

CHAPTER TWO

RACIALIZED
LAND USE
AND HOUSING
POLICIES

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Over the last century, through its land use, zoning, and housing policies New York City followed and reinforced national policies and local market trends that have contributed to racial inequality and segregation. In this chapter we will briefly outline this history. While certainly not exhaustive, the purpose of this review is to demonstrate that local policies have for a long time contributed to racial discrimination and displacement because the city has failed to use its powers to confront market forces and federal policies that reinforce economic and racial inequalities, and in many cases has collaborated with them. The evidence adds up to proof that gentrification and displacement are not natural, independent and benevolent phenomena. The case studies in chapters three through five demonstrate how the city's current policies fail to break with the long history, and the final chapter outlines suggestions for doing so.

ZONING INSTEAD OF PLANNING

New York City's 1811 grid plan was the first major effort to rationalize land development and created Manhattan's well-known pattern of development along avenues running north and south, and streets running east and west. This was quite useful for large landowners who subdivided their land to sell off house lots, most of which went to whites. The next great exercise in planning was the creation of Central Park, which resulted in the displacement of poor whites and blacks (Rosenzweig and Blackmar 1997). But, as the city's population exploded in the early 20th century, concern arose among downtown property owners that the value of their commercial property and housing would be dragged down by the growth of industry and the tenements that housed their workers. This led to the establishment of zoning regulations in 1916. Like the 1811 grid plan, zoning was supported by large property owners and the budding real estate industry.

Significantly, New York City preferred zoning over comprehensive planning—a critical choice whose importance would become more apparent many decades later when neighborhoods began to call for community planning. Comprehensive planning takes a look at prospects for the long-term future of the city and sets out policies to help shape that future, integrating all aspects of the city's physical, economic, and social development and preservation. Zoning was used in a way that downplayed long-term planning and emphasized physical development over questions of economic and social well-being. From the start, it was not race or class neutral, as we show in this chapter.

New York City is the only major city in the United States that has never approved a comprehensive (master) plan. This is not an incidental oversight; it is a direct reflection of the power of the real estate industry, which prefers to rely on individual, localized deals that can be synchronized with zoning changes without having to justify its relationship to any broad city-wide strategy that may be subject to more extensive political debate.

RACIAL ZONING

A major rationale for zoning was that it would help improve living conditions. In the late 19th century, an active civic reform movement pressed for regulations to improve housing and sanitary conditions that contributed to serious epidemics that especially affected working-class neighborhoods. The 1916 zoning ordinance regulated building height and density to allow for more light and air, which were lacking in many older tenement houses that were breeding deadly epidemics. However, by the time zoning was introduced, a series of tenement laws had already outlawed the construction of housing with unsafe and unsanitary conditions. The emphasis on light and air promoted the notion that taller buildings resulting in higher densities were in the public interest and the answer to gritty industries and working class housing. The new development spurred by zoning also created profitable opportunities for landowners. Zoning, like the 1811 grid plan, was mainly presented as a mechanism to create orderly growth, but with regulations that went beyond minimal controls over the subdivision of land into blocks and lots.

A fundamental principle of the new zoning was the segregation of uses—industrial, commercial and residential. Much of the city beyond lower Manhattan allowed for a mixture of uses, giving flexibility to developers who subdivided land around the city's new subway lines. However, in the developed core, the precedent was set for segregating land uses as a means of promoting social and racial exclusion.

ZONING, SEGREGATION, AND DISPLACEMENT

After Reconstruction in 1877, cities around the country began experimenting first with racial ordinances and then the emerging practice of zoning to limit the expansion of blacks into white residential areas (Brooks and Rose, 24). Baltimore was the first to create a comprehensive zoning ordinance that made it illegal for black people to move to a block where more than half the residents were white, and vice versa. Fourteen other cities followed

SLAVERY AND THE UNDERGROUND RAILROAD IN NEW YORK CITY

A superficial reading of history portrays New York City as a strong liberal bastion of opposition to slavery and racism. However, slavery was legal in New York State until 1827 and, according to historian Eric Foner, "New York had close economic ties to the slave South and a pro-southern municipal government [...] Even after slavery ended in New York, the South's peculiar institution remained central to the city's economic prosperity" (Foner 2015). Nevertheless, New York City became a major destination for free blacks. Those who ended up living in the city could initially find housing in and near white working-class neighborhoods. However, violent racial attacks, such as the infamous Draft Riots of 1863, and a dramatic increase in migration from Europe, led to the eventual formation of segregated black neighborhoods by the early 20th century.

After the Civil War and the abolition of slavery, black people in the rural south toiled under a system of sharecropping and were terrorized by physical violence. Reconstruction was ended after barely a decade, and the Great Migration to cities began, first within the south, and then to the north. Although there were racial and ethnic clusters in northern cities, black residents rarely comprised more than 30 percent of any one area, and these were distributed throughout cities, a pattern shared by European immigrants. A typical black resident of a 19th-century northern city lived in a neighborhood that was roughly 90 percent white. This was not a sign of racial integration, but of the preponderance of whites in a relatively small city where blacks were nonetheless second-class citizens because of their economic status and exposure to violence (Massey and Denton 1993, 17-24)

This changed dramatically in the 20th century. In the 1910s, 525,000 blacks migrated north; in the 1920s the number was 877,000 (Massey and Denton 1993, 27-29). In New York City, black neighborhoods in Midtown became overcrowded as land values and rents there exploded. Blacks were displaced by the forces of real estate speculation to then-predominantly white Harlem (Brooks and Rose 2014, 24). In 1910, the entire black population of the city was 60,534, and by 1914 approximately 50,000 black people were living in Harlem.

suit—mostly but not entirely southern cities—by hiring urban planners to design policies designating separate areas where blacks and whites could live, by withholding building permits, and establishing commercial or industrial buffers to separate residential areas between the races. In 1917, one year after New York City's zoning ordinance took effect, the Supreme Court in *Buchanan v. Warley* declared racial zoning unconstitutional, ruling against a white property owner in Louisville who argued the ordinance violated his right to sell to a buyer of his choice under the Fourteenth Amendment (Pietila 2010, 23; Rabin 1989, 106; Taylor 2014, 151, 157).

Unlike many southern and suburban municipalities, New York City never incorporated explicit racial exclusions in its zoning regulations. This does not mean, however, that zoning has not been used to reinforce racial segregation that resulted from discrimination in the housing and real estate sectors.

RACIAL COVENANTS

In many places, covenants written into deeds prevented owners and their heirs from selling or renting to a black person for generations. These restrictive covenants explicitly excluded blacks until a landmark Supreme Court ruling in 1948 ruled against the practice.

Racial and other restrictive covenants were used in parts of New York City and the suburbs to keep middle-class black families from moving into white areas. A 1947 study examining 300 suburban-style developments in Queens, Nassau, and southern Westchester County found covenants included in 48 percent of subdivisions with 20 homes or more, and in 80 percent of subdivisions with 75 homes or more. After 1938, when the Federal Housing Administration (FHA) began recommending 25 to 30-year racial covenants as a condition of funding in its Underwriting Manual, all subdivisions in the study contained them (Dean 1947). The Supreme Court ruled in the 1948 case, *Shelley v. Kramer*, that racial covenants were illegal and the FHA later stopped insuring mortgages subject to racial covenants (Jackson 2008, 208). However, many of these covenants remained in place decades after the Supreme Court ruling, some even into the 21st century (Brooks and Rose 2013, 229).

EXCLUSIONARY ZONING

As racial zoning and restrictive covenants were gradually invalidated by courts, subtler forms of exclusion emerged. Zoning became the main legally defensible means for communities to segregate under the guise of a public interest in protecting the health, safety, and welfare of people, though this was often framed as protecting property values or "neighborhood

character.” Suburban communities have used exclusionary zoning—and continue to this day—to restrict the building of housing that is affordable and amenable to the needs of racial minorities. Exclusionary zoning ordinances typically establish a minimum lot size or maximum density, require large setbacks and yards, limit or prevent multi-family housing, and ban mobile or prefabricated homes (Taylor 2014, 184–185). Zoning can be used along with excessive taxes and fees, extensive design reviews, and infrastructure requirements to make it impossible to build housing affordable to low-income people; given the racial disparities in incomes between blacks and whites, exclusionary zoning effectively discriminates against people of color. Exclusionary zoning in suburbs has also kept out certain kinds of industrial and commercial development that would increase the need for low-income workers and the places where they could be housed.

While exclusionary zoning is usually thought of as a strictly suburban phenomenon, elements of New York City’s zoning have always been exclusionary. The 1916 zoning resolution mainly regulated land use in the more developed upscale core of Manhattan, where industrial uses and new tenement houses, and the low-income immigrant communities associated with them, were excluded. A laissez-faire approach in the outer boroughs allowed market trends to shape development there, along with the discriminatory sales and rental practices used by some developers and landlords. The 1961 zoning extended the separation of uses in zoning throughout the five boroughs.

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One of the patterns that persisted after the 1961 zoning changes and through the rest of the century was that areas zoned for relatively low densities—New York City’s internal “suburbs”—protected the largely white homeowners who lived there. These included large parts of eastern

Queens, the North Bronx, southern Brooklyn, and most of Staten Island.

These exclusionary areas have diminished over the years as soaring land values rippled out beyond Manhattan and led to the construction of higher density enclaves in all of the boroughs. However, the pattern remains in place as a number of low-density, predominantly white enclaves continue to be protected by zoning. Over the last two decades, some of these white neighborhoods (for example parts of Flatbush in Brooklyn) gave way to homeowners from non-white immigrant populations, who have for a while benefited from the exclusionary zoning policies they inherited—until intense real estate speculation, in the absence of more protective zoning, began to force them out.

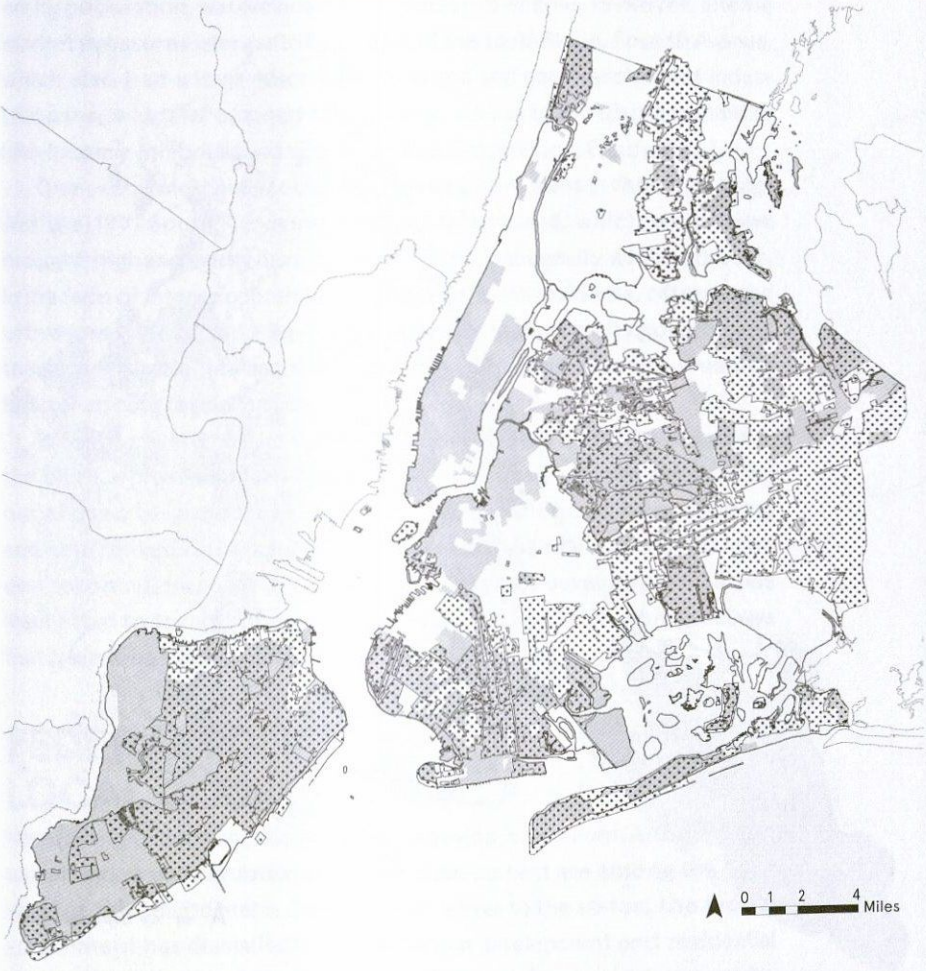
Many white neighborhoods have promoted and defended low-density and contextual zoning. For example, the battles against new apartment development in Forest Hills, Queens, are legendary (Cuomo 1974). While at times racial fears were expressed openly in public meetings, exclusionary sentiments were usually clouded by rhetoric defending the existing low-rise character of neighborhoods. The Department of City Planning (DCP) obliged and reinforced these sentiments with their zoning policies, including the creation of low-density contextual zoning and special preservation districts.

Special preservation districts were created to protect areas from development. These include the Special Hillside Preservation District and Special Natural Area District in Staten Island; the Special City Island District and the Special Natural Area District in north Bronx; and in Queens, the Special Natural Area District in Fort Totten. The Special Forest Hills District was the precedent, created decades ago to protect one of the most distinctive white enclaves of luxury homes in Queens.

Low-density contextual zoning (generally in R1-R5 residential zones) has been generously employed throughout the city's "suburban" fringes. In the 1990s, large parts of white Borough Park,² in Brooklyn, benefited from a form of contextual zoning that legalized widespread home expansions that had violated zoning and building codes. Instead of contemplating a rezoning that would encourage new higher density residential development—and possible racial change—DCP opted to bend its rules to accommodate this politically powerful white ethnic enclave.

Perhaps one of the most prominent models for contextual zoning was in Brooklyn's Park Slope, where it was used to protect neighborhood scale and character. This low- to mid-rise neighborhood in Brooklyn, next to Prospect Park, prominently features many attractive brownstone blocks. The first of these to be protected were in the relatively affluent white portion of the neighborhood, where many blocks also gained protections as

02.A Low Density Residential Zoning Districts and Majority-White Census Tracts



- Low Density Residential Zoning Districts (R1-R5)
- More than 50% white

U.S. Census Bureau, American Community Survey, 2014 5-year Estimates.
New York City Department of City Planning, NYC Zoning Districts, December 2015.

02.B Natural Area Special Preservation Districts and Majority-White Census Tracts



▨ Special Purpose Districts/
Low Density Preservation

■ More than 50% white

U.S. Census Bureau, American Community Survey, 2014 5-year Estimates.
New York City Department of City Planning, NYC Zoning Districts, December 2015.

historic landmark districts. The lower Slope, which had a significant minority population, was excluded from these protections. However, intense market pressures later gentrified most of the south Slope. Fourth Avenue, which also had a large minority population and commercial and industrial uses, was later upzoned for housing, leading to the displacement of low-income minorities and workers. (See Chapter One, Figure O1.A)

One of the most hotly contested development plans in the city's fringe was the 1971 South Richmond Plan in Staten Island, which would have brought higher-density development to the low-density white borough. In the face of intense opposition from Staten Island residents, often tinged with expressions of racial fears, and lukewarm support in city government, the plan was rejected and the city proceeded to protect the area with stricter zoning regulations.

We will never know how many rezonings there might have been in the city's white "suburban fringe" if DCP, city hall and elected officials had chosen to ignore the blowback their proposals would have triggered and confronted racial fears. However, we can ask why it is that so many new rezoning proposals to encourage large-scale development outside Manhattan today are in communities of color and not in the white enclaves that have long been protected by zoning.

FEDERAL POLICY, LOCAL COOPERATION

New York City's zoning policies did not develop in a vacuum. Although land use planning and regulation of urban development are among the powers that the United States Constitution leaves to the states, the federal government has dramatically shaped urban development and residential patterns of US cities. Federal policy, with the city's support, has contributed to racial segregation. Enforcement of fair housing rules has been largely ineffective in countering it in a way that would significantly alter local practices.

After World War II, federal housing and infrastructure programs promoted the dramatic growth of metropolitan areas through the interstate highway program, the largest public works project ever undertaken in the world, and federally guaranteed mortgage financing. This produced the sharp division between central cities, disproportionately black and poor, and suburbs, disproportionately white and middle class, which was famously noted in the 1968 Kerner Commission Report (Report of the National Advisory Commission on Civil Disorders 1968). White suburban

communities utilized their planning and zoning powers to exclude new development that might provide housing opportunities for low-income people of color. At the same time, central city governments used federal housing and urban renewal programs to limit the opportunities for mobility of poor communities of color. While some state and federal court rulings have placed restrictions on discriminatory zoning and housing policies, the status quo established by federal policy, with the collusion of state and local governments, remains in force. In sum, our racially segregated cities, far from being the result of cultural attitudes or uncontrolled market forces, were largely shaped by federal, state and local policies. According to John Bauman:

Between 1900 and 1950, the involvement of the federal government in housing significantly increased. At the beginning of the century, housing reformers were divided over the concept of direct federal involvement in the housing market. Two world wars, the Great Depression, and the postwar veterans' housing shortage resulted in a shift of public opinion in favor of federal involvement in housing. By mid-century, there was no longer any question of whether the federal government would intervene in the private housing market—debate focused on which groups of Americans would get housing aid, how much, and in what form (Bauman 2000, xxxv).

During the Great Depression, Congress created a series of New Deal programs to stimulate home building industries, protect families from foreclosure, and address the decline of inner city housing, but in all of these endeavors it managed to work with local governments to disproportionately benefit whites and strengthen segregation. It has done this through the federal urban renewal program, public housing and mortgage redlining.

URBAN RENEWAL ("NEGRO REMOVAL") AND DISPLACEMENT

The Housing Act of 1949 enabled municipalities to use their power of eminent domain for "slum clearance," and the federal government provided funding to acquire property from existing owners and convey it to developers in accordance with a plan (Wright 1983, 232; Caro 1975, 777). While the policy was supposed to address unhealthy and unsafe conditions, the urban renewal projects were not required to house those who were displaced, nor was the new housing affordable to most original residents (Wright 1983, 226–227). Following eviction, black residents watched their

neighborhoods get replaced not by better housing for them, but large-scale luxury development projects and highways (Meyer 2001, 55).

Opposition to urban renewal programs was a major part of the Civil Rights Movement, as urban renewal became widely known as "Negro removal." In New York City, supporters of racial justice fought to stop the displacement of one of the largest Latino neighborhoods in Manhattan, which was replaced by Lincoln Center. A legal challenge went all the way to the Supreme Court and led to a landmark ruling upholding the right of government to use eminent domain for urban redevelopment. Fierce battles broke out to prevent the displacement of minority communities in the West Side Urban Renewal Area, the Cooper Square Urban Renewal Area, and many other parts of the city.

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At the same time as black neighborhoods were being uprooted to promote upscale development, many were also cleared to build urban sections of the Interstate Highway system, which drew federal resources away from the central cities and into the suburbs. City and state policymakers—and in New York City Robert Moses was the master—sought to harness federal highway dollars to assist in their reclamation of downtown real estate by condemning "slums" and routing highways directly through them. Highway projects in New York City alone displaced some 250,000 people (Mohl 2000, 227–234; Caro 1975, 19).

Although local authorities were required to provide adequate replacement housing in order to qualify for urban renewal funds, in practice this rarely happened (Massey and Denton 1993, 55). In the period 1949–1968, cities demolished 425,000 units of low-income housing and only built 125,000 new units, over half of which were luxury apartments (Wright 1981, 234). Only one-half of 1 percent of all planned federal expenditures in


and subsequent court rulings further expanded local powers of eminent domain, and public funding allowed cities to buy up even more "blighted" urban areas so they could now be given to private developers (Wright 1981, 232; Caro 1975, 777). The impact of these large-scale urban redevelopment projects was the massive displacement of black and other minority communities. In the end, urban renewal stimulated the building industry and displaced the poor and black communities that lived in its path.

MORTGAGE AND INSURANCE REDLINING

The Federal Housing Administration (FHA), created in 1934, and its cousin, the 1944 G.I. Bill within the Veterans Administration (VA), expanded mortgages for homebuyers and provided a new, massive market for suburban development (Jackson 2008, 204–206). The FHA and VA programs favored single-family, owner-occupied housing types. Due to redlining, they were not available to many blacks.

In 1933, the federal government created the Home Owners Loan Corporation (HOLC) to protect homeowners from foreclosure, which introduced the now ubiquitous long-term, self-amortizing mortgage that has enabled so many families to own their home. However, its methods of appraisal for lending led to systematic devaluation and denial of lending to neighborhoods with black populations through its now infamous practice of *redlining*. In assessing the desirability of neighborhoods, HOLC basically drew a red line around neighborhoods that were not considered desirable. One critical factor was whether more than five percent of the population was black. Banks usually did not offer loans to any homes within the red lines. They identified the presence of black residents as an indicator of decline, and presumed an inverse correlation between the concentration of black residents and the viability of investment. In some mostly-white neighborhoods, this spurred white flight to the suburbs, resulting in a neighborhood that became mostly black. HOLC appraisers generally classified all-black neighborhoods as "declined" without respect to the upkeep of the housing or surroundings, assuming that black populations both followed and caused declining property values (Jackson 2008, 202–203).

In the New York region, the discrepancy between urban and suburban FHA lending was stark. Between 1934 and 1960, FHA per capita lending for suburban Nassau was 11 times greater than in Brooklyn and 60 times greater than in the Bronx. The FHA effectively turned the building and insurance industries against the black and inner-city housing market, leading to the

A close-up photograph of a person's hand holding a white page from a book. The hand is positioned on the left side of the page, with the index and middle fingers visible. The background is dark, likely the book cover or another page. The page contains text about redlining in New York City.

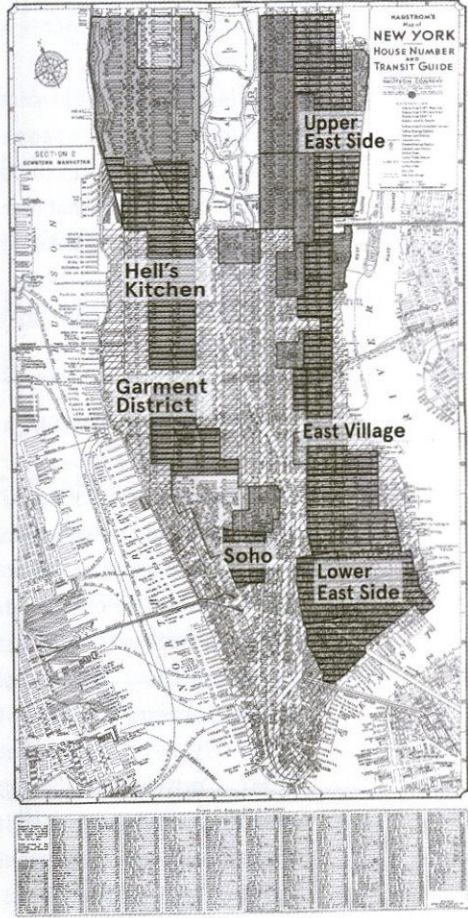
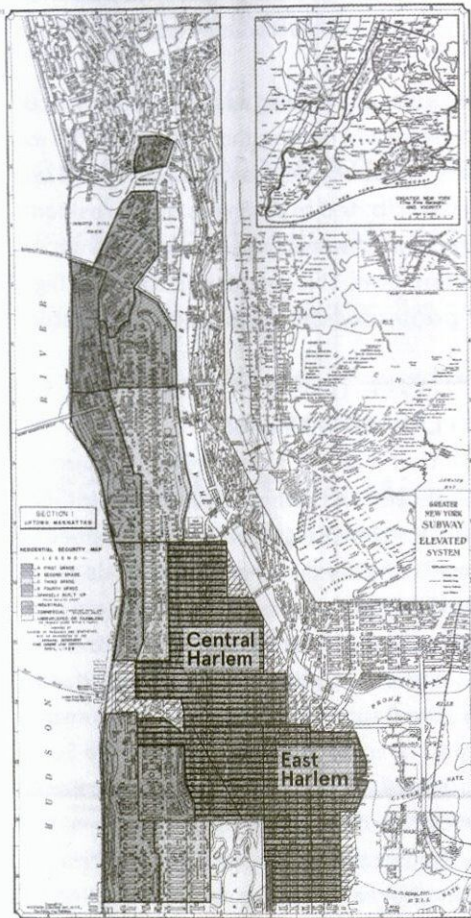
redlining of entire cities and locking them into a spiral of decline (Jackson 2008, 211–213). A study of lending after World War II found that companies starkly decreased lending in urban areas over time: from 1945–1954 they did not issue any mortgages to 23 percent of urban census tracts; by 1966 they were not issuing mortgages to 67 percent of urban census tracts (Taylor 2014, 238–239).


In New York City, largely black neighborhoods such as Harlem and Bedford–Stuyvesant were redlined, depriving residents of access to the capital they needed to maintain their homes. White residents who were living in these neighborhoods could take advantage of the growing stock of affordable housing in the suburbs since race was not a barrier to them. Blacks, on the other hand, were excluded because of discriminatory practices in the sales and rental markets. City government failed to use its resources or considerable access to financial markets to promote redevelopment in these neighborhoods.

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02.C Redlining in Manhattan.

Many "redlined" neighborhoods remained segregated communities facing high poverty rates, such as Harlem and East Harlem. Other redlined areas faced redevelopment plans that displaced people of color, such as the Upper West Side.



 Fourth Grade Residential Security
(Redlined neighborhoods)

Hagstrom's Home Owners Loan Corporation (HOLC) Map of New York House Number and Transit Guide. Hagstrom Company, 1938.

White neighborhoods in all five boroughs qualified for support under federal mortgage programs; they also benefited from the sizeable tax deductions for mortgage interest — the single largest housing subsidy in the nation. In an effort to preserve its tax base, the city proved especially eager to sustain services and infrastructure in white neighborhoods, while it often wrote off minority neighborhoods, most notably during the fiscal crisis of the 1970s.

One of the most insidious results of redlining was that it reinforced the notion that black people cause urban decline, thus feeding racial exclusion. In fact, it was the banks, insurance companies, and federal and local governments that heavily contributed to decline as black residents struggled to maintain their homes and create businesses without access to capital and support from government. This contributed to white flight and later opened the door for predatory real estate brokers, investors, and lenders.

HOUSING ABANDONMENT AND PLANNED SHRINKAGE

Even after the federal government and courts ended redlining, many local governments continued the practice of favoring expenditures in white neighborhoods while ignoring needs in black neighborhoods. This unequal treatment was on display in New York City during the fiscal crisis of the 1970s. When the city faced possible bankruptcy due to larger changes in global, national, and regional capital, severe budget cuts were made. Industry moved to the suburbs and around the world and the industrial labor force moved out of the city. Real estate capital fled large swaths of the city, resulting in widespread abandonment of housing in the South Bronx, Central Brooklyn, and Harlem, all communities of color. Banks, insurance companies, and landlords withdrew and the response of city government was to purposely withhold services in these neighborhoods. Roger Starr, the commissioner in charge of housing, famously called for "planned shrinkage" of the neighborhoods that were most seriously affected, essentially claiming that they had no right to exist. Services were withdrawn and vacant land and buildings were auctioned off instead of being redeveloped.

Planned shrinkage was understood in minority neighborhoods as a concept with deep racial undertones. The presumption was that once the cycle of decline had ended and the minority population left, the real estate market would move in and redevelop these areas. While thousands of buildings were abandoned, the people who stayed came together and organized, and were eventually able to press for housing programs that

helped them to preserve their neighborhoods. These included programs created in the city's housing agency under the Division of Alternative Management Programs (DAMP).

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DISCRIMINATION IN HOUSING

After the 1968 Fair Housing Act, the city had clear authority to prosecute individual acts of discrimination in both private and public sectors, and over the years they have done so with limited resources. However, individual practices of discrimination continue and have impacts on entire neighborhoods while city government has done little to address the institutional elements in housing discrimination, some of which are mentioned below.

BLOCKBUSTING AND RACIAL STEERING

In many white neighborhoods that are near black communities blockbusting has been a common tool for using race to turn a quick profit. Blockbusters play on racial stereotypes and go door-to-door, and use advertising to warn whites of the incoming "black invasion." White homeowners, fearing a precipitous decline in their home values, sell at below market value. The blockbuster then rents or sells the unit well above the market price to middle- and upper-class black families willing to pay more to live in better housing (Thabit 2003, 45). Because black loan applicants are disproportionately denied by banks, the realtor often acts as both seller and lender, charging high interest rates that lead incoming families to default and eviction. Some brokers illegally subdivide units and thus increase overcrowding as housing deteriorates. These practices further segregate blacks across income levels. They can also foster the myth that blacks

cause neighborhood decline (Massey and Denton 1993, 37–39).

Racial steering is perhaps the most common and durable form of housing discrimination. Real estate brokers use a host of informal methods to “steer” blacks to black neighborhoods and keep them out of white neighborhoods. Federal and city funds support non-profit and legal aid groups that do “testing” for racial steering and advocate for people that experience housing discrimination. While there have been many individual cases resulting in legal challenges, the city has never moved beyond individual cases and undertaken a major campaign to change the way neighborhoods remain segregated through discriminatory practices by realtors and building owners.

PREDATORY LENDING

As more capital became available for investment in the real estate sector starting in the 1990s, lenders sought creative ways to open up new markets. Populations that had been redlined in the past were now targets for home mortgage loans. Predatory lending targets prospective and current homeowners by making loans under terms that lenders cannot afford to pay. Predatory loans are disproportionately marketed to poor neighborhoods and people of color. Victims of predatory lending may go into foreclosure, bankruptcy, or suffer other significant financial damage.³ This practice was permitted by federal regulatory agencies and became widespread in the years leading up to the 2007–2008 financial crisis, when investment companies were bundling toxic loans in mortgage-backed securities.

In New York City, predatory practices were even more pervasive in the rental market. In a practice that tenant advocates dubbed “predatory equity,” large financial institutions and real estate companies bought up occupied multi-family properties with the goal of removing rent-regulated tenants (using legal and illegal methods) and bringing in renters with higher incomes. The speculative investments were often based on inflated property values and rents. The market crash and tenant organizing threw a wrench into many of these plans, causing investors to default and leaving many people and buildings in distress. In both predatory lending and equity schemes, black and other minority communities were disproportionately represented among the victims.

ANTI-DISCRIMINATION AND FAIR HOUSING LAWS

In the 1960s, housing discrimination became a national issue and Congress passed legislation prohibiting racial discrimination in government-funded

THE FAIR HOUSING ACT AND DEFINING DISCRIMINATION: INTENT VS. DISPARATE IMPACT

The Fair Housing Act prohibits discrimination based on race, gender, disability, religion and other protected classes. The law, though largely a response to intentional discrimination, does not require claims of fair housing violation to prove intent. Instead, it is sufficient to show that the action resulted in racial exclusion. In other words, if a housing program or policy has a disparate impact on racial groups or other protected classes, it is discriminatory. Disparate impact theory, while challenged, has been upheld by the courts and has guided case law for the past three decades.

In a 2015 ruling, *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc.*, et al, the United States Supreme Court affirmed that in order to prove racial discrimination it is sufficient to demonstrate a disparate impact of public policy without necessarily proving discriminatory intent.

housing. The law had limited impact, however, suffering from uneven enforcement. The law provided little recourse in local battles over the location of public housing projects, which were largely kept out of white, middle- and upper-income neighborhoods (Mohl 2000, 131, 195).

Following the historic Civil Rights Act of 1964, and following rebellions in central-city black neighborhoods, the Kerner Commission was convened by President Johnson to investigate the causes and propose remedies. The Commission declared discrimination and the exclusionary housing market a central cause. After decades of organizing by the Civil Rights Movement, President Johnson signed the Fair Housing Act of 1968 (Civil Rights Act Title VIII), which prohibited the denial of housing based on race. Lower courts have since used the law to block racial steering, race-based appraisal practices, redlining, exclusionary zoning and planning, public housing site selection and demolition, and discriminatory community development activities. However, the Fair Housing Act has been hampered by persistently weak enforcement and subsequent court decisions have limited efforts by the Civil Rights Movement to use the courts to address discrimination (Meyer 2001, 207, 216).

THE RISE AND TRIUMPH OF "AFFORDABLE HOUSING"

Since the fiscal crisis of the 1970s, government at all levels has disinvested in public housing and turned away from direct subsidies of new and existing housing. Instead, government has subsidized financial investors and private developers through public-private partnerships. The underlying assumption for this shift is that public housing is the problem and private housing—the private market—is the solution. Conservatives in Congress fought public housing from the beginning, and when they couldn't stop it they cut funds needed to maintain the quality of housing; then they blamed deteriorating conditions in public housing on the program itself. When Ronald Reagan became president in 1980, he definitively marked the shift away from direct public funding, and every administration since then has followed the same path. The new solution to housing problems would be to provide tax incentives, regulatory relief, and subsidies to the private sector, so that the new housing would "trickle-down" to low-income people. The Low-Income Housing Tax Credit program, now the largest source of subsidies for new low-income housing, is a boon to private investors and results in housing built in segregated neighborhoods.

Another major criticism of public housing is that it concentrates and isolates poor people, which is presumed (without clear evidence) to increase crime and the "culture of poverty."⁴ The new approach instead encouraged mixed-income development, creating opportunities for low-income people to move into better neighborhoods (now known as "moving to opportunity") where schools and other services are presumably better and chances of moving out of poverty are improved. Many long-time liberal supporters of public housing have embraced this new approach as a solution to racial segregation, since government funds would be used to integrate neighborhoods.

Until now, New York City has been a prominent exception to the decline in public housing. It has managed to maintain the country's largest public housing stock without any major demolition or privatization (Dagen Bloom 2008). This is not only due to a history of relatively good management, but also has been abetted by operating and capital subsidies from government and support from portions of the business community. This is changing rapidly, however, as the impact of federal cutbacks in capital and operating subsidies grows and city and state support evaporates. A heated real estate industry is increasingly coveting centrally located public housing sites. In Mayor Michael Bloomberg's last year in office, the administration

presented a proposal to build market-rate housing on eight public housing sites in choice Manhattan locations (Angotti and Morse 2014). Facing opposition by public housing tenants, the mayor withdrew his proposal. However, Mayor Bill de Blasio's recent proposal to "save public housing" has resurrected the idea and expanded it into an elaborate long-term strategy to turn public housing into a public-private enterprise in which the private sector retains the most valuable assets and dominates future decision-making (City of New York 2015).

In the last chapter we will return to the question of public housing and make a case that a return to full public financing of housing for those who need it the most would be a major step towards economic and racial equality in New York City.

THE PUBLIC-PRIVATE PARTNERSHIP

Beyond public housing, the public-private partnership has been New York City's preferred option for the provision of housing over the last four decades. After the fiscal crisis, private housing and commercial development, not direct public subsidies, were promoted as the antidote to widespread disinvestment and abandonment. Thus were born the 421-a and J-51 tax incentives, bond financing and liberal zoning measures that have made real estate development in New York City a most profitable enterprise. The housing boom that these measures helped to create have, since the 1980s, led to large increases in land values and rents, the displacement of many low-income minorities, and the creation of massive homelessness.

Coinciding with the decline of public support for low-income housing there has been a parallel rise of what we know today as "affordable housing." Affordable housing has become a euphemism for "middle-class housing." This is more politically acceptable to those who oppose any form of low-income housing. Affordable housing programs since the fiscal crisis have used public funds to finance new construction and the rehabilitation of existing housing units. Mayor Ed Koch (1978-1989) implemented an ambitious housing program, which included public financing for one to three family homes for middle-income homebuyers. In his 12 years as mayor, Michael Bloomberg managed to complete around 175,000 affordable housing units, most of which served middle-income households. The program successfully preserved over 100,000 existing affordable units, but also spurred new development targeted to moderate incomes,⁵ which helped fuel displacement in gentrifying neighborhoods. Mayor de Blasio's 10-year housing plan calls for 200,000 affordable housing units and relies

on public-private partnerships that could very well have a similar impact on neighborhoods.

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The main problem with these affordable housing programs is that the units being preserved or built are not affordable to people living in the neighborhoods where they are located. This is illustrated in the Williamsburg and Harlem cases discussed in the following chapters. In neighborhoods with low-income minority populations where land values and rents are rising, these programs contribute to displacement of those who need housing the most and cannot afford to pay higher housing costs. This result is assured when the Area Median Income (AMI) is used as a benchmark for eligibility for the new housing units. The AMI is calculated by HUD based on incomes for the city and a portion of the suburbs. Typically the AMI is four to five times higher than the median income in low-income neighborhoods, which excludes the majority of existing residents from eligibility for new units. Units are allocated according to a lottery that often excludes

large numbers of low-income people of color. There is a racial edge to the lotteries since preference is given to those with excellent credit ratings (discriminatory and predatory practices make it difficult for people of color to maintain one) and, due to stop-and-frisk practices and the mass incarceration of blacks and Latinos, many are unable to qualify because they have been arrested at some point in their lives.

Another problem with most of the affordable housing is that guarantees of affordability are not permanent. In some programs requirements that occupants fall below maximum income limits expire in only a few years, and government is often unable to monitor compliance.⁶ Thus, over decades New York City's investment of billions of dollars on affordable housing have basically subsidized real estate speculation. And government has never undertaken a study to determine whether these programs have contributed to the displacement of low-income minority communities.

Many residents in communities now facing upzoning perceive affordable housing as the fig leaf that will ease the way for widespread development and displacement. Promises that a rezoning will bring new affordable housing are intended to quell fears that new market-rate development will displace low-income people, yet too many people have seen the results of past affordable housing promises. As we argue elsewhere, it is clear that many existing affordable units are lost when speculators and landlords anticipate an upzoning. Too often more affordable units are lost than gained, and since it usually takes many years to develop affordable housing, by the time it is completed it is no longer of use to those who have already been displaced.

INCLUSIONARY ZONING

After years of advocacy by community-based organizations, and facing increasing opposition to rezonings, the Bloomberg administration adopted inclusionary zoning in some of its rezoning proposals. Inclusionary zoning provided a 20 percent bonus in floor area to developers who provided 20 percent of units as affordable housing (using the HUD AMI). This was instituted as a voluntary measure. After a decade in practice, however, this measure produced relatively few new "affordable" units.

The de Blasio administration has made inclusionary housing mandatory in all upzonings. The new measure allows a certain amount of flexibility so the developer can choose from among several basic formulas. While mandatory inclusionary zoning is known to have been effective in other cities, it still would not apply everywhere in New York City, only in

areas with major new development. It would still use the AMI as a benchmark. And at the end of the day, up to 80 percent of the new housing units created would be market-rate, which in practice means luxury housing, which in turn leads to rising land values and rents and has a ripple effect on the surrounding area. In low-income communities of color this is likely to result in substantial displacement.

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DISPLACEMENT AND RACE

In sum, New York City's zoning and housing policies combine to reinforce the market-driven process of displacement of low-income communities of color. The case studies that follow give specific examples of how these policies play out in New York City neighborhoods.

The first change needed is for the city to recognize that displacement is a problem and that race and income play a major role in determining who gets displaced and the options available to them. New York City does not attempt to measure displacement resulting from its zoning and housing policies, yet this would have to be the first step in constructing alternative policies. Extensive community-based planning in every neighborhood,

especially those that are under pressure from new development, would allow communities to work with government to comprehensively plan for the future. This would allow neighborhoods and city government to work together to understand displacement pressures and the effects of public policy on low-income people of color, and to develop equitable long-term solutions. We will return to community-based planning in the last chapter.

Endnotes

1. Daisy Gonzalez and Katie Lyon-Hart provided research assistance for this chapter.
2. This is a largely Orthodox Jewish neighborhood.
3. See <https://comptroller.nyc.gov/general-information/predatory-lending>.
4. This has been a continuing debate among social scientists and it is beyond the scope here to fully argue the matter. We are convinced by the notion that concentrated poverty is not the major problem. The major problem is poverty and inequality. The notion of concentrated poverty began with the early 20th-century progressive reformers and was boosted by the "culture of poverty" theory popularized by Oscar Lewis in the 1970s, and "spatial de-concentration" became a rallying cry of many housing and planning experts. Many factors contribute to poverty, including access to education, services, and employment, and racial discrimination. There is some evidence that when poor people move to mixed-income neighborhoods their lives improve, but there is no evidence that scattering poor people across the land, by itself, makes them any less poor. People living in low-density and rural areas experience poverty no less acutely than those living in densely developed urban areas (See Angotti 1993, 13–15).
5. According to a December 21, 2013 press release from the Office of the Mayor.
6. See <http://www.anhd.org/wp-content/uploads/2011/07/Real-Affordability-Evaluation-of-the-Bloomberg-Housing-Program2.pdf>;
Good Place to Work, Hard Place to Live, Closing the Door 2013—CSS http://b.3cdn.net/nycss/1c9817fd6343bf9c88_lkm6va7t8.pdf.