased 22 percent, a wider gulf between job and housing growth than any city except San Francisco. The result is homelessness, overcrowded housing, rent-burdened households that spend more than a third -- and often even more than half -- of their income on rent. Just as everyone today realizes that we have a housing shortage, so too, the identity of culprit is no mystery. Strict zoning laws that limit the uses, densities and heights of buildings, and other land use regulations, from historic preservation to minimum apartment sizes, block developers from building enough new units to meet the intense demand for housing in the city. While there are [some unfortunate state laws](#) that interfere with the city's ability to approve new buildings, most land use regulations are mostly within the City's control.

The solution, therefore, should be easy: Relax regulations so that housing supply can rise to meet demand. The de Blasio Administration recognized this in 2014 when its [Ten-Year Plan for housing New Yorkers](#) bluntly announced that "[t]o become a more affordable city, we must become a denser city...." Accordingly, the Plan recommended that the City "[r]eform zoning, building and housing codes, and other regulations to lower costs and unlock development opportunities."

Six years after that report was issued, it has become plain that this deregulatory effort has fizzled and that, as a result, New York City's housing supply remains critically low. The de Blasio Administration's signature program, mandatory inclusionary zoning ("MIH"), depended on the City's rezoning neighborhoods to accommodate more market-rate housing, requiring as a condition of the rezoning that developers build additional units that were permanently affordable to low- or moderate- income households. Unfortunately, de Blasio could not get many rezonings past the finish line; only six of fifteen



proposed rezonings were approved by City Council. Further, the cost of providing the affordable units was steep enough to deter developers from building much even in those areas where rezonings were approved. As a result, MIH has so far produced only 2,065 units of affordable housing ([Kober 2020](#)).

WHY CAN'T NEW YORK BUILDING HOUSING? NIMBYs AND THE GROWTH MACHINE NARRATIVE

What went wrong? Housing growth everywhere is opposed by Not-In-My-Backyard (NIMBY) homeowners, who seek to stop new construction in order to increase and insure the value of their most valuable asset. Homeowners take advantage of low turnout in local elections and their greater participation in public hearings to dominate the zoning process, as Einstein, Glick and Palmer (2020) show.

The political dominance of NIMBY homeowners in New York politics is still a bit of a mystery. Unlike most jurisdictions, New York City's population is dominated by renters, not homeowners. Publicly arguing against new housing that would reduce rents should be a hard sell in a city full of renters.

New York City's NIMBY homeowners, however, are aided by a political narrative that enables them to make common cause with renters. Following Harvey Molotch, we call this narrative "the Growth Machine Theory" (GMT). According to the GMT, new market-rate housing makes existing housing less affordable by drawing in wealthy buyers or renters who bid up the price of existing units, while at the same time destroying a neighborhood's quality of life. It follows that developers can win approval for such a perniciously gentrifying product only through nefariously anti-democratic means like campaign contributions or lobbying. The idea that market-rate housing is somehow harmful to incumbent residents leads ineluctably to the conclusion that new market-rate units should be permitted only if the City can exact the "windfall" that developers reap from such construction.

As we will discuss below, GMT narrative is demonstrably false. But it remains a powerful weapon in the arsenal of NIMBY opponents to new housing. It provides an economic theory and a political target that can unite an anti-housing coalition of neighbors who dislike any change to "their" neighborhood with tenant and anti-gentrification organizations who fear rising rents. The defeat of MIH rezonings in poorer neighborhoods that would directly benefit from the affordable units provided by MIH developments is testament to the power of the GMT narrative: Those inclusionary units did not buy political support for market-rate housing, because the GMT narrative portrayed market-rate housing as a nefarious plot to benefit the wealthy rather than as the promotion of housing that would benefit the City as a whole.



THREE STRATEGIES FOR GETTING NEW YORK'S POLITICAL SYSTEM TO ALLOW NEW HOUSING TO BE BUILT: CONFRONTING OR SIDE-STEPPING

Any future mayor who cares about increasing New York City's housing supply, therefore, must either confront head-on this narrative with some rival position, build a rival coalition, or swamp NIMBY opposition with a "spread offense" of city-wide text amendments backed by voluminous expertise. Below, we outline three strategies for winning the fight for housing.

A. The Showdown: Use Zoning Map Amendment Fights to Illustrate the Costs of Elite NIMBYism

The new mayor of New York City must start with evidence-based policy-making, and the evidence strongly indicates that the GMT narrative is simply false. To start, the research is very clear that at the city or region-wide level, allowing more housing to be built brings down prices. Recent findings show that this is true even at the neighborhood level. Far from gentrifying neighborhoods, the overwhelming evidence shows that new market-rate housing alleviates demand pressures that cause rents to rise. Asquith, Mast, & Reed (2019) found, for instance, that new market-rate housing reduces rents by 5-7% in existing buildings within 250 meters of the new development, compared to rents in buildings farther away. Xiaodi Li (2019) found that rents fell by 1.6% within 500 feet of new high-rises one year after their completion and persistently thereafter, despite new housing also creating valuable new amenities. By contrast, Liu, McManus, and Yannopolous (2020) present evidence showing that older homes "filter up" — aka gentrify — to higher-income households in markets with limited housing production. By cutting off new market-rate housing, restrictive zoning does not protect neighborhoods from gentrification but instead exacerbates those pre-existing demand pressures that cause rents on existing buildings to rise regardless of whether new units are built. People who think development causes higher rents are simply wrong.

The problem, however, is that this causal story is a bit hard to explain. It is natural for unsophisticated observers to infer that new market-rate housing causes local price increases, because new market-rate units tend to be built in neighborhoods where rents are rising. The evidence described above shows that such an inference mixes up cause and effect, akin to thinking that umbrellas cause rainstorms. But clear research results do not drive land-use politics.

The new mayor, therefore, needs a strategy for dramatizing this evidence, making crystal clear the link between increasing new market-rate housing and relieving rent pressures in poorer neighborhoods. One such strategy would be forcing a showdown by supporting rezonings in the city's wealthiest neighborhoods. If the Mayor can defeat the most powerful NIMBY groups in the richest neighborhoods, it will send a message to the rest of the city that development is needed to address the housing crisis. Rezonings in these neighborhoods would support greater integration, requiring affordable units to be built in rich areas, and in more housing being built where it is in the most demand.



The Mayor should argue that each neighborhood must bear its “fair share” of market-rate buyers on the theory that such buyers threaten high rents wherever they move. Calling for each neighborhood to take its “fair share” of market-rate housing is a sort of zoning jujitsu: It accepts the dominant GMT narrative that market-rate buyers can create local harms but then places the burden on New York City’s most privileged homeowners in New York City to do their part to alleviate that harm. Rather than ask residents to digest a complex story about how market-rate housing in poorer neighborhoods will free up units for poorer households, the mayor need only argue what is patently obvious -- restrictive zoning in wealthy neighborhoods diverts wealthy buyers to poorer neighborhoods where those buyers bid up prices.

The SoHo-NoHo rezoning illustrates the language of equity can be brought to bear on recalcitrant wealthy, white owners resistant to upzoning. Mayor de Blasio defended the proposed re-zoning as “an opportunity here to create affordable housing — to bring to an area that has been upper income a greater mix of New Yorkers.” The call to diversify one of New York City’s richest and whitest neighborhoods has rhetorical power, illustrated by the willingness of several anti-gentrification groups and politicians to support the proposal.

But the case for the re-zoning might be even more powerfully framed in terms of equity by arguing that wealthy buyers were excluded from SoHo-NoHo would likely bid up prices on existing buildings in other parts of the city. If new housing is not built in SoHo, rich buyers will buy up brownstones in Harlem or Washington Heights. The resistance of those SoHo-NoHo NIMBYs is just a selfish effort to export wealthy buyers to less privileged neighborhoods. This story is not hard to explain: The Sightline Institute’s video “Cruel Musical Chairs” video explains the idea in a simple, intuitively plausible way that laypeople can understand.

“Fair share” rhetoric about the need equitably to distribute things like garbage truck depots and homeless shelters is a familiar theme in New York City politics. Extending that rhetoric to market-rate housing and its buyers might be a good way to drive a wedge between incumbent homeowners, on one hand, and tenant and anti-gentrification organizations, on the other. Just to be clear, we are not comparing wealthy buyers to garbage! To the contrary, New York City needs homebuyers in every income range to stay competitive and productive. But ignoring the effect of wealthy buyers’ bids on affordability plays right into the GMT narrative. Far better, then, to acknowledge the housing costs imposed by wealthy bidders – and insist that every neighborhood bear some fair share of those costs.

The recent fight over the New York Blood Center on the Upper East Side shows the promise of this technique. Members of the City Council are talking about approving the expansion of a building proposed by an important non-profit over a local councilmember’s objection, despite the Council’s long tradition of “member deference.” The Chair of the City Council’s Land Use Committee said, “There’s so much going on in my community, and to see the Upper East Side is complaining about shadows is beyond us.” The new Mayor can bring a similar set of political arguments to bear in fights over rezonings for new housing.

B. Phone a Friend: Pro-Housing Coalition-Building



The combination of incumbent homeowners and GMT-inspired anti-gentrification activists is a powerful coalition. Any mayor who wishes to counteract this political resistance to new housing has to construct a new pro-housing coalition. That is not an easy mission, because the consumers of new housing are not geographically concentrated and have no investment in any particular proposed building to motivate lobbying. The potential buyers and renters who would benefit from new construction are, therefore, typically invisible in the zoning process. Mayors can't rely on developers to help them either. Developers are so universally disliked that candidates for office now routinely refuse to accept their campaign contributions.

There are ways, however, to motivate politically powerful constituencies to support new construction, by linking that construction to benefits that those constituencies value.

As we have explained elsewhere, transferable development rights (TDRs) have motivated politically powerful groups to fight for new development. Special TDR subdistricts give particular property owners "air rights" to sell to owners of lots in areas where the City has needed new construction; buying the rights allows the purchasers to build more densely. The effect is that TDR recipients become active supporters of rezoning. For instance, the East Midtown re-zoning enlarged the area in which the Catholic Church could sell air rights from St. Patrick's Cathedral, giving Cardinal Dolan an interest in mobilizing priests and parishioners to lobby for office space in East Midtown. Likewise, the West Side Theater Subdistrict enlarged the area in which landmarked theaters could sell air rights, motivating groups like Actor's Equity to lobby for housing in Hell's Kitchen. Because these groups had political clout, they could counteract the NIMBYs who resisted development.

The next Mayor could do something similar, perhaps around public buildings. For instance, the City could give school buildings the right to sell air rights to nearby users to support the schools. Teachers would thereby have a reason to join a pro-housing alliance, seeing in new development the possibility of higher salaries and better supplies.

Another way to build coalitions is to propose very big city or borough wide rezonings. Big employers almost never get involved in housing politics. They should – high housing prices force them to offer higher wages – but rezonings in only one neighborhood just does not have a big enough effect on overall housing prices to matter to a JP Morgan or a Google. But if the scale increased – rezoning large swathes of Manhattan all at once, say – then you'd see big employers get involved directly in zoning fights.

We do not underestimate the difficulty of creating a pro-housing coalition sufficiently powerful to take on NIMBY neighborhood activists. No doubt those activists will oppose free-floating air rights (although, as we explain below, their opposition will likely be weakened by enlarging the geographic scope of the fight beyond parcel-specific map amendments where NIMBYs have the greatest organizational advantage). However difficult, creating a pro-housing coalition is still essential, because the fight against new housing is now a bitter, gloves-off donnybrook. Coming to this knife fight armed only with good will and pie charts will insure the demise of any proposal to enlarge New York City's housing supply.

C. Play a Spread Offenses with City-Wide Text Amendments



The two strategies outlined above are confrontational. They involve the mayor’s amplifying the case against the GMT narrative with showdowns in particular neighborhoods, rallying potential allies to change a dysfunctional zoning status quo. There is, however, another less visible approach that the mayor can simultaneously pursue: Use a “spread offense” that makes small, incremental increases in housing throughout the entire city. Like the football “spread offense” that forces the defense to cover the whole field, spreading out increases in housing throughout the city weakens NIMBYs by forcing them to block zoning changes that seem fairly distributed and, in any given neighborhood, are relatively small.

The de Blasio Administration’s Zoning for Quality and Affordability (ZQA) provide a model of this city-wide approach. ZQA was a bundle of apparently minor changes to the text of the Zoning Resolution that modified the rules to allow architectural variation forbidden by the zoning straitjacket. For instance, ZQA added five feet of height for buildings with ground-floor retail if the ground floor ceilings were taller and modified strict bulk limits in contextual zones to permit bay windows and courtyards. None of these tweaks allowed dramatically larger structures: They simply made it easier for developers to use square footage that was theoretically permitted but practically impossible to use, given the rigid limits of the zoning.

ZQA spread out the new construction across the entire city in granular ways that made it harder for NIMBYs to block the whole package. Unlike a next-door tower, ZQA’s allowing bay windows to poke into front setbacks was merely irritating, not infuriating, to any particular neighborhood. Moreover, the city-wide character of the changes gave each City Council member the assurance—and political cover -- that all of their colleagues would be taking their fair share of locally unwanted zoning changes.

The cumulative city-wide effect of ZQA’s bundle of small changes, however, was to open up a significant amount of square footage for housing. The new mayor might try to smuggle new housing using a similar “spread offense.”

Take minimum parking requirements requiring a certain number of off-street parking spaces per unit. Although defended as protection for incumbent residents’ on-street parking spaces from newcomers’ cars, these requirements are seldom justified by any data on occupants’ actual car ownership. By conducting a rigorous survey of such ownership for particular housing types, the new mayor could make the case for incremental downward adjustment of the requirements, significantly reducing the cost of housing that is theoretically already permitted by existing zoning. Another possibility is changing the “split lot” rules, easing air rights transfers through zoning lot mergers even outside of special TDR zones.

Pushing these incremental changes the city’s land use process would be labor-intensive and time-consuming, but the gains in housing might be worth the effort. Because each small adjustment would have modest effects in any particular neighborhood, the technical changes would be supported by experts, and, most of all, every neighborhood would be equally affected, the usual residential NIMBYs would be less likely to circle the wagons.



CONCLUSION

Whatever approach the new mayor decides to take, there is no escaping the need to confront the GMT narrative. Either the mayor will have to don boxing gloves, recruit powerful pro-housing allies,

and take on the NIMBYs using equity-based rhetoric of Fair Share. Or the mayor will have to overwhelm NIMBY opponents with city-wide text amendments that deprive neighborhood activists of their home-field advantage in attacking parcel-specific map amendments. Either way, there is no escaping a city-defining and divisive fight. The alternative is to convert New York City into a gated community with ever-increasing rent-burdened households and ever-greater economic losses from the exclusion of people who want to make it in the Big Apple but cannot move here at all.

