

WEEK 8: Zoning & Affordable Housing in NYC

October 18, 2022 | Adjunct Lecturer: Erin Lilli | URBST 222:
Introduction to Urban Housing /URBST 723: Dynamics of Housing &
Homelessness



Rent hikes renters face after pandemic pricing ends

[link](#)



Affordable housing developers in public-private partnership with the city. They discuss topics form this lecture: Mandatory Inclusionary Housing, Area Media Income, cross subsidies...

[link](#)

- In the early 2000s, in the aftermath of 9/11 and amidst increasing expensive housing, the Bloomberg Administration pursued an ambitious plan:
 - To **preserve and build 165,000** units of **affordable housing** in the city
 - Undertake the most **extensive rezoning** in the city's modern history
- While some view Bloomberg's plan in a positive light, his administration saw:
 - Increasingly unaffordable housing
 - steep median rent hikes as real median income declined
 - a near doubling of residents in homeless shelters
 - decline in public housing maintenance and no checking of lead paint

“We talk in these vagueries of units and developments and dollars and money. And the reality is that 500,000 people in our city are living more affordably because of the work that Mayor Bloomberg did over 12 years.”

Rafael Cestero, Department of Housing Preservation and Development during Bloomberg

- In 2011 the NY City Council sued the Bloomberg Administration over stricter requirements imposed on who could qualify for city homeless shelters.



POLICY BRIEF

**Closing the Shelter Door:
The Bloomberg Administration's Misguided Plan to Deny Shelter to
Homeless Families and Children**

Mayor Bloomberg and administration officials have announced one of the most dramatic changes in New York City homeless policy in more than two decades: New rules, to be implemented in the coming months, to deny shelter to homeless children and their families who have been deemed “ineligible” for shelter by City bureaucrats. Under the proposed new rules, for the first time in more than eight years homeless children and families could be turned away from the shelter door by City bureaucrats and left out in the cold. The Bloomberg Administration’s plan represents one of the most fundamental attacks on the right to shelter for homeless New Yorkers since the inception of modern homelessness, and threatens to make New York like other American cities where homeless children and families are frequently left to sleep rough on the streets. Mayor Bloomberg and City officials should immediately abandon any effort to implement rules to deny shelter to homeless families.

The Proposed New Rules: No Shelter for Many Homeless Families

Under the proposed new policy, which was outlined on November 16th at the opening of a new Bronx intake center for homeless families and detailed in subsequent news reports, homeless children and families whom the City’s Department of Homeless Services (DHS) claims are “ineligible” for shelter would be denied shelter applications when they re-apply for shelter, as is the current practice.¹ According to Bloomberg Administration officials, the ban on shelter placements would be permanent

“In a time of prosperity, he [Mayor Bloomberg] took aggressive steps from a policy perspective to hurt the homeless...I never understood that.”

Christine Quinn, City Council speaker at the time of lawsuit, currently president of Women in Need, largest provider of shelter and homeless services for women and children in the city.

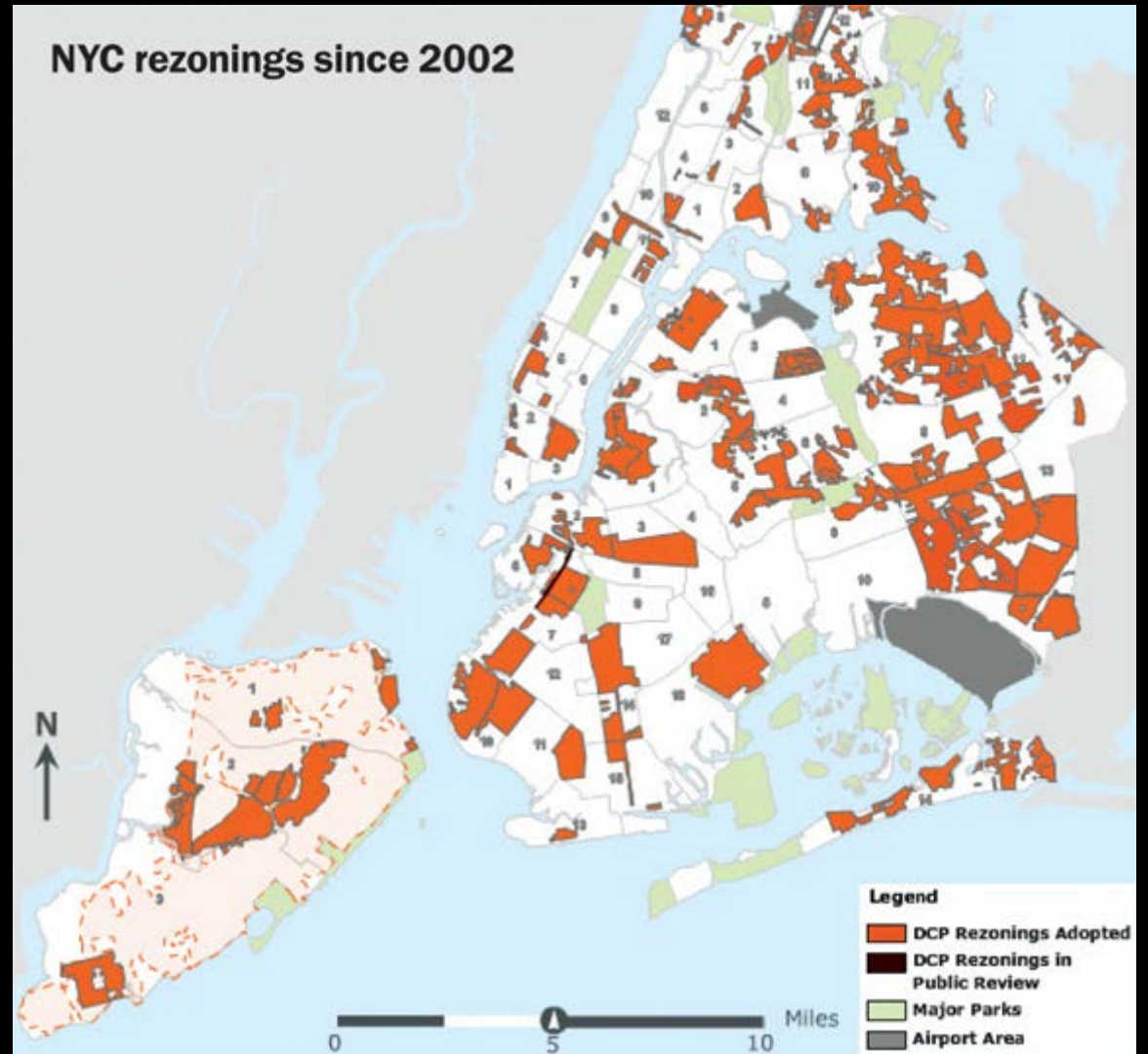
Bloomberg's (re)Zoning of NYC

- Bloomberg Administration rezoned about 40% of NYC or 302.6 square miles meant to create patterns of land use with:
 - Restrict development in low density areas (e.g. outer boroughs)
 - Encourage development along major transit corridors including allowing for large-scale residential development in formerly non-residential areas (e.g. West Side of Manhattan, Downtown Brooklyn, **Williamsburg** /Greenpoint Brooklyn, and Long Island City in Queens)
 - *We'll read about Williamsburg on Zoned Out! this week*
- According to the NYU Furman Center, Bloomberg's rezonings added only a slight increase in residential capacity city-wide
- Black and Hispanic neighborhoods were disproportionately upzoned
- White neighborhoods were disproportionately downzoned

(re)Zoning of NYC

- De Blasio's Administration rezoned much less but added the **Zoning for Quality and Affordability (ZQA)** ([link](#))
 - ZQA aims to make it easier for developers to **produce needed affordable senior housing and care facilities, to enable mixed-income housing,** and to reduce the costs of building affordable housing **near public transportation.** In terms of quality, ZQA aims to **change rules to allow for more various and lively pedestrian spaces,** encourage higher ground-levels to accommodate for retail spaces and residential units, and ensuring that rules are relevant to their zoning districts.
 - Of the 15-neighborhood rezoning goal, de Blasio's completed 6: East New York (Brooklyn), Downtown Far Rockaway, East Harlem, Jerome Avenue (Bronx), Bay Street Corridor (Staten Island), and Inwood (Manhattan).

- Since 2010 new housing development has been mostly concentrated in those formerly non-residential areas that were rezoned under Bloomberg.
- Since 2010 there has been nearly zero new development in lower density neighborhoods.
- Between 2010 and 2018 NYC added 5 new jobs for every new unit of housing.
 - NYC has added substantially less housing per capita than its peer cities (Seattle, Washington DC 7 Boston)



(re)Zoning of NYC

Benefits of Upzoning in **Low-Income** Areas

- Bring amenities and investment in infrastructure
- Spur development of below-market rate housing
- Allows more housing to be built on a site – adding value and reducing overall costs
 - Lower costs and higher revenues allow for **cross-subsidizing** of affordable units (e.g. **Mandatory Inclusionary Zoning [MIH]**)
- Improve housing quality in disinvested areas

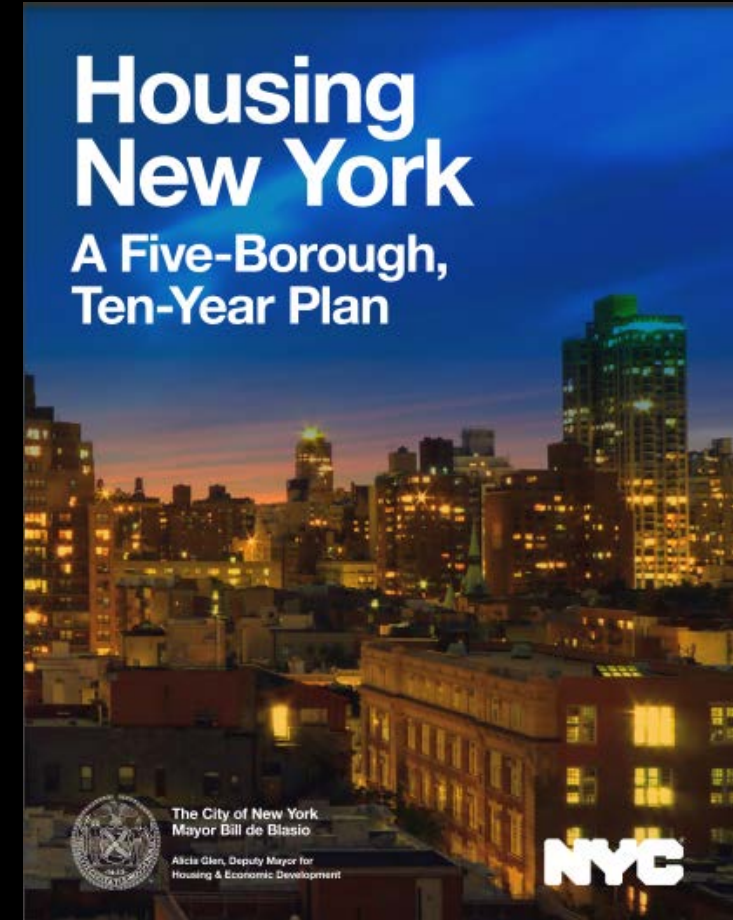
Benefits of Upzoning in **High-Income** Areas

- Usually already access to more and better resources (e.g. transit, jobs, parks, better schools)
- Could promote greater racial integration and fair housing assuming housing is made affordable for a diverse range of incomes
 - **What about gentrification?**
- Makes MIH more effective via cross-subsidies

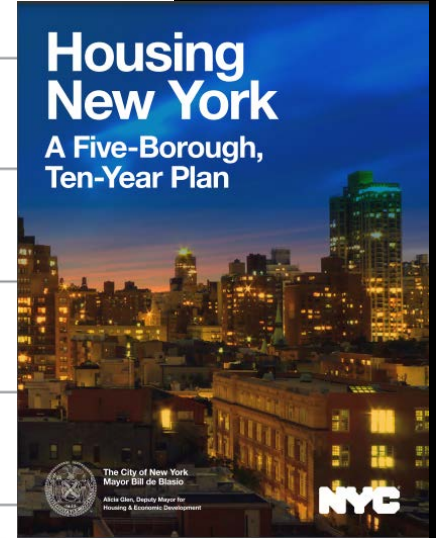
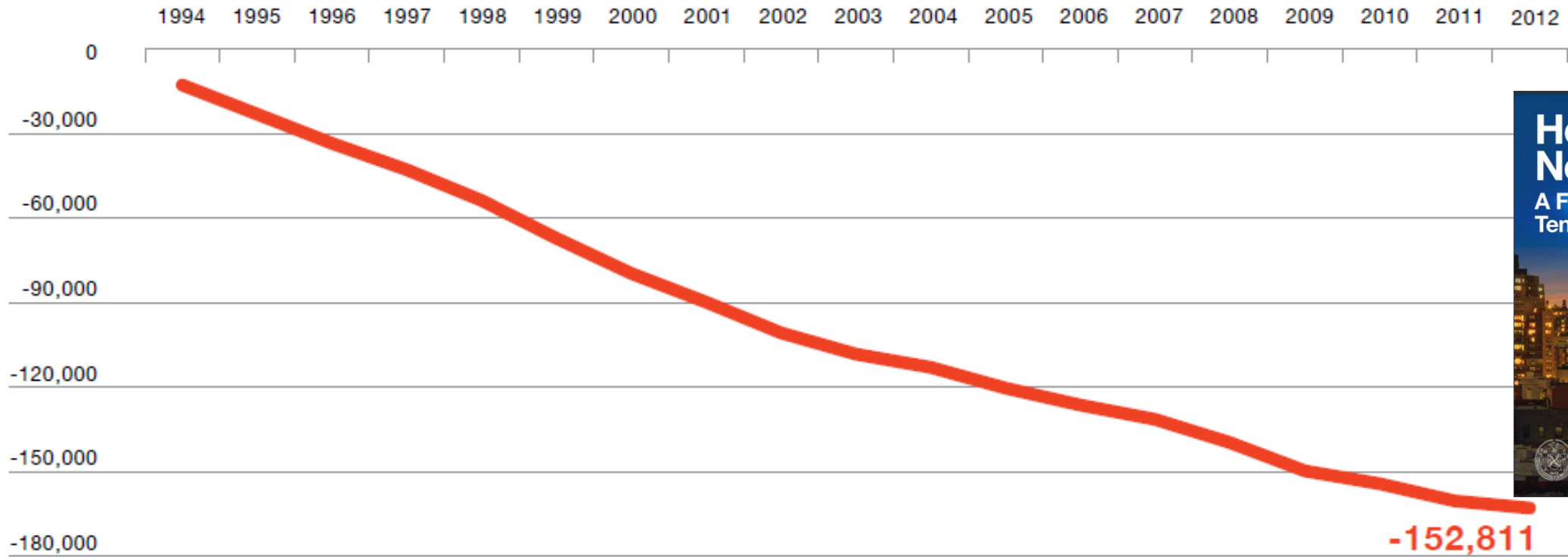
Inclusionary Zoning in NYC

Mandatory Inclusionary Housing (MIH) :: the construction of affordable housing (AH) in areas where the city allows new and larger developments to be built at market rate (part of de Blasio Administration Housing Plan)

- De Blasios' 2014 AH Plan: Housing NY: 5 borough/10 year plan with 4 main strategies:
 1. continue subsidizing non-profit development
 2. leverage city power to preserve 120k extant units of AH
 3. tweak zoning to allow slightly higher density in some low density areas
 4. (most controversial), build 80k income targeted units through MIH



Net Loss of Rent Stabilized Units, 1994 – 2012

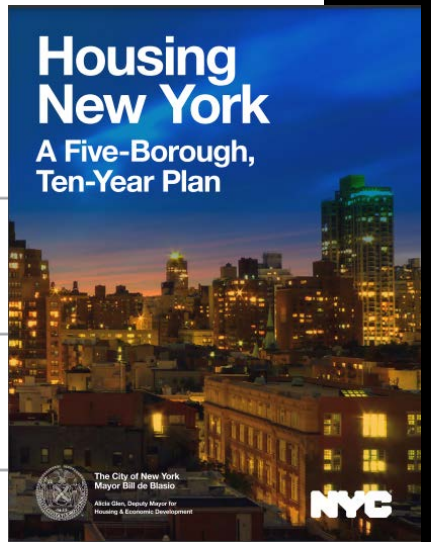
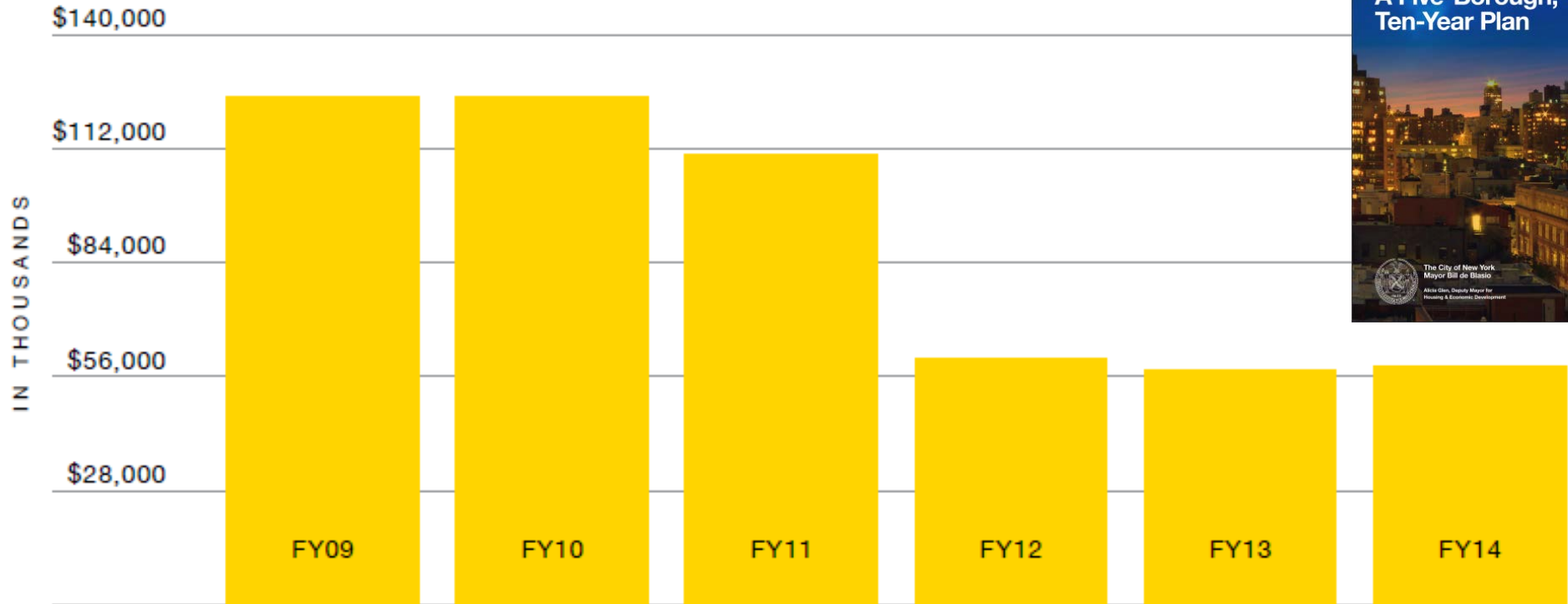


Data Source: Rent Guidelines Board Reports, Changes to the Rent Stabilized Housing Stock in NYC in 2012. The city has lost more rent regulated units than it has gained.

Department of Housing Preservation and Development (HPD) HOME Grant Funding, FY2009 - FY2014

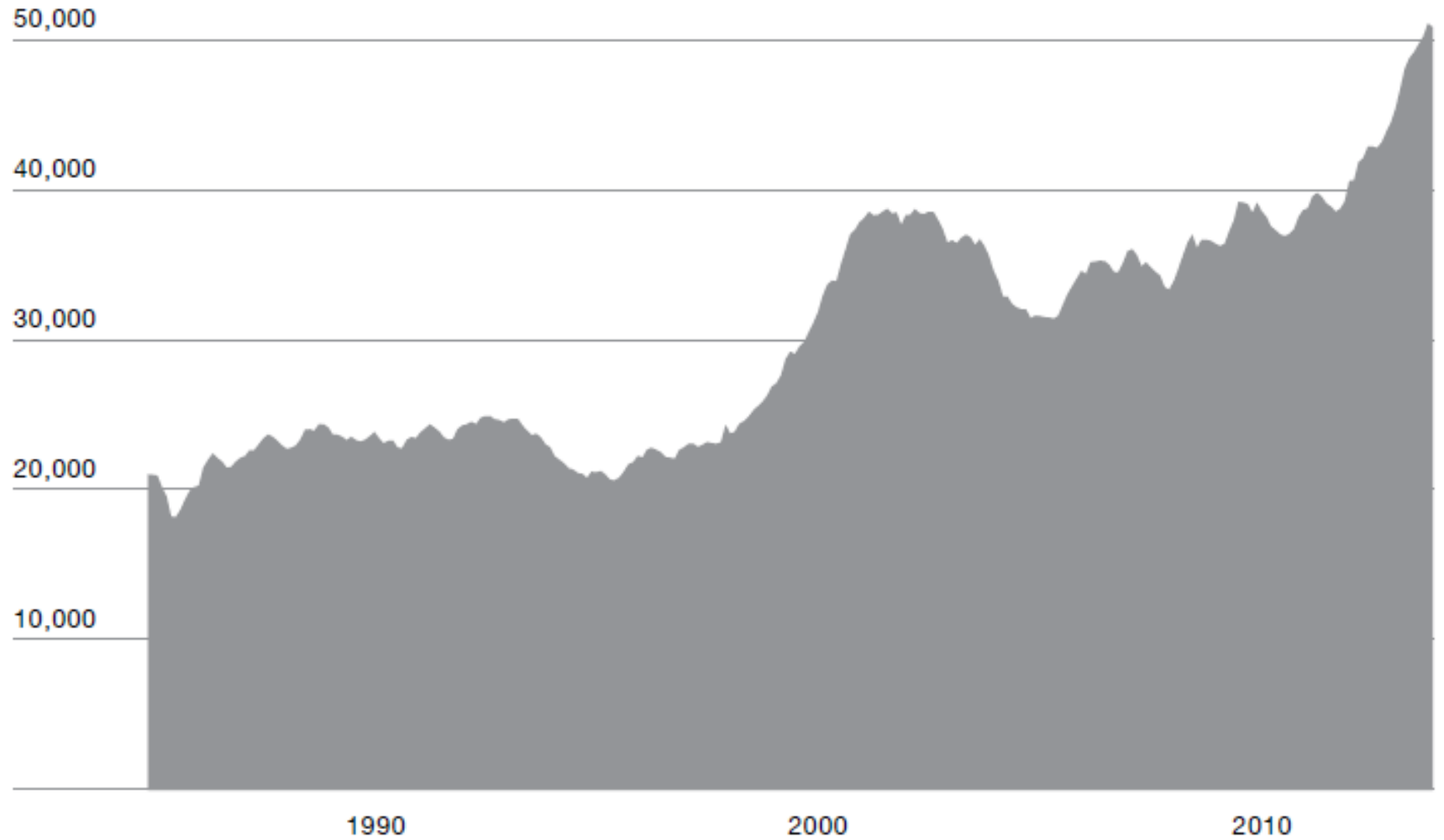
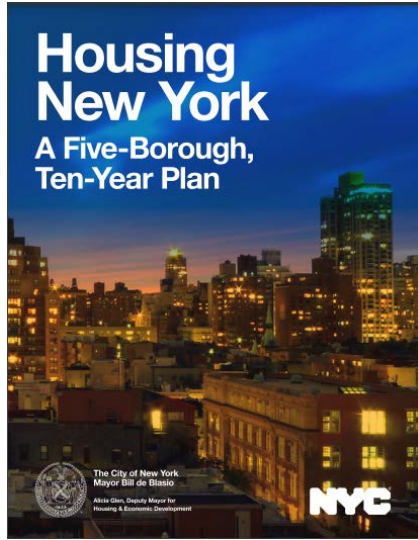
Data Source: U.S. Department of Housing and Urban Development.

The reductions in Federal spending resulted in a 52 percent cut to the HOME grant awarded to New York City between Fiscal Year 2011 and Fiscal Year 2012.



Dwindling federal resources for the construction or preservation of affordable housing and for housing vouchers

New York City Shelter Population

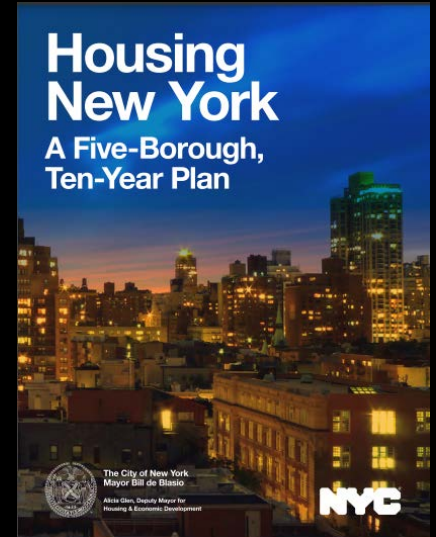


Data Source: Coalition for the Homeless
Report on New York City Homeless Municipal
Shelter Population, 1983-present (available
online at www.coalitionforthehomeless.org)

The number of people—children and
adults—residing in municipal shelters has risen
over the past 30 years.

De Blasio's Housing Plan **Goals**...

- aimed to create or preserve 200,000 housing units over a 10-year period, in 2017, the administration upped that goal to 300,000 housing units—120,000 new and 180,000 preserved— by 2026.
- had financed the construction of 50,656 new affordable homes and the preservation of 114,934 more, for a total of 165,590 units by July 2020 according to a report by the Community Service Society



Inclusionary Zoning in NYC

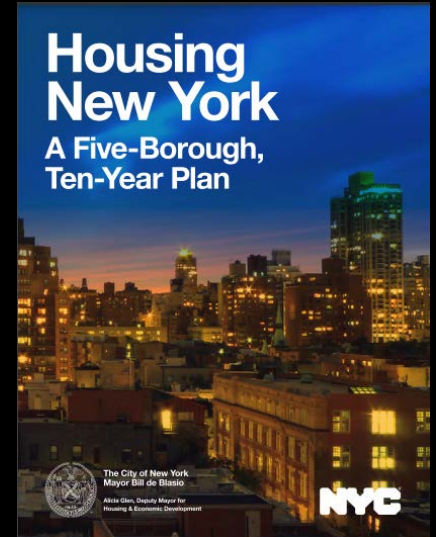
- MIH is a variation of inclusionary zoning (IZ) undertaken by the de Blasio
 - IZ began in 1987 under Mayor Ed Koch as density bonus for developers, but it failed to create much AH
 - IZ was kept through Mayorships of Dinkins and Giuliani then Bloomberg expanded (rezoning 40% of NYC)
- Two shortcomings to this IZ under Bloomberg
 1. Being voluntary for developers, it produced very little AH
 2. Units at 80% area median income (AMI) were not affordable to most New Yorkers
 - DeBlasio's MIH approach touches on both of these concerns
- MIH is mandatory, not voluntary, for new construction in neighborhoods where the city increases zoning capacity
- MIH addresses affordability issues by providing options the Dept of City Planning (DCP) can apply as they see fit
 - Option Examples: 20% of building units at 40% AMI; 25% of units at 60% AMI [another 10% must be at 40% AMI]; 30% of units at 80% AMI; 30% of units at 115% AMI)

Inclusionary Zoning in NYC

- MIH is an expansion of AF but not an overhaul of the system:
 1. MIH only takes effect when neighborhoods are rezoned
 2. AMIs stretch lower but also go much higher than before
 3. AMI levels still don't match the city's needs (greatest need is for 1/3 of residents who make 30% AMI or less)
- Deeper issue of IZ
 - New AH is always linked to luxury development which raises the value of rezoned land and encourages land speculation in hopes it will be upzoned –
 - With this speculation comes rising rent as new landlords need to cover debt and old landlords capitalize on new hype, some small low-rent owners might sell to speculative investor.

De Blasio's Housing Plan Realities...

- produced 300% more housing for New Yorkers earning up to 30% AMI and 33% more aimed at households earning between 31%-50% AMI, compared to Bloomberg
- produced 50% less housing for higher income earners compared to Bloomberg
- AMI eligibility for AH units did not meet the real needs in most neighborhoods
- the city's homeless shelter population is still high
- NYCHA still underfunded and in crisis with lead paint issues and an estimated maintenance bill of \$40B
- essentially ignored the interconnected issues of homelessness, public housing, and affordability
- furthered disparities facing vulnerable New Yorkers
 - 72% of households earning 200% of the Federal Poverty Line are rent burdened



Does Mandatory Inclusionary Zoning Work?

- MIH appears to be less of an AH plan than a strategy for capital accumulation that accelerates gentrification
- MIH is a neoliberal housing policy because:
 - it places responsibility with providing housing to private market and not the state
 - gives away public airspace for limited public benefit
 - value for developers is far greater than for the public

Per a report by the Community Service Center,

“Not a single one of the 9,902 apartments built in 21 MIH projects in neighborhoods with average incomes under 40 [percent] of AMI would be affordable to the typical local resident”.

Two proven methods that work for AH:

- public housing (PH still in Nixon-era moratorium and poorly funded)
- rent regulations (weakened since fiscal crisis and early 1990s, but strengthened with 2019 HSTPA)

Ways to improve MIH:

- Decouple IZ from increased zoning so its all over the city
- Put MIH in most expensive enclaves so there would be no displacement of the working classes

Other efforts mitigating unaffordability:

- Right to Counsel (providing free legal services in housing court)
- tenant protection programs (e.g. Certificate of No Harassment)
- rental assistance programs
- increased funding for community land trusts
- city's commitment to building 15,000 supportive housing units
- city raising the percentage of mandated affordable units set aside for homeless New Yorkers from 10% to 15%
- Passing of the 2019 HSTPA

What is the Housing Stability and Tenant Protection Act (HSTPA)?

On June 14th, 2019 Governor Cuomo signed the HSTPA which provided a series of historic reforms to the rent laws, including:

- Makes the laws permanent
- Establishes rent stabilization as an option for localities statewide
- Repeals high rent vacancy deregulation and high income deregulation
- Repeals vacancy decontrol and longevity increases
- Makes preferential rent the base rent for duration of the tenancy
- Limits MCI rent increases and IAI rent increases
- Reforms rent increase system for rent control tenants
- Establishes stronger tenant protections statewide with changes to security deposits and eviction guidelines
- Bans owners from refusing leases to tenants who have been involved in housing court cases
- Limits rent increases in manufactured home parks



Homes and
Community Renewal

High Rent / High Income Decontrol: Repealed

Pre-2019 Law

- Due to Rent Reform Act of 1997, landlords could permanently deregulate apartments not subject to tax benefits/regulation (e.g. 421-a/J-51) when the legal rent crossed the decontrol threshold
- Upon vacancy, when the legal rent of the outgoing tenant was above the decontrol threshold (currently \$2,744/month in NYC, indexed to RGB increases), the unit was no longer rent stabilized
- Without a vacancy, if legal rent crosses the decontrol threshold AND combined income of tenants in an apartment is greater than \$250,000 for two consecutive calendar years, the unit was no longer rent stabilized



HSTPA of 2019

Eliminates the decontrol threshold

- Landlords can no longer deregulate apartments due to high rent or high income

UPDATED FACT SHEET #26



Homes and
Community Renewal

Vacancy and Longevity Increase: Repealed

Pre-2019 Law

Landlords were entitled to the following upon vacancy:

- Vacancy Increase:
 - 20% increase upon vacancy
 - Available once per calendar year
- Longevity Increase:
 - Available if the apartment had been occupied for at least 8 years since a vacancy
 - If applicable, the legal rent could be increased by 0.6% per year that elapsed since the prior vacancy



HSTPA of 2019

Eliminates Vacancy Increase

- Landlords can only increase legal rents by RGB

Eliminates Longevity Increase

- Landlords can only increase legal rents by RGB regardless of how long a tenant is in occupancy

UPDATED FACT SHEET #26



**Homes and
Community Renewal**

Major Capital Improvements (MCIs): Retained but substantially modified to limit impacts on rent increases

Pre-2019 Law

- Landlords were entitled to a permanent legal rent increase for certain capital work performed for building-wide improvements with ORA approval
- The MCI rent increase was based on the actual and verified cost of the work, amortized over 8 or 9 years, depending on building size
- The MCI rent increase was capped at 6% per year to slow the impact on the tenant's rent
- Landlords could also temporarily collect a retroactive increase to cover the period between application date and approval date



HSTPA of 2019

MCI's are no longer permanent

Rent increase cap is reduced

- From 6% to 2% in NYC
- From 15% to 2% in ETPA counties
- The 2% cap applies prospectively to MCIs that became effective in the last seven years
- Buildings with 35 or fewer units are amortized over 12 years, buildings with more than 35 units are amortized over 12 ½ years
- Allowable costs will be based on a reasonable cost schedule created by HCR.

UPDATED FACT SHEETS #26, 33, 35



Homes and
Community Renewal

Individual Apartment Improvements (IAIs): Retained but substantially modified to limit impacts on rent increases

Pre-2019 Law

- Landlords were entitled to a permanent legal rent increase for IAIs
- IAIs permitted upon vacancy (when most are completed) with no caps on cost
- Under certain circumstances, IAIs permitted with consent for occupied apartments
- IAI rent increase was amortized over 3 or 5 years depending on building size
- IAIs are not filed with, reviewed, or approved by ORA



HSTPA of 2019

IAI spending is capped

- Maximum is \$15,000 over a 15-year period;
- No more than three IAIs can be charged during this 15-year period

IAIs are no longer permanent;

- Burn off after 30 years
- Increases not allowed where the apartment has outstanding hazardous or immediately hazardous violations
- HCR to create a centralized database

UPDATED FACT SHEET #35



**Homes and
Community Renewal**

“We did have a major emphasis on affordable housing, and a great deal of spending on it, during the de Blasio administration...And yet the problems have persisted”.

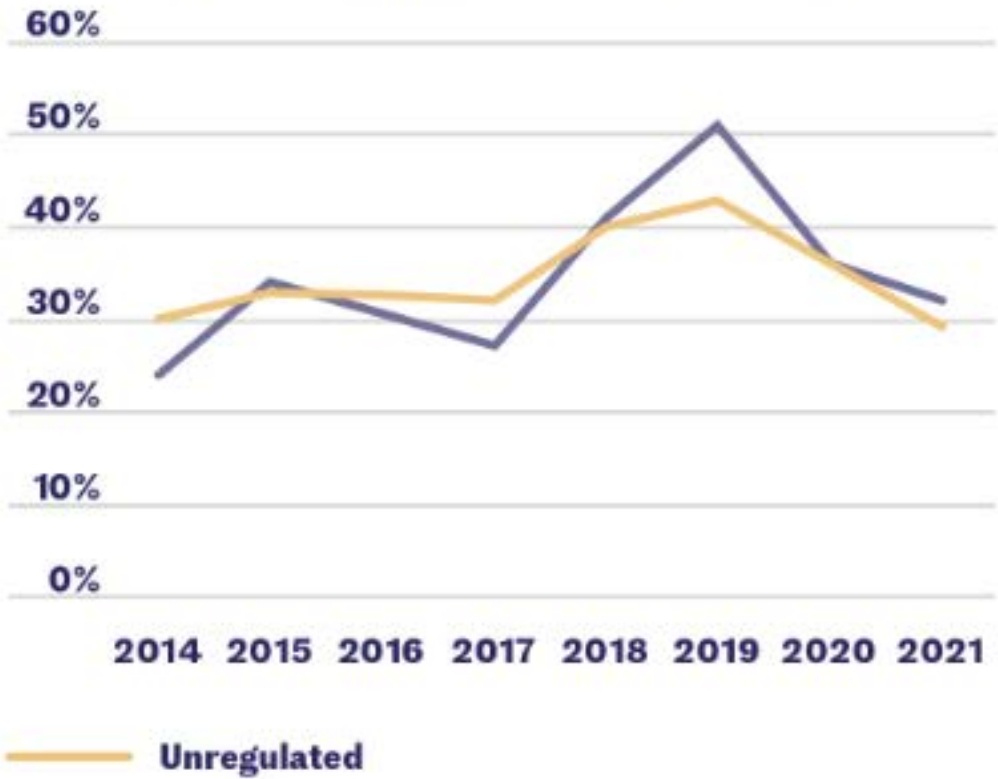
Sam Stein, Policy Analyst with CSS, <https://citylimits.org/2021/02/05/de-blasio-housing-plan-created-more-affordable-units-but-left-out-citys-most-vulnerable-report/>

- Despite claims from opponents, the HSTPA has not caused a decline in building maintenance in rent stabilized buildings
- The HSTPA has been highly effective at preventing apartment deregulation and keeping rents in regulated units lower than they would have been otherwise.
- However, Harassment of rent stabilized tenants is ongoing

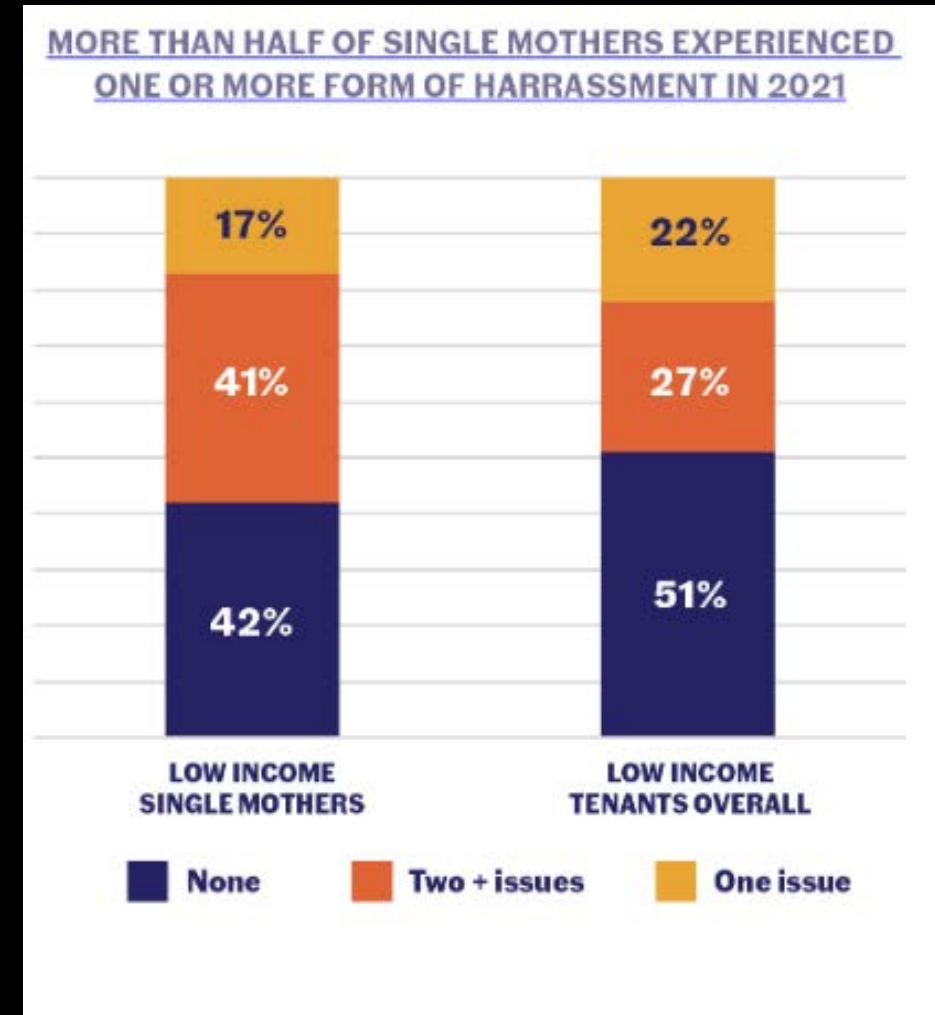
SHARE OF LOW-INCOME TENANTS REPORTING A PROBLEM WITH BUILDING CONDITIONS



SHARE OF LOW-INCOME TENANTS REPORTING A PROBLEM WITH BUILDING SERVICES



- **Low-income rent stabilized tenants were ten times more likely to access rental assistance compared** to low-income unregulated tenants, perhaps because stronger tenant rights provide a firmer basis for tenants to push their landlords to accept rental assistance.
- **HSTPA saved 15,670 apartments from deregulation.** In 37,040 apartments where new tenants moved in since 2019, HSTPA kept rents around the city's median of \$1,500 – \$300 lower than they would have been without the 2019 rent law reforms.
- **More than half (58 percent) of low-income single mothers have experienced one form of harassment** from their landlords, with most experiencing more than one type.



421-a Developer Tax Exemptions

As described by the Furman Center:

The 421-a Tax Incentive program is a partial real estate tax exemption for new construction of housing. The program was established in 1971 and has been closed, re-opened, and reorganized several times. After the tax exemption was suspended in 2016, the New York State Legislature extended the 421-a program in April of 2017 (with retroactive coverage to 2016), so that the program now includes three sub-programs which are scheduled to sunset in June of 2022. The first, 421-a (1-15), extends the program for projects that began construction before December of 2015 and the second, 421-a (17), extends the exemption period for properties that began construction before 2008 and already qualified for earlier versions of the program. The third sub-program, the 421-a (16) “Affordable New York” program, is available to developers of new housing projects who have not yet participated in the program or who began construction between January of 2016 and June of 2022. Affordable New York (ANY) includes seven options for rental and homeowner housing, which include varying term lengths and affordability levels.

<https://furmancenter.org/coredata/directory/entry/421-a-tax-incentive-program>



421-a Developer Tax Exemptions

421-a offers incentives to developers via tax exemptions, for a certain number of years, provided they create a portion of affordable housing.

- It cost \$1.7 billion in lost revenue last year. That makes it the most expensive tax break in the city, a title it has held since 2007, per Department of Finance records analyzed by the Community Service Society. The second-highest tax break, an abatement for coops and condos, cost \$655 million last year.
- More than half, or 56%, of all the city's multifamily residential units created in the past eight years involved 421-a, according to Housing Preservation and Development data analyzed by the Real Estate Board of New York.
- More than a quarter, or 28%, of affordable units in the same time period were subsidized by 421-a, REBNY's analysis found.

<https://www.thecity.nyc/housing/2022/2/10/22925482/a-tenants-guide-to-421-a-the-citys-biggest-tax-break-for-developers-and-landlords>

421-a Developer Tax Exemptions

- 421-a (10-25 year tax exemptions given to developers for including AH in new development projects)
- There was an estimated \$1.4B loss in FY 2017 due to 421-a exemptions granted in prior years ([link](#))
- For the 2017 tax roll, \$94.2 million in new 421-a tax expenditures were added, the largest volume increase since 2013 and \$14.2 million greater than the 20-year average.
- 421-a is rigorous, applicant (landlord) must promise to register as rent stabilized; upon completion of construction developers are issued a certificate of approval after verification from city
 - This certificate is then supposed to be filed with city finance to get the tax break (**it often is not – see link**)
 - Landlords save about \$300M, collectively, a year in property tax without showing they even qualify
 - Most of the 4000 properties in question, filed before 2014, failed to register as rent stabilized meaning they can raise rents to market rate
 - Most of landlords those that ignore filing own 1-10 unit properties in gentrifying and peripheral

Sources

- City Limits: <https://citylimits.org/2021/02/05/de-blasio-housing-plan-created-more-affordable-units-but-left-out-citys-most-vulnerable-report/>
- Furman Center: [https://furmancenter.org/files/publications/302.6 Where to Build - Final.pdf](https://furmancenter.org/files/publications/302.6%20Where%20to%20Build%20-%20Final.pdf)
- ProPublica: <https://projects.propublica.org/tables/nyc-421a-tax-benefits.html>
- New York Times: <https://www.nytimes.com/2019/11/09/upshot/bloomberg-new-york-prosperity-inequality.html>
- Stein, S. (2017). Progress for whom, toward what? Progressive politics and New York City's Mandatory Inclusionary Housing. *Journal of Urban Affairs*, 1–12.