

# The Case Against Restrictive Land Use and Zoning

The 2020 NYU Furman Center report, “Ending Exclusionary Zoning in New York City’s Suburbs,” highlights the harm that onerous land use restrictions inflict on the economy, on racial equity, and on the environment. Data on rents, prices, and construction rates show that even pre-pandemic there was an extreme housing shortage facing New York City and its suburbs. This policy brief broadly lays out the drawbacks of restrictive land use, then reviews the current state of New York’s zoning and explains the need for state intervention. The case for more flexible suburban land use regulations is stronger given increased demand from residents leaving the city in pursuit more spacious work-from-home environments.



Restrictive zoning has serious consequences for the New York region and its residents:

1. Many studies have shown how rigid land use rules lead to more expensive housing, as a limited supply of housing cannot meet the needs of increasing or even steady demand.<sup>1</sup>
2. Restrictive land use regulations can reduce economic productivity by disrupting agglomeration economies. In areas like New York, there is value added from the dense clusters of groups like artists, traders, and lawyers.<sup>2</sup> Proximity results in productivity, and so by capping the number of individuals who can move to an area, restrictive zoning laws cut off the potential for growth.<sup>3</sup> Therefore, zoning laws do more than simply increase an individual's rent payments: restrictive zoning laws have the potential to stifle regional growth, and even reduce GDP nationwide.
3. Limiting housing redistributes wealth from renters, who are disproportionately lower-income, to higher income households who already own homes. But low-density zoning does not only draw the line between the economic haves and have-nots, it has also long been used as a tool to maintain or increase segregation.<sup>4</sup> In part because restrictive zoning locks in existing residential patterns, and in part because it increases the financial

barriers to homeownership, low-density zoning disparately affects people of color. Thus, reducing excessive barriers to housing production would not only allow for economic growth at large, it is an imperative for racial equity and economic justice.

4. Restrictive zoning prevents the construction of more environmentally sustainable housing in dense, transit-oriented areas. Without housing available near cities, residents and workers must live further away, increasing sprawl.<sup>5</sup> In turn, new construction in less dense areas often requires residents to commute by car (increasing pollution and emitting greenhouse gases)<sup>6</sup> and live in larger spaces that use more energy to heat and cool.<sup>7</sup> It has also been linked to the degradation of water quality.<sup>8</sup> Multi-family housing, especially when near transit, is a critical part of efforts to fight climate change.
5. Finally, restrictive zoning has a deleterious effect on one of the most American of ideals: choice. For a variety of reasons, including a desire to age in place, some households prefer to reside in an apartment rather than a detached single-family home. Restrictive zoning bans on apartments or bans on accessory dwelling units reduce the diversity of housing choices for many.

New York City suburbs' zoning practices contribute to each of these harms. While the city and other areas of the state must also reconsider their zoning policies, state action should focus on these suburban locales, where many measures suggest the problem is the most acute.

1 See, e.g., Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply*, 5 HANDBOOK REGIONAL & URB. ECON. 1289 (2015) (reviewing literature); Edward L. Glaeser, et al., *Why Have Housing Prices Gone Up?*, 95 AM. ECON. REV. 329, 329 (2005).

2 EDWARD L. GLAESER, CITIES, AGGLOMERATION AND SPATIAL EQUILIBRIUM 1–14 (2008).

3 Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation* 3, Nat'l Bureau of Econ. Res., Working Paper No. 21154 (2017).

4 JESSICA TROUNSTINE, SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES (2018); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017); see also Solomon Greene, Margery Austin Turner, and Ruth Gourevitch, *Racial Residential Segregation and Neighborhood Disparities*, US Partnership on Mobility from Poverty (Aug. 2017), <https://www.mobilitypartnership.org/publications/racial-residential-segregation-and-neighborhood-disparities> (reviewing literature).

5 See, e.g., Arnab Chakraborty, et al., *The Effects of High-Density Zoning on Multifamily Housing Construction in the Suburbs of Six US Metropolitan Areas*, 47 URB. STUD. 437, 447 (2010).

6 See, e.g., Reid Ewing, Shima Hamidi, & Jack L. Nasar, *Compactness Versus Sprawl: A Review of Recent Evidence from the United States*, 30 J. PLAN. LIT. 413 (2015)).

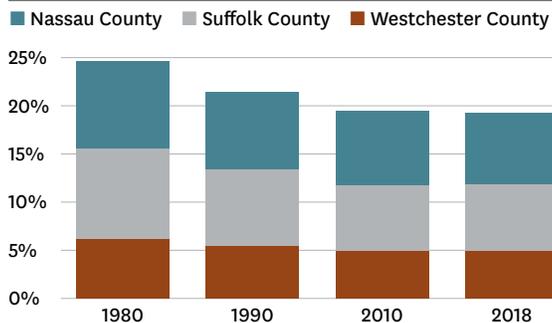
7 See, e.g., Hossein Estiri, *Differences in Residential Energy Use Between US City and Suburban Households*, 50 REG'L. STUD. 1919, 1920 (2015):.

8 See, e.g., John S. Jacob & Ricardo Lopez, Is Denser Greener? *An Evaluation of Higher Density Development as an Urban Stormwater-Quality Best Management Practice*, 45 J. AM. WATER RESOURCES ASS'N 687, 688 (2009).

# Quantifying New York's Lack of Housing Growth and Unaffordable Housing Prices

Several measures highlight how little housing was being created before the pandemic, despite the region's economic success. The city's suburbs remain national laggards, issuing fewer building permits per resident than essentially all other suburban Northeastern counties.<sup>9</sup> Additionally, a declining share of the metro population is housed by the state's three core suburban counties. Between 1980 and 2018, the region added millions of residents, yet Westchester, Nassau, and Suffolk's portion of residents dipped from 24.5 percent to just 19.2 percent.<sup>10</sup> Put differently, had Long Island continued to house its 1980 share of the population in 2018, it would be home to more than 800,000 additional residents.

## County Share of the Metro Area Population



Sources: Decennial Census (1980, 1990, 2010), American Community Survey (2018), NYU Furman Center

Indeed, by some measures, the New York region actually builds less housing<sup>11</sup> than the infamously restrictive Bay Area, which is known for high rental prices and tight zoning.<sup>12</sup>

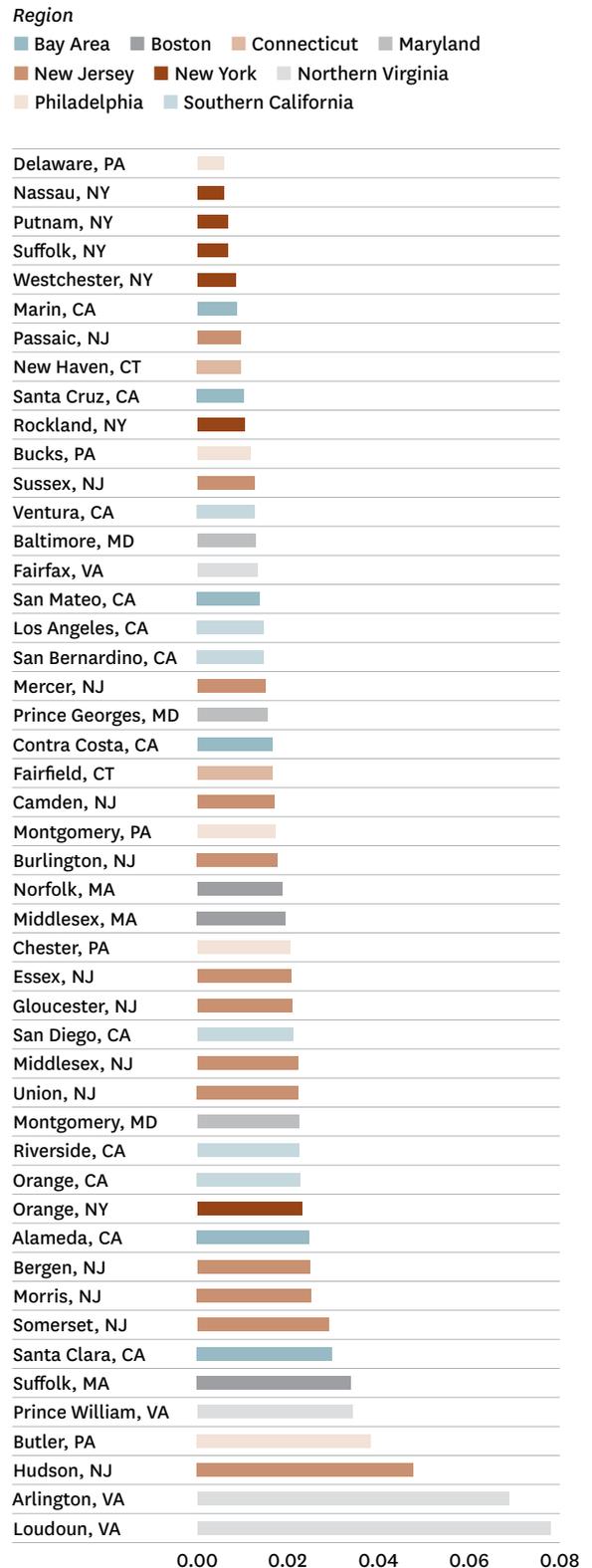
<sup>9</sup> Furman Center analysis, HUD State of the Cities Data Systems: Building Permits Database.

<sup>10</sup> Furman Center analysis, data from U.S. Census Bureau, Population Division, via Google Data Explorer.

<sup>11</sup> Metropolitan Transportation Commission, *Housing Permits*, VITAL SIGNS, <http://www.vitalsigns.mtc.ca.gov/housing-permits> (last visited June 29, 2020).

<sup>12</sup> See Francesca Mari, *Where America's Fight for Housing Is an All-Out War*, N.Y. TIMES (FEB. 14, 2020) <https://www.nytimes.com/2020/02/14/books/review/golden-gates-housing-conor-dougherty.html>.

## Building Permits Per Capita, by County



Sources: HUD SOCDs Building Permits Database, American Community Survey (2018), NYU Furman Center



The effects of these exclusionary policies clearly contributed to higher pre-pandemic housing prices and rents. These downstate suburban counties have seen home prices skyrocket, even when homes were pricey to begin with. As measured by the Federal Housing Finance Agency’s Housing Price Index, the cost of a single-family home in Nassau County has risen the second-highest amount since 1990 of all suburban counties in the Northeast.<sup>13</sup> Rents in these areas have also continued to rise. The median rent of a housing unit in Westchester County increased by roughly 2.5 times from 1990 to 2018, the third highest total among comparable suburban counties.<sup>14</sup> And because suburban housing markets are closely interconnected with the city, the shortage of affordable homes in the suburbs exacerbates the city’s housing crunch as well.<sup>15</sup>

## Exclusionary Zoning, Fair Housing, and Segregation in New York

New York is also a remarkably segregated region. By one common measure of residential segregation, the region has the second-highest level of black-white segregation in the country, after only Milwaukee.<sup>16</sup> The New York region has the third-highest levels of both Asian-white and Hispanic-white segregation.<sup>17</sup> Although there are multiple reasons for the region’s deeply segregated housing,

exclusionary zoning is one cause. The history of zoning in New York was explicitly racist in some places, while more carefully coded in others, but its effects were the same.

The depth of racial exclusion is further illustrated by the history of fair housing litigation in New York State. New York’s suburbs routinely fall short of their obligations under the Fair Housing Act—including by imposing low-density zoning and restrictions on multi-family housing. And even after they lose in court, they retain the tools to continue to obstruct affordable housing construction, sometimes for decades.

In one of the most famous Fair Housing Act cases in the country, *Huntington Branch, N.A.A.C.P. v. Town of Huntington*, restrictive zoning in the town of Huntington was used to prevent multi-family housing and an affordable rental project.<sup>18</sup> Despite civil rights groups triumphing against restrictive zoning in the United States Supreme Court, opponents of the project ultimately prevailed. By throwing up new roadblocks to development, opponents of the plans ensured that even now, 40 years after the project was proposed, the project has yet to break ground.<sup>19</sup> Examples like this one show just how immense the obstacles are to integrated, fair housing, and underscore the need for reform.

13 Furman Center analysis, see Federal Housing Finance Agency, *FHFA HPI County Map*, <https://www.fhfa.gov/DataTools/Tools/Pages/HPI-County-Map.aspx>.

14 Furman Center analysis, HUD State of the Cities Data Systems: Building Permits Database.

15 Evan Mast, *The Effect of New Market-Rate Housing Construction on the Low-Income Housing Market*, Upjohn Institute Working Paper 19-307 (Jul. 12019).

16 William H. Frey, *Black-White Segregation Edges Downward Since 2000, Census Shows*, BROOKINGS INST. (DEC. 17, 2018), <https://www.brookings.edu/blog/the-avenue/2018/12/17/black-white-segregation-edges-downward-since-2000-census-shows/>

17 See Population Studies Center, Institute for Social Research, *New Racial Segregation Measures for Large Metropolitan Areas: Analysis of the 1990-2010 Decennial Censuses*, <https://www.psc.isr.umich.edu/dis/census/segregation2010.html>.

18 *Huntington Branch, N.A.A.C.P. v. Town of Huntington*, 488 U.S. 15 (1988). Pam Robinson, *Updated: Matinecock Court Vote Pushed Back*, *Huntington Now* (Nov. 18, 2021), <https://huntingtonnow.com/updated-matinecock-court-vote-pushed-back/>

19 Editorial, *A Major Step for Affordable Housing on LI*, *NEWSDAY* (Dec. 4, 2019), <https://www.newsday.com/opinion/editorial/matinecock-affordable-housing-long-island-project-bellone-1.39225726>.



## Restrictive Zoning as the Cause of New York's Housing Shortfalls

New York has one of the strongest economies in the country: it is clear that a lack of housing supply, not limited demand for housing, is responsible for the slow rate of housing construction. According to one leading metric, the Wharton Residential Land Use Regulatory Index, the region has the second-strictest zoning in the country, only after the San Francisco metro area.<sup>20</sup>

For a more holistic understanding of the costs of restrictive zoning, one may look at local land use controls currently implemented in the suburbs. New York's suburbs wield a vast array of land use techniques to restrict housing production. In some cases, the tools are blunt: like a moratorium on new housing or a ban on multi-family construction. In others, they are more subtle, like lengthy public review processes and zoning shrink-wrapped around the existing housing stock. Almost any piece of the land use process can contribute to the overall restrictiveness of local zoning, and each local government may use a different technique to limit housing production including: setback requirements, parking requirements, height limits, density limits, lot coverage requirements, minimum lot sizes, site plan reviews, architectural guidelines, discretionary approval processes, and more.

<sup>20</sup> Joseph Gyourko, Jonathan Hartley & Jacob Krimmel, *The Local Residential Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index*, NBER Working Paper No. 26573, at 22 (Dec. 2019), <https://www.nber.org/papers/w26573.pdf>.

## Why the State Needs to Step In

Both practice and theory suggest that local governments will not fix these problems themselves. First, and perhaps most tellingly, New York's suburbs haven't opened their zoning to allow for affordability or access to opportunity. If anything, pre-pandemic housing production had declined, even as the region's economy was booming. Long Island's housing production fell by 58 percent from the 2001-2008 period to the 2009-2018 period; in the northern suburbs, production fell by 50 percent in the same period.<sup>21</sup>

Local governments have intense political incentives to avoid new development as well. As currently structured, suburban local governments tend to review land use proposals on a project-by-project, discretionary basis. As a result, project opponents who believe they will be directly affected by a new development, generally those within a block or two of the project site, are mobilized and fight hard against new construction. Meanwhile, the benefits of any particular new development are more diffuse and do not inspire active support. As Boston University political scientists found in a study of Massachusetts land use hearings, those who show up to testify at land use hearings are generally a project's immediate neighbors—half live on the same block as the proposed development—and a mere 15 percent of them support the project.<sup>22</sup> Making land use decisions at the local level makes the negatives of development more politically salient, while making the positives politically invisible. In effect, our land use system is designed to give new housing's fiercest opponents the loudest voice.

<sup>21</sup> N.Y.C. DEP'T CITY PLANNING, *THE GEOGRAPHY OF JOBS: NYC METROPOLITAN REGION ECONOMIC SNAPSHOT 26* (2d ed. 2019) <https://www1.nyc.gov/assets/planning/download/pdf/planning-level/housing-economy/nyc-geography-jobs2-1019.pdf>.

<sup>22</sup> KATHERINE LEVINE EINSTEIN, DAVID M. GLICK & MAXWELL PALMER, *NEIGHBORHOOD DEFENDERS* 97, 103 (2019). Those who testify are also disproportionately white, male, older, and more likely to own homes.



In contrast, when land use decisions are made at the state level, people can vote their values, not their most parochial fears. At the state level, the debate is over broad, generally-applicable policies, not specific sites and projects. Those who support more development and those who oppose it stand on equal footing, politically; neither side is uniquely mobilized. Additionally, at the state level, political ideology and interest groups play larger roles in politics than they do at the local level. Homeowners are always active in suburban politics, but advocates for civil rights or protecting against climate change only rarely are organized at the local level; shifting to the state level allows these important perspectives to be aired.

New York has already done this for many kinds of development. State law restricts local governments' zoning power with respect to everything from power plants to in-home daycares and group homes for people with developmental disabilities.<sup>23</sup> In each of these cases, the legislature determined that state intervention was needed to overcome local opposition to important kinds of land use. As all of New York's peer states—i.e. states with high housing costs, healthy regional economies, and restricted housing supply, largely located on the coasts—have recognized, this is equally true of housing. Zoning reform is a job for the state.

## Recent Legislation and Proposals

Over the last year, three bills have been introduced in the New York State Legislature to address the state's exclusionary zoning, and governor Hochul included several land use reform proposals in her 2022 State of the State address. The most recent of these, SB7635, is modeled after Massachusetts' "40B" law, which provides streamlined approvals and a state appeal process for qualifying affordable projects in certain localities where under 10 percent of the rental housing stock is affordable for low or moderate income households. That follows closely on the heels of SB7574, which would eliminate parking requirements, limit mandatory minimum lot sizes, and legalize denser, more affordable housing types such as duplexes and fourplexes statewide. In early 2021, companion bills were introduced in the Senate and Assembly to liberalize regulations around Accessory Dwelling Units, including basement apartments. Suburban land use reform has also been proposed by the executive branch: Governor Hochul's agenda includes measures to promote ADUs and higher density development along transit corridors. These developments represent an important step for Albany: a debate about how the state action can overcome local intransigence to promote more affordable, environmentally friendly, and racially equitable housing.

<sup>23</sup> See N.Y. Pub. Serv. L. § 172; N.Y. Soc. Serv. L. § 390(12); N.Y. Mental Hygiene L. § 41.34.



## Conclusion

Despite New York serving as a leader in affordable housing production and pushing for new tenant protection laws, New York has not taken on the challenge of land use reform. The surge within the suburban housing market during the height of the pandemic revealed a high demand from city residents as multiple offers well over the asking price became commonplace.<sup>24</sup> With localities refusing to update their zoning to allow for the production of more housing, the New York City region will become increasingly unaffordable, racial and economic divides will continue to grow, the local and regional economy will not function at full potential, and increased per capita carbon emissions will magnify the risks of climate change. While there are many tools available to do so, it is clear that exclusionary zoning in the suburbs must be curtailed.

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<sup>24</sup> See Lisa Prevost, 5 Ways the Coronavirus has Changed Suburban Real Estate, N.Y. TIMES (July 17, 2020) <https://www.nytimes.com/2020/07/17/realestate/coronavirus-suburbs-real-estate.html>