DOWNTOWN CONDOS FOR THE RICH: PROS AND CONS

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INTRODUCTION

In the late 20th century, most American urban cores were in decline. [1] But in recent decades, downtowns have become more populous and affluent.[2] But as the demand for urban housing has increased, housing costs have risen – especially in downtowns and other urban neighborhoods.[3] Some new housing units are too expensive for anyone but the very wealthy.[4] Buyers[5] of these high-cost units include not only wealthy residents who wish to move downtown, but nonresidents who wish to use housing as an investment rather than a residence.[6]

Both common sense and economic literature support the proposition that increases in housing supply are likely to make housing less expensive.[7] This article focuses on the narrower

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1 *See infra* notes __ and accompanying text.
2 *See infra* notes __ and accompanying text.
3 *See infra* notes __ and accompanying text.
4 *See infra* notes __ and accompanying text.
5 Of course, many new housing units are apartments. This article, however, focuses on for-sale units because the article focuses on units used as investments by their buyers. If a unit is for rent, the only investor is likely to be the landlord.
6 *See infra* notes __ and accompanying text.
7 *See* In re Linerboard Antitrust Litigation, 305 F.3d 145, 151 (3rd Cir. 2002) (under "economic laws of supply and demand… if a product is in short supply, the price will increase"); Homeowner's Corp. of River Trails v. Saba, 626 So. 2d 274, 276 (Fla. Dist. Ct. App. 1993) (applying this principle to housing, by noting that where there is "a housing shortage ... the economic law of supply and demand result[s] in unusually high housing prices");Evan Mast, *The Effect of New Market-Rate Construction on the Low-Income Housing Market* 1-2 at

question of whether high-end condominiums are an exception to this rule. Some commentators argue that the construction of such housing will not increase housing supply, because housing will be bought by investors rather than by local residents, and that those investors will leave the units empty, rather than renting them out.[8] A related argument is that even if market-rate condos are purchased by local residents, any market-rate housing will increase housing costs by increasing the cost of land, regardless of its effects upon housing supply.[9]

Other commentators also argue that even if high-end condos do not increase housing costs, they create a variety of other negative externalities, such as increased urban inequality, money laundering, and/or energy consumption.[10]

The purpose of this article is to evaluate such claims. Part I of the Article discusses the background of the debate, including the rebound of urban life, the explosion of urban housing costs in some cities, and the growth of high-cost condos.

Part II of the article critiques the claim that the growth of high-end condos will fail to lower housing costs; the article concludes that (1) at least some of these condos are in fact purchased or rented by local residents; (2) even if this was not the case, these condos might lower housing costs, by shifting demand away from older housing units that might otherwise be purchased by out-of-town investors. The article further suggests that even if out-of-town investors have increased housing demand, a vacancy tax will limit such demand more effectively than restrictive zoning.

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https://research.upjohn.org/cgi/viewcontent.cgi?article=1012&context=up_policybriefs (explaining concept in more detail); *infra* Sec. __ (discussing recent literature on housing supply).

[8] *See infra* notes __ and accompanying text; Mast, *supra* note ___, at 2 (explaining why new housing does not increase overall supply if it is used as second home).

[9] *See infra* notes __ and accompanying text.

[10] *See infra* Part III.

Part III of the Article discusses the other externalities allegedly caused by these condos, and argues that those externalities do not justify limits on condo construction.

I. Background

In the first half of the 20th century, every large American city gained population.[11] But in the late 20th century, America's metropolitan population shifted to suburbia. Of the U.S. cities with over half a million people in 1950, all but four lost population between 1950 and 2010.[12] This statistic actually underestimates the extent of suburbanization, because some cities gained population only by annexing fast-growing suburbs.[13]

At first, the neighborhoods closest to the city's traditional core declined most rapidly: for example, downtown Detroit lost nearly two-thirds of its population between 1950 and 2000,[14] and downtown El Paso lost 60 percent of its population.[15] During the 1970s alone, downtowns lost 10 percent of their population.[16] A Brookings Institute report showed that 38 out of 45

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[11] *See* SARAH JANSSEN, ed., THE WORLD ALMANAC AND BOOK OF FACTS 2016, at 614 (every U.S. city with over half a million people in 1950 gained population in preceding decades).

[12] *Id*. at ___.

[13] *See* Nathaniel Baum-Snow, *Did Highways Cause Suburbanization*?, 122 QUARTERLY J. ECON. 775, 777 (2007) (a selected group of U.S. central cities gained population in late 20th century, but if post-1950 annexations are excluded, such cities lost 17 percent of their population); Alan Berube et. al., REDEFINING URBAN AND SUBURBAN AMERICA: EVIDENCE FROM CENSUS 2000 at 61-62 (2006) (Houston gained population only by annexing vast amounts of territory).

[14] *See* Clifford C. Schrupp, *Gentrification and Fair Housing Laws: The Detroit Experience*, 4 J.L. SOCIETY 13, 16 (2002) (decline from 3769 people to 1301). By contrast, the entire city of Detroit lost 44 percent of its population- a significant but nevertheless smaller portion. *See* JANSSEN, *supra* note __, at 614 (population declined from 1,849,568 to 1,027,974).

[15] *See* Ray Telles, *Forgotten Voices: Gentrification and Its Victims*, 3 SCHOLAR 115, 119 (2000) (in downtown El Paso, population declined by 60 percent between 1960 and 1990). *Cf.* NYC OpenData, New York City Population by Borough, 1950-2040 at https://data.cityofnewyork.us/City-Government/New-York-City-Population-by-Borough-1950-2040/xywu-7bv9/data (Manhattan population declined from 1.96 million in 1950 to 1.428 million in 1980, and then increased in subsequent decades)

[16] *See* Eugenie L. Birch, *Who Lives Downtown* 5, at https://www.brookings.edu/wp-content/uploads/2016/06/20051115_Birch.pdf (combining data from forty-five cities).

downtowns studied lost population during that decade.[17] Even in fast-growing cities such as Dallas, San Antonio, and Phoenix,[18] downtown population declined.[19]

But in recent decades, this trend has reversed itself. In the 1990s, three-quarters of downtowns gained population,[20] including downtowns in declining cities such as Baltimore, Pittsburgh and Cleveland.[21] In the 21st century, this trend continued. In metropolitan areas with over 5 million people, population within two miles of the regional core city's City Hall increased by 13.3 percent between 2000 and 2010.[22] The repopulation of urban cores is not limited to the United States: for example, in the United Kingdom "inner London" (the part of London close to the city's historic core) has grown and become more affluent, while more suburban "Outer London" has become poorer.[23] Similarly, Canadian downtowns such as those of Toronto and Vancouver are growing more rapidly than other urban neighborhoods.[24]

As downtowns have grown, they have also become more affluent. In the fifty largest U.S. metropolitan areas, per capita income within a mile of downtown grew by over 40 percent,

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[17] *Id.*
[18] *See Available City Population Data*, at http://physics.bu.edu/~redner/projects/population/ (describing growth of these cities).
[19] *See* Birch, *supra* note ___, at 5.
[20] *Id.*
[21] *Id.* (downtown data); JANSSEN, *supra* note __, at 614 (showing citywide population decreases for many cities).
[22] *See* U.S. Census Bureau, *Patterns of Metropolitan and Micropolitan Population Change: 2000 to 2010* 27, at https://www.census.gov/content/dam/Census/library/publications/2012/dec/c2010sr-01.pdf
[23] *See* Kat Hanna and Nicholas Bosetti, *Inside Out: The New Geography of Wealth and Poverty in London* 3, 6-9 at https://www.centreforlondon.org/wp-content/uploads/2016/08/CFLJ3887-Inside-out-inequality_12.125_WEB.pdf ("Inner London boroughs had the fastest growth rates" while "Poverty rates have increased in Outer London and decreased in Inner London").
[24] *See* Alex Ballingall, CENSUS SHOWS BIG POPULATION GAINS IN TORONTO, MILTON AND BRAMPTON, THE STAR, JULY 8, 2017 at https://www.thestar.com/news/canada/2017/02/08/census-shows-big-population-gains-in-toronto-milton-and-brampton.html (Toronto's "sharpest population gains are concentrated downtown"); Jen St. Denis, WITH POPULATION BOOM, DOWNTOWN AND EAST-SIDE VOTERS COULD SWAY MUNICIPAL ELECTION RESULTS, THE STAR VANCOUVER, OCT. 16, 2018, at https://www.thestar.com/vancouver/2018/10/16/with-population-boom-vancouvers-downtown-and-east-side-voters-could-sway-municipal-election-results.html (downtown Vancouver's voter population grew more rapidly than population of areas west of downtown).

from just over $32,000 to just over $46,000.[25] By contrast, incomes grew slowly or not at all in areas three or four miles from downtown.[26] And as the demand for urban housing has increased, its cost has increased as well: since 2000, housing prices in city centers have increased 50 percent more rapidly than metropolitan housing prices as a whole.[27] In New York City, for example, housing prices tripled in Manhattan between 2000 and 2017, while merely doubling in suburb-like Staten Island.[28]

In the majority of American regions, housing costs have risen more rapidly in downtowns than in other urban neighborhoods.[29] For example, between 2008 and 2018, the median sale price of housing in downtown Chicago rose by over $200,000 (from $656,000 to $900,000) while the sale price in the rest of the city rose by only $5000.[30] And in Detroit, downtown housing prices rose by over $70,000, while sale prices in the rest of the city rose by only $2000.[31]

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[25] *See* Luke Juday, *The Changing Shape of American Cities* at http://statchatva.org/changing-shape-of-american-cities/

[26] *Id.* ("Per capita income" graph).

[27] *See* FitchRatings, *Fitch: U.S. Housing Demand Pendulum Swinging Back Towards City Centers*, at https://www.fitchratings.com/site/pr/989360. *Cf.* Eliza Theiss, *The Rise and Fall of the American Downtown- A Look into the Home Price Evolution of the Nation's Urban Cores in the Decade Since the Downturn*, at https://www.propertyshark.com/Real-Estate-Reports/2019/01/14/the-rise-and-fall-of-the-american-downtown-a-look-into-the-home-price-evolution-of-the-nations-urban-cores-in-the-decade-since-the-downturn/ (housing prices in two-thirds of downtowns surveyed higher than their city's average home price).

[28] *See* NYU Furman Center, *State of New York City's Housing and Neighborhoods in 2017* 71, 101 at http://furmancenter.org/files/sotc/SOC_2017_Full_2018-08-01.pdf ("Index of Housing Price Appreciation" showed increase from 100 to 314 in Manhattan, and from 100 to 218 in Staten Island). I call Staten Island "suburb-like" because it has only 8200 people per square mile, *id.,* far below the density of Manhattan or of the city as a whole. *Id.* at 34 (city has just over 28,000 people per square mile), 71 (Manhattan has just over 72,000).

[29] *See* Eliza Theiss, *The Rise and Fall of the American Downtown- A Look into the Home Price Evolution of the Nation's Urban Cores in the Decade Since the Downturn*, at https://www.propertyshark.com/Real-Estate-Reports/2019/01/14/the-rise-and-fall-of-the-american-downtown-a-look-into-the-home-price-evolution-of-the-nations-urban-cores-in-the-decade-since-the-downturn/ (housing prices in roughly two-thirds of downtowns surveyed higher than their city's average home price).

[30] *Id.*

[31] *Id.*

To a much greater extent than homeowners, renters face a housing crisis. In 2014, the U.S. homeownership rate dropped to its lowest rate in twenty years, causing increased demand for rental housing.[32] The share of American households that rent is at a 50-year high of 37 percent (up from 32 percent in 2004).[33] In nine of the nation's eleven largest cities, there has been double-digit growth in the percentage of renters since 2006.[34] Supply has not caught up with demand; the national rental vacancy rate hit a 30-year low in 2016.[35]

Because of this combination of stagnant supply and rising demand, rents rose nationwide over the past decade.[36] Rent increases have been especially rapid in prosperous urban centers. For example, in New York City, rents have increased four times more rapidly over the last decade in Manhattan than in Staten Island,[37] and rose almost four times as rapidly citywide as in New York's suburbs.[38] In the city of San Francisco, rents nearly doubled between 2000 and 2017.[39] In Washington, D.C., city rents rose by 27 percent between 2006 and 2014, while suburban rents rose by only 8 percent.[40]

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[32] *See* Andrea J. Boyack, *Equitably Housing (Almost) Half A Nation of Renters*, 65 BUFF. L. REV. 109, 116 (2017).
[33] *See* Vicki Been, *City NIMBYs*, 33 JOURNAL OF LAND USE AND ENVIRONMENTAL LAW 217, 238 (2018).
[34] *See* Boyack*, supra* note __, at 116.
[35] *See* Boyack, *supra* note __, at 239.
[36] *Id.* at 118 (rents rose 15 percent between 2009 and 2014, outpacing wages); Been, supra note __, at 239 (in 53 largest metro areas, rents rose at an annualized rate of 1.9 percent above inflation between 2012 and 2015).
[37] *See* NYU Furman Center, *State of Renters and Their Homes* 24, at http://furmancenter.org/files/sotc/SOC_2017_PART1_Citywide_Renters.pdf (since 2006, rents increased by 22.3 percent in Manhattan, adjusted for inflation, and 5.6 percent in Staten Island).
[38] *See* Ingrid Gould Ellen and Brian Karfunkel, *Renting in America's Largest Metropolitan Areas* 19, at http://furmancenter.org/research/publication/renting-in-americas-largest-metropolitan-areas (between 2006 and 2014, city rents rose by 15 percent and suburban rents by 4 percent).
[39] *See* Paragon Commercial Brokerages, *Compass Multi-Unit Res-Income Report,* at https://www.bayareamarketreports.com/trend/bay-area-apartment-building-market (rent rose from $1874 in 2000 to $3326 in 2017). By contrast, rents nationwide have grown by a little over 30 percent. *See* Pew Charitable Trusts, *American Families Face a Growing Rent Burden* 6-7, at https://www.pewtrusts.org/-/media/assets/2018/04/rent-burden_report_v2.pdf
[40] *See* Ellen and Karfunkel, *supra* note __, at 19.

The most expensive urban buildings are so costly that they are unaffordable not only to the average middle-class renter or condo buyer, but even to a professional making a high six-figure (or even a low-seven figure) income. For example, in 432 Park Avenue in Manhattan, all but four of 43 units sold in 2018 cost more than $10 million, and the most expensive unit was sold for $83 million.[41] Similarly, the most expensive condominium in downtown Los Angeles, as of early 2019, was on sale for $60 million[42]- a price far beyond the reach of even a professional earning $1 million per year.[43]

Some of the demand for such high-end housing comes from persons other than downtown residents; for example, one study shows that in twelve new condominium buildings in downtown Boston, 64 percent of unit owners do not claim a tax exemption available to persons who use a building as their primary residence- evidence that these buyers might not in fact reside in those buildings full-time.[44] The study, written for the progressive[45] Institute for Policy Studies (IPS),[46] describes these multi-million dollar buildings as "wealth storage properties"[47] because they can be used by wealthy investors to diversify their holdings.[48] Some of these investors

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[41] *See* Streeteasy, *432 Park Avenue*, at https://streeteasy.com/building/432-park-avenue-new_york#tab_building_detail=2 ("432 Park").
[42] *See* Zillow, *601 South Main Street*, at https://www.zillow.com/homes/for_sale/Los-Angeles-CA/condo,apartment_duplex_type/2093994595_zpid/12447_rid/priced_sort/34.338333,-117.971879,33.703206,-118.850785_rect/9_zm/0_mmm/
[43] According to Zillow, the likely mortgage for this condominium was just over $238,074 per month. *Id.* So for a household earning $1 million per year (or $83,333 per month) the mortgage would cost more than twice the household's monthly pretax income.
[44] *See* Chuck Collins and Emma de Goede, *Towering Excess: The Perils of the Luxury Real Estate Boom for Bostonians* 10, 14 at https://inequality.org/wp-content/uploads/2018/09/Towering-Excess-Report-Final.pdf (noting this fact, and describing buildings surveyed).
[45] *See* Peter J. Spiro, *The Military is Not Everything*, 32 TEMP. INT'L & COMP. L.J. 97, 98 (2018) (describing IPS as "iconically progressive"); W. Hays Parks, *Air War And The Law of War*, 32 A.F.L.REV. 1, 179 n. 534 (1990) (describing IPS as "far-left").
[46] *See* Collins and de Goede, *supra* note __ at ii.
[47] *Id.* at 2.
[48] *Id.* at 7 ("Across the world, skyscrapers and mansions are rising in globalized super-cities, a form of "wealth storage" for the world's wealthy who are seeking to diversify their asset holdings.")

reside outside North America; for example, one Chinese immigrant bought 16 units in downtown Boston's new Millenium Tower condos on behalf of Chinese investors.[49] In Manhattan, the share of home purchases by out-of-town buyers increased from 9.6 percent to 13.6 percent between 2004 and 2016.[50]

Some commentators blame these investors for rising housing costs, for two reasons. First, every investor to enter a housing market increases demand, and thus increases housing prices and land prices.[51] Second, it has been argued that investor-owned properties are especially likely to be kept unused rather than being rented out, thus reducing housing supply.[52] One survey of Californians asked them why housing is unaffordable in California, and gave respondents eight options; "foreign buyers" came in fourth, with 16 percent of the "vote".[53] Similarly, author Dan Barnabic writes that rising home prices in certain American cities are caused by "the ever growing influx of foreign buyers — mostly wealthy Chinese — who view

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[49] *See* Tim Logan, *Foreign Buyers at Millenium Tower Show That Boston is on a World Stage*, BOSTON GLOBE, AUGUST 30, 2016, at https://www.bostonglobe.com/business/2016/08/29/with-millennium-tower-boston-reaches-new-heights-foreign-money-magnet/keC5sjXE546tpvGmGsTVlM/story.html

[50] *See* Dan Bertolet, *Stop Blaming Foreign Home Buyers*, at https://www.sightline.org/2017/07/05/stop-blaming-foreign-home-buyers/, *citing* Jack Favilukis and Stijn van Niuwerburgh*, Out-of-Town Buyers and City Welfare*, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2922230

[51] *See* Collins and de Goede, *supra* note __ at 18.

[52] *Cf.* Sam Roberts, *Homes Dark and Lifeless, Kept by Out-of-Towners*, NEW YORK TIMES, JULY 6, 2011, at https://www.nytimes.com/2011/07/07/nyregion/more-apartments-are-empty-yet-rented-or-owned-census-finds.html (claiming that in one six-block stretch of Manhattan, half of all apartments "are occupied for two months or less", and suggesting that one reason for this is that as "the market for high-end apartments has rebounded. Manhattan continues to attract foreign investors seeking a haven."); Nicole Gelinas, *What YIMBYs Get Wrong About Housing, Governing*, May 2019, at https://www.governing.com/columns/transportation-and-infrastructure/gov-yimby.html ("New York's new luxury towers are notorious for being empty").

[53] *See* Liam Dillon*, Experts say California needs to build a lot more housing. But the public disagrees, Los Angeles Times,* October 21. 2018, at https://www.latimes.com/politics/la-pol-ca-residents-housing-polling-20181021-story.html

American residential real estate as the safest investment commodity."[54] Public concern over foreign condominium purchases is not limited to the United States. In Canada the provincial government of British Columbia and the city government of Toronto have both imposed taxes targeting real estate owned by nonresidents.[55]

Such purchases of downtown real estate are controversial for reasons unrelated to housing costs. For example, if out-of-town investors rarely or never use their housing units, thus units may remain empty, thus reducing street life and making the neighborhood duller.[56]

The IPS report claims that new luxury housing generally has other negative side effects, such as:

*increased inequality, because the residents of this new housing are likely to be wealthy individuals;.[57]

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[54] Dan Barnabic, *The Danger of Foreign Buyers Gobbling Up American Homes*, at https://www.marketwatch.com/story/the-danger-of-foreign-buyers-gobbling-up-american-homes-2015-10-08 However, Barnabic does not really explain why this should be the case.

[55] *See* Guardian Staff, *Vancouver Declares 5 percent of homes empty and liable for new tax*, THE GUARDIAN, MARCH 7, 2018, at https://www.theguardian.com/world/2018/mar/08/vancouver-declares-5-of-homes-empty-and-liable-for-new-tax *Cf.* Josef Filopowicz, *Focus on Foreign Buyers Overlooks Source of Most Housing Demand in Canada,* Dec. 20, 2017, at https://www.fraserinstitute.org/blogs/focus-on-foreign-buyers-overlooks-source-of-most-housing-demand-in-canada (nonresidents own 3.4 percent of all residential properties in greater Toronto, and 4.8 percent in metropolitan Vancouver). The wisdom of these taxes will be addressed at *infra* note ___ and accompanying text.

[56] *See* Tanya Powley and Lucy Warwick-Ching, *"Stateless" Super-Rich Wear Out Their Welcome in Posh Enclaves*, CNBC, May 1, 2012, at https://www.cnbc.com/id/47248862 (quoting concerns over "low density of street-life" in areas inhabited by the wealthy); Collins and de Goede, *supra* note __, at 19 (claiming that high-end neighborhoods become "luxury ghost towns" with "no stoop life, less foot traffic, fewer customers for neighborhood businesses, and weakened neighborly bonds"); William Booth and Karla Adam, LONDON MAYOR EYES TAX ON SWANKY "ZOMBIE FLATS", WASH. POST, SEPT. 19, 2017 at A1, 2017 WLNR 28804363 (claiming that London is full of "owned, but empty" housing units).

[57] *Id.* at 18-19. They also note that foreign investors may be able to use their investments to obtain U.S. citizenship, because under U.S. law a foreigner who invests over $500,000 in certain areas may more easily obtain a path to citizenship. *Id.* at 22.

*the possibility that housing may be used for money laundering, because some of these condos "are purchased with cash by shell companies, raising red flags about the legality and source of funds;"[58]

*increased energy consumption from new buildings.[59]

II. High-End Condos and Housing Costs

Dozens of economic studies have concluded that places with restrictive zoning tend to have higher housing costs than more permissive cities because of the law of supply and demand: when government restricts supply of housing, prices will normally increase.[60] For example, a study by California legislative staff found that rents grew more slowly in places with higher levels of housing construction.[61] Between 1980 and 2013, the housing stock in urban coastal California grew by 34 percent, while housing stock grew by 99 percent in the fastest-growing fifth of metropolitan counties.[62] Rents rose by 50 percent in the California counties, and only 18 percent in the fast-growing counties.[63] Similarly, Jeffrey Zabel and Maurice Dalton found that in Massachusetts communities, increases in minimum lot sizes were usually followed by price increases.[64] A study by Vanessa Brown Calder sought to use the growth of zoning case law as a

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[58] *Id.* at 19.
[59] *Id.* at 22-23.
[60] *See* Christopher S. Elmendorf, *Beyond the Double Veto: Housing Plans as Preemptive Intergovernmental Compacts,* 71 HASTINGS L.J. at 9-18 [forthcoming 2019), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3256857 (surveying literature); Been, *supra* note __, at 227-29 (same); Daniel Shoag, *Removing Barriers to Accessing High-Productivity Places*, at https://www.brookings.edu/wp-content/uploads/2019/01/Shoag_PP_web_20190128.pdf (as early as 2005, 40 studies had found such a relationship).
[61] *See* Legislative Analyst's Office, *Perspectives on Helping Low-Income Californians Afford Housing*, at https://lao.ca.gov/publications/report/3345
[62] *Id.*
[63] *Id.*
[64] *See* Been, *supra* note __, at 228 (also citing other studies). To the extent that these housing restrictions affect prices, they have a variety of other negative effects. High housing costs keep productive workers out of high-cost cities, thus limiting workers' incomes and economic growth generally. *Id.* at 230-32. Because workers who cannot afford high-cost cities are likely to be poorer than other workers, high housing costs also increase segregation by income. *Id.* at 233-34. Restrictive zoning also increases

means of measuring regulation; she found, based on a regression analysis, that in "44 of 50 individual states, rising annual land-use regulation is associated with rising real average home prices over a 35-year period."[65] This economic scholarship suggests that cities can reduce housing costs by loosening zoning laws in order to allow more housing.

However, a variety of commentators claim that the law of supply and demand does not apply to high-end urban housing. They argue that new supply will be snapped up by wealthy investors who will fail to rent out the units,[66] and/or raise housing costs by raising land costs.[67] Each of these arguments will be addressed in turn.

A. Does Global Investment Prevent Housing Supply From Reducing Housing Costs?

One commentator writes that new housing will not contain housing costs "when a fuller picture of demand is painted that includes foreign direct investment in apartments that remain vacant"[68]- in other words, that foreign investment will soak up new housing supply, thus preventing new supply from reducing housing costs. This argument makes sense only if (1) new housing supply invariably is occupied by investors; (2) the investors do not rent out new housing; and 3) if the new housing is not built, the investors will not purchase other housing. Each of these arguments will be discussed below.

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automobile-related pollution and greenhouse gas emissions, because such zoning often reduces density, and people who live in less compact neighborhoods tend to drive more because in low-density areas, residences are further from each other and from jobs. *Id.* at 235. *See also* Michael Lewyn, *You Can Have It All: Less Sprawl and Property Rights Too*, 80 TEMP. L. REV. 1093, 1097 (2007) (explaining latter point in more detail).

[65] Vanessa Brown Calder, *Zoning, Land-Use Planning, and Housing Affordability* 7, Cato Institute Policy Analysis, Oct. 18, 2017, at https://www.cato.org/publications/policy-analysis/zoning-land-use-planning-housing-affordability

[66] *See infra* Part II-A

[67] *See infra* Part II-B

[68] Jim Russell, *Illusion of Local: Why Zoning for Greater Density will Fail to Make Housing More Affordable*, at https://psmag.com/social-justice/illusion-local-zoning-greater-density-will-fail-make-housing-affordable-85313

1. Do Non-Investors Really Buy New Housing?

Even in the most expensive real estate markets, nonresidential investors are only a small percentage of homebuyers. As noted above, nonresidents purchase just under 15 percent of Manhattan housing units,[69] and about 3 percent of California units.[70] Of course, this figure includes older homes as well as new units- so it might be the case that nonresidents purchase a small proportion of overall units and yet purchase a much larger proportion of new units.[71]

Little data is available on sales of new units. As noted above, the IPS study suggested that 64 percent of units in downtown Boston's newest, most expensive condo buildings were owned by nonresidents.[72] Assuming this conclusion is generally applicable, this means that more than one-third of the units do belong to Boston residents, which means in turn that these units *increase* regional housing supply. In other words, if a new condo building has 300 units, and only 100 are owned by residents, the building has increased regional housing supply by 100 units, thus contributing to holding down housing costs by reducing demand for the preexisting housing supply. Having said that, the Boston survey is a very small sample, and more research from other cities would be useful.

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[69] *See supra* note __ and accompanying text.

[70] *See* Matt Levin, FOREIGN INVESTORS MAY BE DRIVING UP HOME PRICES, VENTURA COUNTY STAR, MARCH 25, 2018, at D3, 2018 WLNR 9069745 (California Association of Realtors estimates that 3 percent of purchases went to international buyers, but their chief economist notes that some realtors might not know citizenship status of clients).

[71] However, this has not been the case in at least one major city: in London, overseas buyers' share of the supply of new housing is only slightly greater than their share of the overall housing supply. *See* Isabelle Fraser, *'Almost no evidence' of London homes owned by foreign buyers being left empty,* THE TELEGRAPH, June 14, 2017, at https://www.telegraph.co.uk/property/house-prices/almost-no-evidence-london-homes-owned-foreign-buyers-left-empty/ (17.9 percent of new units purchased by overseas buyers); infra note __ (13 percent of all London units purchased by overseas buyers).

[72] *See supra* note __ and accompanying text.

Moreover, most new housing is not as expensive as these high-end buildings. The IPS study profiled twelve buildings with an average condominium price just over $3 million.[73] I used the real estate website Zillow to search for condominiums in the city of Boston built after 2016; only 32 (out of a total of 325) sold for that much.[74] Even this statistic overestimates the impact of high-end condos, since some new housing units are in apartment houses rather than condominiums, and thus not likely to be used as investment properties.[75] If only the most expensive units are attractive to global investors, most new housing supply is useful even if the most expensive buildings are turned into second homes for foreign oligarchs.[76]

In sum, the claim that market-rate housing will be taken over by out-of-town investors seems implausible, for two reasons. First, even in the most expensive buildings, a significant number of condos may be purchased by local residents. Second, the most expensive buildings are only a small minority of new housing units;

2. Do Investors Rent Out Housing?

Some of the public concern over high-end housing is based on fear that speculators will purchase housing and then leave it vacant instead of occupying it or renting it out, creating a wasteland of empty "ghost apartments". For example, one American law review article complains about "the ever-growing presence of ghost buildings… [buildings that are]

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[73] *See* Collins and de Goede, *supra* note __, at 9.
[74] See Boston, MA, Real Estate, at https://www.zillow.com/homes/for_sale/condo_type/50000-_price/196-_mp/2016-_built/pricea_sort/42.415979,-70.886193,42.210846,-71.20926_rect/11_zm/
[75] *See supra* note __.
[76] Of course, we do not know for sure whether less expensive buildings attract out-of-town investment. But this seems like a plausible conclusion for two reasons. First, much of the public outrage over such investment is related to high-end real estate. *See, e.g. infra* notes __ and accompanying text. Second, if such out-of-town investment occurred throughout the housing market, a majority of a city's housing units might be unoccupied or used as second homes- a result not supported by data. See infra notes __ and accompanying text (even in major cities, less than 20 percent of new units purchased by nonresidents); notes __ and accompanying text (in most cities, no more than 2 percent of units used for seasonal or occasional use).

astonishingly expensive, mostly foreign owned [and]… left largely empty while fewer and fewer young people can afford to buy or even rent in the city."[77] And a British newspaper article states that "[a]lmost two-thirds of homes in the Tower, a 50-storey apartment complex in London, are in foreign ownership… many of the homes are barely occupied, with some residents saying they only use them for a fraction of the year."[78] The latter article notes that owners of the units include a former Russian senator, a former Nigerian government minister, and an Indonesian banker.[79]

If every unit of a high-end condominium was purchased by foreign investors who then refused to rent those units out, the units obviously would not add to housing supply, and thus would not lower housing costs. As noted above,[80] some of these units are apparently purchased by local owner-occupants, which means they add to housing supply and thus presumably *do* lower housing costs.

But even if this was not the case, new condos would increase local housing supply if they were rented out to local residents. In turn, local residents' use of the new units would reduce rent for the preexisting housing supply, since their lack of interest in these older units would reduce demand for those units.[81]

There is little available evidence on other side of this question; however, a couple of studies suggest that most units owned by nonresidents are rented out to local residents. A study performed by several London School of Economics (LSE) scholars found "almost no evidence of

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[77] Jeffrey R. Boles, *Million Dollar Ghost Buildings: Dirty Money Flowing Through Luxury Real Estate Markets,* 45 REAL EST. L.J. 476, 500 (2017). *See also* Gelinas, *supra* note ___.
[78] Robert Booth and Helena Bengtsson, *The London skyscraper that is a stark symbol of the housing crisis*, The Guardian, May 24, 2016, at https://www.theguardian.com/society/2016/may/24/revealed-foreign-buyers-own-two-thirds-of-tower-st-george-wharf-london
[79] *Id.*
[80] *See supra* note _ and accompanying text.
[81] *See infra* note _ and accompanying text (describing "filtering" of housing caused by new units).

units being left entirely empty- certainly less than 1%."[82] The LSE study cited a 2012 study showing that 58 percent of overseas investors intended to rent out their property, 27 percent intended to occupy it regularly, and 17 percent intended to use the property as a second home.[83]

The authors of the study independently interviewed developers and real estate agents. The agents suggested that "over 90% and often 95% of properties were occupied with the vast majority being tenanted."[84] The authors interviewed over a dozen building managers and developers in new buildings with high levels of foreign ownership; some stated that 90 percent or more of units were occupied, while one stated that 70 percent were fully occupied and 30 percent were used as second homes.[85] The authors also interviewed concierges from four large new buildings; they estimated that between 50 and 75 percent of units were rented out, and no more than 0-2 units per building were entirely unoccupied.[86] Based on this data, the authors estimated that roughly 70 percent of foreign-owned units were rented to Londoners.[87] Because less than 20 percent of London's new housing units were foreign-owned, this means that only about 6 percent of London's new housing units (or about 1200 in 2015-16) were used by foreigners at all, including the units that those foreigners actually lived in.[88] The authors also explained the reasons behind the perceptions of high vacancy in the very newest developments:

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[82] Kath Scanlon et. al., *The role of overseas investors in the London new-build residential market* 2, at http://www.lse.ac.uk/business-and-consultancy/consulting/consulting-reports/the-role-of-overseas-investors-in-the-London-new-build-residential-market
[83] *Id.* at 16. Also cited was a 2013 analysis by real estate agents finding that "85% of international buyers purchased properties as an investment and let them out." *Id.*
[84] *Id.* at 17.
[85] *Id.* at 18. One building manager did not specify a percentage of occupancy, but stated that the average occupancy was 190 days a year. *Id.*
[86] *Id.* at 19.
[87] *Id.* at 26.
[88] *Id.*

passers-by may think a unit is vacant when it is in fact not yet completely built, and even after a building is ready for occupancy, selling the units may take years.[89]

One possible flaw in the LSE study is that it is based on estimates by real estate industry participants, rather than on actual vacancy data. However, a study of Vancouver electricity use by an energy company[90] supports the LSE study's conclusion that a surge in foreign investment has not led to a surge in vacant units. This study defined non-occupied units as those with minimal electricity consumption.[91] The study found that only 4.8 percent of all housing units in Vancouver were unoccupied.[92] If these unoccupied apartments affected housing prices, the non-occupancy rate would have risen over the past decade, when housing prices in Vancouver soared.[93] Yet Vancouver's non-occupancy rate was no higher in 2014 than in 2002.[94] Some press coverage suggests that Downtown Vancouver is especially notorious for ghost apartments owned by nonresidents.[95] If this were really the case, downtown Vancouver's non-occupancy rate would have grown in recent years. Yet according to the Ecotagious study, downtown Vancouver's non-occupancy rate has actually declined since 2002 (from 6.9 percent to 6.0 percent).[96] The lack of change in electricity usage suggests that investor-owned ghost apartments in Vancouver are uncommon.

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89 *Id.* at 19.
90 *See* Ecotagious, *Stability in Vancouver's Housing Unit Occupancy*, at https://vancouver.ca/files/cov/stability-in-vancouver-housing-unit-occupancy-empty-homes-report.pdf
91 *Id.* at 8-10.
92 *Id.* at 12.
93 *See* Yuen Pao Woo, *In Vancouver, foreign capital is part of the housing solution*, The Globe and Mail, Feb. 19, 2018, at https://www.theglobeandmail.com/opinion/foreign-capital-is-part-of-the-housing-solution/article38017421/ (between 2007 and 2017, "prices of single detached Vancouver houses rose by 130 per cent.")
94 *See* Ecotagious, *supra* note __, at 12.
95 *See* Mike Raptis, *15% of downtown Vancouver condos sit empty, turning areas into ghost towns: Study*, at https://globalnews.ca/news/386369/15-of-downtown-vancouver-condos-sit-empty-turning-areas-into-ghost-towns-study/ (citing variety of estimates).
96 *See* Ecotagious, *supra* note __ at 25. *See also* Andrew Yan, *Ownership, Occupancy and Rentals: An Indicative Sample Study of Condominiums in Downtown Vancouver* 6, at

Another study was limited to high-rise condos in downtown Vancouver,[97] and found that only 5.5 percent of these units used less than 75 kilowatt hours of electricity per month (roughly the amount needed to power a refrigerator).[98] Because any occupied unit will use more than 75 kilowatt hours of electricity per month, this study shows that only 5.5 percent of units are vacant-a result consi[99]

So it seems unlikely that a significant number of new condo units are completely unused. On the other hand, many units are used for second homes. In fact, about 40 percent of Manhattan's vacant apartments (or roughly 50,000 housing units, 5.8 percent of the borough's housing supply) are vacant and used for "seasonal, recreational or occasional use" according to the Census Bureau.[100] It could be argued, based on this data, that investors looking for second homes are soaking up a significant share of new housing supply.

But it is not clear whether this is the case, because overall vacancy numbers do not tell us *which* housing units are being used as second homes. Are these units the newest, most luxurious units? Or are they spread more evenly through the city's housing supply?[101] In any event, the

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http://bingthomarchitects.com/app/uploads/2009/12/btaworks_condo_study_report_final2.pdf (only 5.5 percent of high-rise condos in downtown Vancouver used less than 75 kilowatt hours of electricity).
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98 *Id.* at 6.
99 *Id.*
100 The exact number was 49,924 in 2017. *See* Factfinder*, supra* note __ (data only available through "Advanced Search" feature, Tables B 25002 and B25004).
101 In addition, we have no way of knowing whether these units are possessed by investors (wealthy or otherwise) or by local suburbanites who just want to sleep in the city a few nights a week rather than suffering through a long commute to their suburban homes. I also note that some of these units may be used as short-term rentals through Airbnb and similar sites, and thus actually meet consumer demand for housing just as a more traditional long-term rental might. *See* Nathan Tempey, *Lights out: New York's ghost apartments multiply*, Brick Underground, March 14, 2018, at https://www.brickunderground.com/rent/pied-a-terre-airbnb-affordable-housing-crisis-nyc (government officials "can't parse from the data how many of these 75,000 apartments are being rented out on sites like Airbnb versus how many are being used as pieds-à-terre"). About 23,000 complete housing units are rented out through Airbnb, just under one-third of the "seasonal use" total. *See Inside Airbnb*, at http://insideairbnb.com/new-york-city/ (23,870 "entire home or apartment" Airbnb listings in New York City; in addition, a roughly equal number of spare rooms are rented out in apartments occupied by the

impact of second homes on citywide housing supply is quite small. In New York City as a whole, 79,001 vacant housing units are vacant and used for seasonal or occasional use- only 2.2 percent of the 3.5 million housing units available in the city.[102] Moreover, the number of occasionally used housing units is even smaller in other high-cost cities- a fact which suggests that second homes do not significantly affect housing costs in those cities either. In Boston (the second most expensive urban rental market in the United States)[103] only 1.5 percent of housing units are in the "seasonal or occasional use" category.[104] In Los Angeles (the fifth most expensive)[105] only 0.9 percent of housing units fall into this category.[106] If second-home buyers were a major cause of high rents, these markets would be less expensive.

3. What If No High-End Housing Is Built?

Airbnb "landlord" or by other Airbnb users). The city's average Airbnb unit is occupied for 100 days a year. *Id.*

[102] *See* Factfinder, *supra* note __ (data only available through "Advanced Search" feature, Tables B25002 and B25004).

[103] *See* Geoff Boeing and Paul Waddell, *Insight Into Rental Housing Markets Across the United States: Web Scraping and Analyzing Craigslist Rental Listings* 14, at https://arxiv.org/ftp/arxiv/papers/1605/1605.05397.pdf (Boston has second highest rent per square foot among urban markets, behind New York).

[104] *See* Factfinder, *supra* note __ (4440 units out of the city's 293,158 housing units in this category; data only available through "Advanced Search" feature, Tables B25002 and B25004).

[105] The only markets with higher rent are New York, Boston, San Francisco, and Honolulu. *See* Boeing and Waddell, *supra* note __, at 14-15.

[106] *See* Factfinder, *supra* note __ (13,587 units out of the city's 1,496,661 housing units in this category; data only available through "Advanced Search" feature, Tables B25002 and B25004). In fact, some less expensive markets have higher rates of second-home use than New York and Los Angeles. For example, metro Atlanta's rent per square foot is only $0.74, less than half that of Los Angeles and about one-fourth that of New York. *See* Boeing and Waddell, *supra* note __, at 14; Factfinder, *supra* note __ (central city median rents lower in Atlanta than in New York and Los Angeles). Yet 10,242 out of Atlanta's 245,063 housing units (or roughly 4 percent) are in the "vacant due to seasonal or occasional use" category- a figure higher than that of New York or Los Angeles. *See* Factfinder, *supra* note __ (data only available through "Advanced Search" feature, Tables B25002 and B25004). Similarly, in Austin, another relatively low-cost market, 1.7 percent of housing units are in this category, a figure lower than that of New York but higher than that of Los Angeles. *See* Boeing and Waddell, *supra* note __, at 14 (median Austin-area rent is $1.25 per square foot); Factfinder, *supra* note __ (7309 units out of the city's 417,939 housing units in this category; data only available through "Advanced Search" feature, Tables B25002 and B25004).

The claim that new high-end housing fails to increase housing supply is based on two assumptions- one that is plausible and one that is less plausible. The plausible assumption is that the presence of out-of-town investors may raise housing costs by increasing demand for housing.[107] The less plausible assumption is that these investors will invade a housing market only if new housing is built- that is, that these investors are only interested in new, high-end urban condos. But ample evidence suggests that out-of-town investors and local second-home buyers are willing to purchase older high-end units as well as newer units- which in turn means that restricting the supply of new units will merely drive more investors into the "older unit" market, rather than making them disappear.

This is the case for several reasons. First, the number of housing units vacant and used for "seasonal or occasional" use exceeds the number of new units. In Manhattan, for example, there are 49,924 such units-[108]apparently more than 30,000 more than the U.S. Census Bureau's estimate of the number of units built after 2010.[109] So even if *every single housing unit* in the "seasonal or occasional use" category is an out-of-town investor's second home, and even if *every single housing unit* built after 2010 was purchased by such an investor, tens of thousands of older units also shared this fate. Thus, it seems clear that foreign investors are perfectly willing to purchase condos other than new units.

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[107] See Favilukis and Van Nieuwerburgh, supra note __, at 2 ("demand shock" caused by out of town investment may increase rents by as much as 18.8 percent if no units rented out to locals; such rent increases disappear if investors rent these housing units to locals).
[108] *See* Factfinder, *supra* note __ (7309 units out of the city's 417,939 housing units in this category; data only available through "Advanced Search" feature, Tables B25002 and B25004).
[109] *See* Factfinder, *supra* note __ (15,583 units built after 2010). *But cf.* New York City Rent Guidelines Board, *2019 Housing Supply Report* 20 (city issued 38,640 certificates of occupancy in Manhattan between 2010 and 2018) at https://www1.nyc.gov/assets/rentguidelinesboard/pdf/hsr19.pdf It is not clear to me why the Census Bureau's data differs from that of the city- but even the city's estimate is lower than the number of "seasonal and occasional" units cited above, showing that at least some older units are used as second or seasonal homes.

Second, prestigious cities that have little high-rise housing nevertheless seem to suffer from out-of-town housing demand. For example, in most of central Paris, city regulations limit building heights to 10 floors, and in Paris's most central, historic areas, height limits are even more stringent.[110] Yet out-of-town investment as as common in Paris as in other major cities. Roughly 16.6 percent of Paris buyers are not from Paris, more than in London or New York.[111] Thus, the fate of Paris suggests that a city will not deter out-of-town investors by excluding new housing.[112]

Third, it would be economically irrational for wealthy investors to ignore older units. If a housing market becomes expensive, price inflation is likely to affect older units as well as newer units- so an investor in search of profits can make money by buying and selling older housing just as it can make money buying and selling new housing. For example, I recently performed a search on Zillow.com, a real estate website, for condominiums in my Manhattan zip code (10016); the cheapest for-sale condominium built before 2010 was being offered for $495,000.[113] By contrast, a search for condominiums in less expensive cities will often show hundreds of less

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[110] *See* ALAIN BERTAUD, ORDER WITHOUT DESIGN: HOW MARKETS SHAPE CITIES 311 (2019) ("The highest permissible buildings [] have about 10 floors and are mostly located in the periphery of the municipal area … regulations impose short buidlings in the most ancient areas of Paris").

[111] *See* Favilukis and Van Nieuwerburgh, *supra* note __, at 8 (since 1992, nonlocal buyers have held a consistent share of 16.6 percent of transactions, compared to 13 percent in London and 10 percent in Manhattan).

[112] And in London, nonresidents' share of new units does not differ materially from their share of all housing purchases. *See supra* note __.

[113] *See* Zillow, *10016 Condos*, at https://www.zillow.com/homes/for_sale/Manhattan-New-York-NY-10016/condo_type/61630_rid/1-_beds/pricea_sort/40.753677,-73.964961,40.735535,-73.992427_rect/14_zm/ . The cheapest unit I found was built in 1964. *See* Zillow, *251 E. 32nd Street, #8G,* at https://www.zillow.com/homes/for_sale/Manhattan-New-York-NY-10016/condo_type/120789860_zpid/61630_rid/1-_beds/0-500000_price/0-1964_mp/pricea_sort/40.753677,-73.964961,40.735535,-73.992427_rect/14_zm/

expensive units for sale.[114] Thus, it appears that the rising trade of real estate prices lifts even the oldest and cheapest boats.

If, as suggested above, nonresident investors and other second-home buyers are willing to purchase older housing units, this means that if new units are not built, many of these investors will bid for older units, thus driving up demand for those units and bidding up their prices. So even if nonresident investors purchased and used all of a city's new housing units, a city that excludes new market-rate units may experience higher housing prices than if the new housing was not built.[115]

And if such price inflation occurs, exclusionary policies might even make foreign investors will become even *more* interested in local housing, because higher housing prices and more rapid price inflation mean that investors will have higher rates of return.[116] So if cities refuse to allow new housing in order to exclude out-of-town investors, they might create a vicious circle: their exclusionary policies may lead to higher housing prices, which makes existing housing even more attractive than it would otherwise be to out-of-town investors, thus creating even higher housing prices due to increased demand for a stagnant housing supply.

4. Are Vacancy Taxes A Less Harmful Alternative?

The discussion above suggests that expensive condos increase housing supply, even if

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[114] For example, I searched in Atlanta, and found over 600 condominiums for sale at prices lower than $400,000. *See* Zillow, *Atlanta, GA, Real Estate*, at https://www.zillow.com/homes/for_sale/Atlanta-GA/condo_type/37211_rid/1-_beds/0-500000_price/0-1964_mp/pricea_sort/33.925984,-84.260674,33.607471,-84.700127_rect/10_zm/20_p/

[115] The above discussion assumes, of course, that the city's choice is between market-rate new housing and no new housing at all. The city can also choose to subsidize housing for the lower and/or middle classes, thus allowing it to have new housing with lower rents than market-rate housing. But in that case, the city would incur the financial cost of building the new housing or subsidizing those who do. *Cf.* Joe Cortwright, *Why Is 'Affordable' Housing So Expensive To Build?,* Citylab, Oct. 19, 2017, at https://www.citylab.com/equity/2017/10/why-is-affordable-housing-so-expensive-to-build/543399/ (citing examples of subsidized housing costing as much as $825,000 per unit).

[116] Cf. Reuben Duarte, *Why Foreign Money is Irrelevant to Increasing Density*, Planetizen, July 10, 2014, at https://www.planetizen.com/node/70195

many of them are purchased by out-of-town investors. But the law of supply and demand means that housing prices are affected by demand as well as supply. It logically follows that public concern over foreign investment contains one grain of truth: if there were fewer nonresidents and part-time residents in the housing market, there would be less demand for housing and thus lower housing prices for full-time residents.

It logically follows that a city might be able to reduce demand without reducing supply, if it taxes nonresident occupiers of housing. The most widely publicized example is Vancouver's vacancy tax, enacted in 2016.[117] The empty homes tax is a 1 percent tax applied to all property that is unoccupied for more than six months per year.[118] The law defines property as "unoccupied" if it is not the principal residence of an occupier or of the owner's tenant.[119] Thus, a nonresident is subject to the tax if he or she purchases a property and does not either (1) use it as his or her primary residence for most of the year or (2) rent it out to a tenant.

In 2018, only 922 homeowner paid the tax (down from 1085 in 2017)-[120] a fact that suggests that either there are very few vacancies or that many households are evading the tax. However, just under 5000 homeowners have illegally failed to declare their tax status as of February 2019;[121] the city plans to bill those households for vacancy taxes unless the taxpayers

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[117] *See* Nadav Shoked, *Cities Taxing New Sins: The Judicial Embrace of Local Excise Taxation*, 79 OHIO ST. L.J. 801, 809 n. 40 (2018) (citation omitted).
[118] *See* Vancouver, B.C., Vacancy Tax By-Law No. 11674, secs. 1.2, 2.3(a), 2.4 at https://bylaws.vancouver.ca/11674c.PDF ("By-Law") (property vacant if unoccupied for more than six months during "reference period"; "vacancy reference period" defined as prior calendar year). In addition, the province of British Columbia passed a similar (but smaller) tax in 2018. *See* V.L.Hendrickson, *How Can I Avoid Paying Vacancy Tax on a Second Home in Vancouver?,* MansionGlobal, March 14, 2019, at https://www.mansionglobal.com/articles/how-can-i-avoid-paying-vacancy-tax-on-a-second-home-in-vancouver-124063 (provincial tax passed in fall of 2018, and imposes an 0.5% levy).
[119] *See* By-Law, *supra* note __, at sec. 2.2.
[120] City of Vancouver, *Improving the Effectiveness of the Empty Homes Tax* 5, at https://council.vancouver.ca/20190227/documents/pspc2.pdf (Feb. 8, 2019).
[121] *Id.* at 4.

proves to the city that the property is not vacant.[122] Thus, the tax may apply to as many as 6000 homeowners- but even that number is only 3.2 percent of the homes potentially subject to the tax.[123]

Some anecdotal evidence suggests that the vacancy tax appears to have reduced demand, and thus reduced prices, for some of the most expensive condominiums in Vancouver. For example, Vancouver's Trump Tower has 5 percent of its units for sale, twice the average for luxury condominums in Vancouver.[124] As a result, one condo that was originally listed at almost $3.4 million sold for $2.95 million.[125]

It is not yet clear whether these trends have affected rents. Data from Canada's national housing agency, the Canada Mortgage and Housing Corporation,[126]suggests that the median rent in Vancouver increased from $1150 in 2016 to $1300 in October 2018, an increase roughly comparable to that of the preceding two years (when rent increased from $1035 to $1150). [127] On the other hand, Vancouver home prices declined by 8 percent between September 2018 and September 2019.[128] Thus, it may be that pre-2019 data is simply outdated.

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[122] *Id.* ("These properties have been issued a tax bill pursuant to the provisions of the Vacancy Tax By-law and have received a ticket for a $250 penalty (imposed under the By-law Notice Enforcement By-law) for failing to declare by the deadline. At this time, the City is allowing owners to make a late declaration following payment of the penalty. If an owner makes a late declaration for a status other than vacant, the bill will be cancelled.")
[123] *Id.* (189,000 properties required to declare vacancy status).
[124] See Postmedia News, Vacancy taxes prompt sale of luxury condos in downtown Vancouver, August 23, 2019, ("Real estate sources say two to three per cent of properties are typically for sale in condo buildings. Trump Tower has 290 units, which means there would normally be six to nine units for sale, not 15.")
[125] *Id.*
[126] See Julia Kagan, *Canada Mortgage and Housing Corporation*, at https://www.investopedia.com/terms/c/cmhc.asp (describing CMHC)
[127] See Canada Mortgage and Housing Corporation, *Vancouver- Historical Rental Market Statistics Summary*, at https://www03.cmhc-schl.gc.ca/hmip-pimh/en/TableMapChart/Table?TableId=2.1.31.3&GeographyId=2410&GeographyTypeId=3&DisplayAs=Table&GeograghyName=Vancouver#October ;
[128] See Canadian Real Estate Association, National Statistics, at https://creastats.crea.ca/natl/index.html

In sum, it seems possible that the vacancy rate has reduced housing demand and thus affected housing costs- but because this policy has been in effect for only three years, it is too soon to know how useful it has been.

5. Supply Skepticism: Confronting Counter-Arguments

The discussion above assumes that ordinarily, new market-rate housing will hold down rents by increasing housing supply. However, some commentators argue that this is not the case even in the absence of out-of-town investment because (1) most cities have a limited supply of land and thus cannot increase new housing supply; (2) new supply in the luxury market does not affect the rest of the housing supply; and/or (3) new housing generally induces new demand and thus fails to reduce housing costs. Each of these arguments will be addressed below.

a) Land Costs and Housing Costs

Some commentators argue that because new housing will not reduce housing costs because "the supply of land is limited in many jurisdictions by existing development and by geographical constraints such as coasts or mountains."[129] If these commentators are correct, market-rate housing crowds out land that could be used for low-income housing, and thus actually makes housing more expensive.[130]

This argument lacks merit, for two reasons. First, it is not the case that land used for market-rate housing will, in the absence of construction, be used for low-income housing. Such land may be used instead for nonhousing purposes, because government may not be able to subsidize low-income housing on every available piece of land, given the variety of other social

[129] Vicki Been et. al., *Supply Skepticism, Housing Supply, and Affordability*, 29 Housing Policy Debate 25, 27 (2019) (describing argument) (citation omitted).
[130] *Id.*

needs competing for government funding.[131] Second, the relationship between land scarcity and housing scarcity is a weak one, because cities can always reduce housing costs by allowing land to be built more intensively. For example, suppose that a tract of land is worth $300,000. The city could allow one single-family house to be built, causing one family to pay $300,000 (plus construction costs) for the land. Or the city could allow a duplex to be built, causing each household to pay $150,000 (plus half of construction costs). The city could also allow a four-unit condominium to be built, in which case each household only pays $75,000 (plus one-fourth of construction costs). And if the city allowed a 200 unit condominium complex to be built, each household's share of land costs would be only $1,500- which is to say, next to nothing.[132] So if a city allows unlimited housing construction, housing can be inexpensive even if land is expensive.

b) Does the Luxury Market Affect the Not-So-Luxury Market?

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[131] *Id.* ("the reasons affordable housing is not provided in larger quantities go far beyond the lack of land and include the inadequacy of funding to pay for construction, financing costs, and operating costs.")

[132] *Cf.* Nolan Gray, *Density is How The Working Poor Outbid the Rich for Urban Land*, Market Urbanism, Feb. 5, 2018, at http://marketurbanism.com/2018/02/05/density-working-poor-outbid-rich-urban-land/ (explaining other scenarios). It could be argued that the added construction costs of large apartment buildings make apartments more expensive than single-family homes. But if this was true, condo prices would typically be higher than house prices in the same area. This is generally not the case- especially in dense cities like Manhattan with lots of condos, as opposed to smaller cities where most land is zoned for single-family housing. *See* E.B. Solomont, *Is NYC's townhouse market undervalued* ,The Real Deal, September 2014, at https://therealdeal.com/issues_articles/is-nycs-townhouse-market-undervalued/ (even in Manhattan, average townhouse cost over $3.5 million, while average condo cost $1.25 million); Steve Gillman, *Condo vs. house: Before You Buy, You Must Read This,* at https://www.thepennyhoarder.com/life/condo-vs-house/ ("houses cost more than condos just about everywhere"). Admittedly, in some metro areas condos are almost as costly as houses. *Id.* However, this fact reflects not the inherent costliness of condos, but the fact that local governments restrict multifamily housing to a much greater extent than single-family housing, thus creating an artificial shortage of condos that leads to artificially high prices. *See* Joint Center for Housing Studies at Harvard University, *America's Rental Housing- Expanding Options for Diverse and Growing Demand* 17, at http://www.jchs.harvard.edu/sites/default/files/americas_rental_housing_2015_web.pdf ("Local land use regulations often restrict the area available for multifamily development, particularly in suburbs, which can increase the competition for available sites and raise land costs. … [such] restrictions often limit the number of units in multifamily developments. This raises per-unit construction costs and ultimately the rents that developers must charge to be profitable."); Michael Lewyn, *Yes to Infill, No to Nuisance*, 42 FORDHAM URB. L.J. 841, 854 (2015) (in most cities, the majority of residential land is zoned for single-family housing).

It could also be argued that even if new high-end housing affects housing costs for other high-end housing, it might not reduce housing costs for low- and moderate-income households,[133] because housing for the rich is an entirely separate market.[134] But in fact, what happens at the high end of a housing market can affect the rest of the market. To understand why, imagine a housing market with 5000 apartments- 1000 for the rich, 1000 for the upper middle class, 1000 for the lower middle class, and 2000 for the working class and the poor.

Then imagine that 1000 new apartments for the rich are built. The rich people move into the new apartments, leaving the older upper-class apartments for the upper middle class. As the upper middle class units become deserted by their original tenants, they filter down to the lower middle class- after which there are 3000 apartments (the 1000 lower middle class apartments plus the 2000 working class and poor apartments) competing for only 2000 working-class tenants. In such a scenario, it seems likely that landlords will reduce their rents to attract the poor tenants, and that 1000 of the units will in any event be left vacant. If these apartments deteriorate over time, this "filtering down" of housing towards the lower classes will accelerate, as the apartments become less desirable.[135]

On the other hand, assume that 1000 rich households move to a city, and outbid the existing rich people for their apartments. If no new high-end housing is built, the native rich will then move to the upper-middle class units (because they can still outbid the existing upper-

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[133] *See, e.g*. Ana Aguirre et. al., *For East New York's Housing Crunch, Supply is Not the Solution*, at https://citylimits.org/2016/02/18/cityviewsfor-east-new-yorks-housing-crunch-supply-is-not-the-solution/ (The *only* increase in housing supply that will help to alleviate New York's affordable housing crisis is housing that is truly affordable to low-income and working-class people.") (emphasis in original).
[134] *See* Been et. al., *supra* note __, at 28.
[135] *See* C. Tsuriel Somerville and Christopher J. Mayer, *Government Regulation and Changes in the Affordable Housing Stock*, 9 FRBNY Economic Policy Review 45, 46 (2003), at https://www.newyorkfed.org/medialibrary/media/research/epr/03v09n2/0306some.pdf ("Without expenditures on maintenance, renovation, and repairs, units decline in quality as they depreciate physically and technologically. As this occurs, the units move down the quality ladder.")

middle-class tenants), the upper-middle-class tenants then outbid the lower-middle class tenants for their units, and the lower-middle-class tenants outbid the poor for 1000 of the 2000 working-class units. Rents would rise as landlords essentially auction off the low-end units, and the 1000 poorest households might be left homeless, or might need to accept smaller living spaces in order to avoid being homeless. In this situation, apartments originally used by poorer tenants "filter up" to wealthier tenants due to housing scarcity.[136]

Several studies show that filtering is common in the United States. For example:

*A Hudson Institute economic study found that millions of housing units have either "filtered down" or "filtered up" in recent decades. Between 1985 and 2013, filtering added 4.6 million units[137] to the nationwide inventory of rental housing affordable to households earning 50 percent of area median income- that is, housing that cost less than 30 percent of income for such households.[138] On the other hand, 1.7 million rental units became unaffordable during that period.[139] Because there were 15 million housing units that were affordable by this definition in 1985, this means that almost 11 percent of the 1985 housing units became unaffordable to lower income households, and more than twice that many became affordable. But in high-cost cities like Los Angeles and New York, the number of housing units that "gentrified" (that is, filtered up and thus became less affordable) exceeded the number that filtered down the economic ladder to become more affordable.[140] In New York, three times as many housing units "gentrified" as "filtered down."[141]

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136 *Id.* at 50 (using term). *See also* Mast, *supra* note __, at 4 (describing relevant economic literature).
137 *See* John C. Weicher et.al., *The Long Term Dynamics of Affordable Rental Housing* 2-3, at https://s3.amazonaws.com/media.hudson.org/files/publications/AffordableRentHousing2017.pdf .
138 *Id.* at 7 (housing units "affordable if the sum of rent, utilities, and related costs, adjusted for the number of bedrooms, is less than or equal to 30 percent of 50 percent of local area median income.")
139 *Id.* at 3.
140 *See* Weicher et.al., *supra* note __,. at 152.
141 *Id.*

*The Joint Center for Housing Studies at Harvard University found that "downward filtering of higher-cost housing had increased the number of units renting for less than $400 by 11 percent from the level in 2003."[142] However, this number was offset by the number of low-cost units that were removed from the stock by deterioration and demolition.[143]

*a study by economist Scott Rosenthal shows that "controlling for other house attributes, on average house rent and price decline by 0.3 and 0.7 percent per year as the home ages."[144] As a result, most lower-income families live in old homes.[145]

Some commentators argue that filtering is rare because housing markets are segmented- that is, an increase in high-cost housing will lead to immediate price drops for high-end housing, but will affect lower-cost housing more gradually or not at all.[146] For example, if 100 new high-end units are created, some of these units will be purchased by persons abandoning older housing, but others might be used as second homes by owners of existing high-end units.[147] However, a study by economist Evan Mast seems to at least partially disprove this argument. Mast surveyed 686 new multifamily buildings in twelve cities and tracked 52,000 of their current residents.[148] He found that new market-rate housing creates a chain of moves similar to the "filtering down" described above, and that this movement reduces demand for lower-income

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142 Joint Center, supra note __, at 14,

143 *Id.* at 3.

144 Scott Rosenthal, *Are Private Markets and Filtering a Viable Source of Low-Income Housing?* 23, at https://pdfs.semanticscholar.org/1082/c7b73d40631df665beb24c80e9b29e964a39.pdf

145 *Id.* at 24.

146 See Rick Jacobus, *Why Voters Haven't Been Buying the Case for Building*, SHELTERFORCE, Feb. 19, 2019, at https://shelterforce.org/2019/02/19/why-voters-havent-been-buying-the-case-for-building/

147 *Id.* (as prices fall, households in the luxury segment of the market may consume more housing. This can happen when someone buys a second home or even when two roommates respond to lower prices by each renting their own place. But also, some luxury units may be taken off the market when prices fall")

148 *See* Mast, *supra* note __, at 2.

housing. In particular, Mast found that building 100 new market-rate units creates a chain of moves that leads 70 people to move out of lower-income neighborhoods.[149]

Even if the "segmented markets" argument is partially true, it certainly does not justify a claim that what happens in high-end markets has zero effect on other housing submarkets. If affluent neighborhoods were a wholly separate market from middle- and lower-class neighborhoods, no neighborhoods would ever gentrify- obviously an absurd result.[150]

Thus, it appears that filtering is quite common. Where housing is scarce, it tends to filter up, as middle-and upper-class households priced out of one building or neighborhood move to slightly less expensive buildings and neighborhoods.[151] But when housing supply is abundant, housing tends to filter down, as middle- and upper-class households abandon older housing for newer housing. It logically follows that construction of new housing reduces demand for older housing and makes it less expensive.

c) Does New Housing Induce Demand?

It has been argued that even in the absence of out-of-town investment, new housing can never reduce housing prices, because even if housing creates a short-term decline in a city's housing prices, that decline will spur new demand for housing as households move to the city.[152]

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[149] *Id.* at 1-2 (such construction "sparks a chain of moves that eventually leads 70 people to move out of neighborhoods from the bottom half of the income distribution, and 39 people to move out of neighborhoods from the bottom fifth.")

[150] *Cf.* National Community Reinvestment Coalition, *Shifting Neighborhoods: gentrification and cultural displacement in American cities,* at https://ncrc.org/gentrification/ (discussing extent of gentrification in American cities)

[151] *See* Somerville and Mayer, *supra* note __, at 51 ("greater regulation results in an increase in the probability that an affordable rental unit will filter up to become unaffordable" because the possibility of higher rents means that renovation of older apartments will become more profitable for landlords); Rosenthal, *supra* note __, at 28 (filtering down is less common in most expensive parts of United States).

[152] *See* Been et. al., *supra* note __, at 29-30; Gelinas*, supra* note __. A related argument is that new supply might spur demand for a given neighborhood, thus spurring gentrification and displacement. *See* Been, et.al., *supra* note __, at 30-31. But the high-end properties discussed in this paper are likely to be in already-expensive neighborhoods, not in newly gentrifying areas. For example, New York City's "Billionaire's Row" includes zip codes 10019 and 10022- two zip codes that were affluent decades ago.

But this argument is based on the assumption that there are no constraints limiting households' ability to move to cheaper cities- an assumption that leads to absurd results.[153] If this assumption was true, cheap cities would quickly become more expensive, as households in search of cheaper housing moved to those cities. Eventually, rising demand would cause those cities' prices to increase until they became as expensive as other cities. Obviously, this assumption is incorrect: housing prices vary widely from one city or region to another. [154]

Moreover, the "induced demand" theory rests on the assumption that migration is a major cause of new housing prices; otherwise, the migration to a city caused by lower prices would be insufficient to bring housing costs back up to their previous level. But if this was the case, the cities with the fastest population growth would have the highest housing costs. In fact, regions with the fastest population growth tend not to be the most expensive cities. Between 2000 and 2014 the regions with the highest levels of population growth were Raleigh, Austin, Las Vegas, McAllen, and Orlando.[155] The most expensive of these regions, Austin, had a median housing

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See Lauren Paley, *Billionaire's Row: Where is It and How'd It Get That Name?,* One Block Over, May 9, 2018, at https://streeteasy.com/blog/billionaires-row-nyc/ (describing area as near Central Park South, stretching from Columbus Circle to Park Avenue); Maps Manhattan, Manhattan Zip Code Map, at http://maps-manhattan.com/manhattan-zip-code-map (these blocks part of zip codes 10019 and 10022); Factfinder, *supra* note __ (in 2000, both zip codes had median household income over $55,000 at a time when Manhattan's median income was $38,293). Thus, gentrification is beyond the scope of this article.

[153] Id. at 30 (induced demand theory "requires demand curves to be perfectly elastic—or, in other words, it assumes that neighborhoods and jurisdictions are perfect substitutes and that there are no constraints on the ability and willingness of households to move. .. Any additional demand induced by new housing is limited by personal and economic constraints on the ability and willingness of households to move, restrictions on immigration, and uncertainty and other factors that might inhibit renters and buyers from renting or buying in the market in which housing supply increases.")

[154] *See* MICHAEL LEWYN, GOVERNMENT INTERVENTION AND SUBURBAN SPRAWL: THE CASE FOR MARKET URBANISM 79 (2017) (showing wide variation between metro areas' housing prices; for example, median home price in metropolitan San Francisco over $1 million, while median price in metropolitan Orlando under $200,000).

[155] *Id.* (citation omitted).

price of $303,000 in late 2018- far below the median prices of expensive regions such as San Francisco ($1.3 million) and Los Angeles ($620,000).[156]

And over the last decade, home prices have grown less rapidly in high-growth regions than in some high-cost regions. For example, in metropolitan San Francisco home prices rose from $680,000 to $1.3 million between 2008 and 2018, almost a 100 percent increase, and in metropolitan San Jose prices similarly rose from $544,000 to $1.07 million, almost an almost-100 percent increase.[157] By contrast, home prices rose by 59 percent in Austin (from $191,000 to $303,000), by 42 percent in Raleigh (from $210,000 to $300,000) and by under 40 percent in the other three high-growth regions.[158] This fact suggests that constraints on new housing supply (such as zoning) may have a stronger effect on prices than population growth.[159]

B. Does New Housing Raise Housing Prices By Raising Land Costs?

The IPS report claims that

[160] If government makes it impossible to build housing on land tract X, there will be less demand for that land. On the other hand, if the government allows housing on tract X, there will

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[156] See National Association of Home Builders, *The NAHB/Wells Fargo Housing Opportunity Index: Complete History By Metropolitan Area (1991-Current)*, at https://www.nahb.org/en/research/housing-economics/housing-indexes/housing-opportunity-index.aspx
[157] *Id.* I note that price appreciation was not this rapid in all high-cost regions. In Los Angeles, home prices rose by only 52 percent (from $407,000 to $620,000)- a lower rate of increase than Austin, *see infra* note __ and accompanying text, but a higher rate than in other high-growth cities. *See infra* notes __ and accompanying text.
[158] *Id.* (showing that median price increased from $101,000 to $139,000 in McAllen, $225,000 to $240,000 in Orlando, and from $245,000 to $283,000 in Las Vegas).
[159] *See* Lewyn, *supra* note __, at 74-75 (noting than San Francisco and Los Angeles have extraordinary restrictive zoning).
[160]

be more demand for the land, causing land prices to increase.[161] It could therefore be argued that upzoning (that is, more permissive zoning),[162] will lead to higher housing prices.[163]

This argument seems implausible, for two reasons. First, as noted above, higher land prices will not lead to higher rents *if* landowners are allowed to build more units per piece of land. A landowner who builds 100 apartments on a tract of land can charge cheaper rents than one who builds 10 apartments on the same tract of land, assuming that other landowner costs are equal.[164] So even if upzoning increases land prices, it is unlikely to increase rents.

Second, if upzoning increased housing prices, downzoning (and restrictive zoning generally) would lead to lower housing prices. The city of Los Angeles has tested this theory. In 1960, that city was zoned to support 10 million people- that is, if every landowner built to the extent allowed by zoning, the city would have had 10 million residents.[165] By contrast, today the city is zoned to support only 4.3 million, only slightly more than its current population.[166] If downzoning reduced housing costs, Los Angeles land prices would have declined or stabilized, causing rents to fall. And yet land values there have increased sixfold in recent decades,[167] and

[161] *See* Richard Florida, *Does Upzoning Boost Housing Supply and Lower Prices? Maybe Not*, at Citylab, Jan. 31, 2019 at https://www.citylab.com/life/2019/01/zoning-reform-house-costs-urban-development-gentrification/581677/ (citing study showing increased land values from Chicago upzoning).
[162] See Bradley Pough, *Neighborhood Upzoning and Racial Displacement: A Potential Target for Disparate Impact Litigation*, 21 U. PA. J. L. & SOC. CHANGE 267, 276 (2018).
[163] *Cf.* Collins and de Goede, *supra* note __ at 18 (."[l]uxury real estate … [increases] land values and housing costs")
[164] *See supra* note ___ and accompanying text.
[165] *See* Gregory D. Morrow, T*he Homeowner Revolution: Democracy, Land Use and the Los Angeles Slow-Growth Movement, 1965-92*, at 3, at http://escholarship.org/uc/item/6k64g20f#page-1.
[166] *Id.* at 3, 19 n. 2.
[167] *See* AEI Housing Center, Land and House Values, at https://www.aei.org/wp-content/uploads/2018/10/msa_graph_value_2018q2.pdf

rents have risen by 55 percent (adjusted for inflation), more than four times the increase in median renter income.[168]

Similarly, New York City has downzoned so aggressively that 40 percent of Manhattan's buildings could not be built under the current zoning code, [169] while San Francisco's 1978 downzoning decreased the number of housing units that could be built by 180,000 (roughly one-third of the city's housing supply).[170] And yet in both markets, rents have exploded[171] and land values have increased at least sevenfold over the past 35 years[172] - far more rapidly than inflation.[173]

The above discussion assumes that upzoning in fact increases housing supply, and that downzoning reduces housing supply. One might argue that a recent study by Yonah Freemark suggests otherwise.[174] Freemark examined the results of some upzonings in Chicago between 2013 and 2015, and found an increase in land values in the upzoned areas, but no increase in new

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168 *See* Andrew Woo, *How Have Rents Changed Since 1960?*, at https://www.apartmentlist.com/rentonomics/rent-growth-since-1960.

169 See Quoctrung Bai et. al., *40 Percent of the Buildings in Manhattan Could Not Be Built Today*, New York Times, May 20, 2016, at https://www.nytimes.com/interactive/2016/05/19/upshot/forty-percent-of-manhattans-buildings-could-not-be-built-today.html

170 *See* Hunter Oatsman-Stanford, *The Bad Design That Created One of America's Worst Housing Crises*, FAST COMPANY, Sept. 28, 2018, at https://www.fastcompany.com/90242388/the-bad-design-that-created-one-of-americas-worst-housing-crises

171 *See supra* notes _ and accompanying text.

172 *See* AEI Housing Center, *supra* note __ (between 1984 and the present, land prices rose at levels roughly comparable to housing prices- tenfold in New York and sevenfold in San Francisco) ("Land and House Values" chart).

173 *See* U.S. Inflation Calculator, *Consumer Price Index Data from 1913 to 2019*, at https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/ (consumer prices generally have risen by 2.5 times since 1984).

174 Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Home Construction,* at https://urbanaffairsreview.com/2019/03/29/upzoning-chicago-impacts-of-a-zoning-reform-on-property-values-and-housing-construction/

housing permits.[175] Some commentators interpreted this study as a broad finding that upzoning does not increase reduce housing prices.[176]

However, Freemark himself rejects this conclusion, pointing out that "development is a lengthy process; it takes time to move from a policy like zoning to actually getting housing units on the ground."[177] In addition to complying with zoning, a landowner who wishes to build new housing must find a site for the housing, design and finance the housing, and navigate legal obstacles other than the pre-upzoning code.[178] In addition, Chicago's zoning system gives council members veto power over new development.[179] Thus, the fact that Chicago's upzoning has not yet led to new housing does not prove that it will not lead to longer-run increases in housing supply.

In fact, at least one study suggests that reducing regulations generally reduces land costs. A study in the Journal of Urban Economics utilized data from 110 cities in metropolitan San Francisco to analyze the relationship between land use regulations and land prices.[180] The study measured regulatory burden as the number of independent reviews required for a building permit; for example, a city that requires a review by a city council, an architectural review board and a planning commission is more burdensome than one that merely requires a city council vote.[181] The authors found that "the stringency of regulations is positively related to the price of

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175 *Id.*
176 *See* Florida, *supra* note __.
177 *See* Freemark, *supra* note __.
178 *See* Alex Baca and Hannah Lebovits, *No, Zoning Reform Isn't Magic. But It's Crucial.*, CITYLAB, Feb. 5, 2019, at https://www.citylab.com/perspective/2019/02/zoning-reform-house-costs-yonah-freemark-research/582034/
179 *Id. (*upzoning added a bonus to particular underlying zones, but the local alderman can change those zones to avoid the bonus") (citation omitted)
180 *See* Nils Kok, Paavo Monkkonen, and John M. Quigley, *Land use regulations and the value of land and housing: An intra-metropolitan analysis*, 81 JOURNAL OF URBAN ECONOMICS 136, 137 (2014), at https://escholarship.org/content/qt04r462fk/qt04r462fk.pdf .
181 *Id.* at 144.

vacant land, even when controlling for locational, geographic and demographic characteristics of the land use."[182]

III. Other Externalities

Opponents of new high-end condos argue that in addition to raising land and housing costs, such buildings lead to increased inequality, degraded street life, money laundering, and ecological degradation. Each of these questions will be addressed in turn.

A. Inequality

The IPS report claims that because high-end condos will attract the rich, expensive new housing will "exacerbate [cities'] already grotesque inequality of income, wealth and opportunity."[183] Some central cities are already more unequal than their suburbs,[184] and if a city attracts new rich people, this alleged problem will get worse.

This argument, of course, contradicts the claim that these condos will become unoccupied "ghost apartments."[185] If rich investors buy apartments in city X but never actually live there, they will not affect inequality within the city; by contrast, if the investors move to the city, they will make the city's population more unequal.

More importantly, inequality-based attacks on housing are based on the assumption that if new housing is not built in a city, rich people will not come there. As noted above, out-of-town investors purchase older housing as well as newer housing. For example, although Paris limits new building in its historic core, it has as many out-of-town buyers as other major cities.[186]

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[182] *Id.* The authors noted that an earlier study of Florida cities had yielded contrary results. *Id.* at 145. The authors suggested that in California, there is a "lack of close substitutes between jurisdictions", *id.*, while in Florida, "cities are close substitutes for one another." *Id.* at 138.
[183] Collins and de Goede, *supra* note __ at 3.
[184] Id. at 8 (citing Boston as example).
[185] *See supra* note ___ and accompanying text.
[186] *See supra* note ___ and accompanying text.

And in Manhattan, the number of housing units used for second homes apparently exceeds the number of new housing units.[187] Thus, it seems that if a city excludes new housing, it will not necessarily exclude wealthy investors.

Finally, it is not necessarily the case that cities are better off without rich households. Wealthy residents increase a city's tax base, which means that more services are available for everyone.[188] And wealthy people who live and shop in a city create demand for goods and services, thus creating jobs for local residents of all social classes.[189]

A related argument is that if wealthy people reside in a city, they will have less of a stake in public services than middle-class and poor residents, and thus will "use their considerable clout to reduce taxes and expenditures on public services."[190] But cities with expensive real estate tend to have *more* generous public services than other cities. .

TABLE 1 The Superrich, Taxes and Spending

	Number of houses listed at over $5 million (per 1 million city residents)[191]	Central city per capita spending[192]
New York	184	8690
Los Angeles	114	2132
Boston	84	4180

[187] *See supra* note ___ and accompanying text.
[188] In fact, the IPS report implicitly admits this is the case by calling for additional taxes upon high-end real estate, and suggesting that the revenue from those taxes should be used to subsidize housing. *Id.* at 4.
[189] Again, the IPS report implicitly admits this by noting that wealthy families who live in Boston might "privatize their needs- in the form of private schools, private club and recreational facilities, and other services." *Id.* at 19. Obviously, all of these services employ local residents.
[190] *Id.*
[191] To find the number of high-end residences, I searched at Zillow.com (on April 11, 2019). To calculate the number of million-dollar residences per million residents I used municipal population data at JANSSEN, supra note __, at 614.
[192] *See* Ballotpedia, *Analysis of spending in America's largest cities*, at https://ballotpedia.org/Analysis_of_spending_in_America%27s_largest_cities

San Francisco	83	9433
San Diego	66	2256
Washington, DC	45	15,624
Atlanta	39	1190
Austin	31	3953
Dallas	30	2333
Houston	28	2476
Seattle	24	6744
Chicago	15	2704
Denver	10	2294
Phoenix	7	2333
Philadelphia	7	2903
Minneapolis	4	2999
San Antonio	3	1714
San Jose	1	3004
Detroit	0	3775

Table 1 above shows that cities in regions with more high-end real estate actually spend *more* on public services than less affluent cities. In the five cities with over 50 $5-million properties per 1 million people, three spend more than $4000 per resident. By contrast, among the six cities with fewer than 10 such properties per 1 million people, not one spends that much.

B. Impaired Street Life

One common argument against high-rise housing (especially housing for the rich, which tends to have more amenities than other housing)[193] is that high-rise housing reduces street life and thus makes cities duller.[194] Some commentators claim that residents of the most expensive high-rises are unlikely to go out into the streets, because if the high-rise "include[s] a restaurant, market, gym and other amenities [residents] never have to go outside."[195]

How can one prove or disprove such a sweeping claim? Walkscore.com rates neighborhoods based on the number of restaurants, grocery stores and other amenities within walking distance. If expensive high-rises were bad for street life, their neighborhoods would have mediocre Walkscores, because if their residents did not walk outside to shop, the nearby shops would not have enough customers to survive. But one of the most expensive high-rises in New York City, 432 Park Avenue (where most units sell for over $10 million)[196] has a Walkscore of 98 out of a possible 100.[197] There are four restaurants, four coffee shops, and fifteen grocery stores within half a mile of 432 Park.[198] 432 Park, of course, may be aberrant because of the high walkability of New York City generally.[199] But the most expensive high-rises in Boston also have high Walkscores. Mandarin Oriental, which the IPS report

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[193] *Cf.* Collins and de Goede, *supra* note __ at 32.

[194] Bloomingrock, *7 Reasons Why High-Rises Kill Livability*, Smartcitiesdive at https://www.smartcitiesdive.com/ex/sustainablecitiescollective/7-reasons-why-high-rises-kill-livability/561536/ (quoting claim by urban planner that high-rises create a city that is "detached from street life"). I note that most of the "7 Reasons" are reiterations of the suggestion that high-rise residents are shut-ins. For example, its 7th reason is that high-rises are bad for health because "high-rises keep children and the elderly from getting the exercise the extra effort it takes to get outside encourages them to stay at home and flip on the TV. " *Id.*

[195] *Id.*

[196] *See supra* note ___ and accompanying text.

[197] *See* Walkscore*, 432 Park Avenue*, at https://www.walkscore.com/score/432-park-ave-new-york-ny-10022

[198] *Id.*

[199] *See* Walkscore, *Living in New York*, at https://www.walkscore.com/NY/New_York (city as a whole has Walkscore of 89).

characterizes as a "wealth storage unit",[200] has a Walkscore of 100[201] Millenium Tower, the largest high-rise profiled in the IPS report,[202] has a Walkscore of 96.[203] If any high-rise could reduce street life, it would be a behemoth such as the 443-unit Millenium Tower[204]- yet there are eight restaurants and four coffee shops within half a mile of that building.[205]

C. Money Laundering

The IPS report notes that some of Boston's most expensive high-rise condominiums are being purchased through Limited Liability Companies (LLCs),[206] and suggests that LLC purchases are especially likely to involve money laundering.[207] An LLC is a legal entity that is similar to both a corporation and a partnership: its members have "limited liability as if they were shareholders of a corporation [but are]… a partnership are tax purposes."[208] LLC purchasers are anonymous: if real estate is purchased through a LLC, the name of the LLC is public but the LLC members' names are not.[209] This feature makes LLCs popular for persons who may not want to make their address or their wealth publicly known- for example, a celebrity

[200] *See* Collins and de Goede, *supra* note __ at 10.
[201] *See* Mandarin Oriental Boston, at https://www.mandarinoriental.com/boston/back-bay/luxury-hotel (address is 776 Boylston), Walkscore, *776 Boylston*, at https://www.walkscore.com/score/776-boylston-st-boston-ma-02199 (Walkscore of this address is 100).
[202] *See* Collins and de Goede, *supra* note __ at 10 (this building has 443 units, more than any other building listed).
[203] See Millenium Tower Boston Location, at http://www.millenniumtowersboston.com/#location (location is 1 Franklin Street); Walkscore, *1 Franklin Street,* at https://www.walkscore.com/score/1-franklin-st-boston-ma-02110.
[204] *See supra* note __.
[205] *See* Walkscore, *supra* note __.
[206] *See* Collins and de Goede, *supra* note __ at 25-28.
[207] *Id.* at 25-26.
[208] Gary McPherson, *Floating on a Sea of Funny Money: An Analysis of Money Laundering Through Miami Real Estate and the Government's Attempts to Stop It*, 26 U. MIAMI L. BUS. L. REV. 159, 164 (2017) (also adding that LLCs popular in real estate transactions).
[209] *Id*. at 165.

who fears "the whole world potentially camping out on [his or her] front step"[210] or a foreign family who fears that public disclosure of their wealth may make them a target for kidnapping.[211]

Unfortunately, the anonymity of LLCs also facilitates money laundering- that is, the concealment of income in order to facilitate tax evasion or avoid prosecution for other crimes.[212] Criminals have found that real estate transactions through LLCs are an effective way to hide money from criminal activity, because the real estate industry is less heavily regulated than banks.[213] For example, Alvaro Lopez Tardon, a Spanish drug dealer, purchased 13 condos and a fleet of luxury cars with $20 million of profits from his drug smuggling operation.[214]

In response to this problem, the Treasury Department has imposed a variety of anti-laundering regulations in recent years. For example, the government requires title insurance companies in some cities to inform the government about the identity of purchasers in high-cost real estate transactions.[215] The government also requires that any LLC with an American bank account must establish the identity of persons owning more than 25 percent of the LLC.[216]

The existence of money laundering, however, is not a reason to restrict real estate transactions. Criminals can launder money in many other ways: for example, Tardon laundered

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[210] *Id*.
[211] *Id*. (quoting accountant's statement that "You see a lot of safety concerns with people from Brazil or Argentina… They don't want people from their home country to go and look on the Internet and see that they paid a lot of money for a house and become a target for kidnapping").
[212] *Id*. at 167. *Cf*. Alessandra Dagirmanjian, *Laundering the Art Market: A Proposal for Regulating Money Laundering Through Art In The United States*, 29 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 687, 693-94 (2019) (describing money laundering techniques in more detail).
[213] *See* McPherson*, supra* note __, at 167. For example, banks must file a report with the Treasury Department if the suspect that a client is depositing or transferring money related to criminal activities, while real estate agents have no such requirement. *Id.*
[214] *Id*. at 172. In 2014, Tardon was sentenced to 150 years in prison for money laundering. *Id*. at 172-73.
[215] *Id*. at 175-76.
[216] *See* Collins and de Goede, *supra* note __ at 26 (questioning whether these regulations will be effective because not all criminals use U.S. bank accounts, and because a business could break ownership into five 20 percent shares in order to avoid disclosure); McPherson, *supra* note __, at 177-93 (describing other loopholes in regulations).

his funds by purchasing luxury cars.[217] The art market is also highly suspectible to money laundering, because art buyers can easily maintain anonymity,[218] sellers of art often sell through intermediaries and thus do not know each other's identities, and the intermediaries do not maintain uniform standards for recordkeeping.[219] But surely no reasonable legislator would ban the purchase of cars or art in order to prevent money laundering!

Indeed, even commentators most concerned over money laundering do not use this fact to justify restrictions on real estate supply. For example, the relevant section of the IPS report merely endorses public disclosure of "beneficial owners" of real estate- that is, the persons who actually invest in an LLC or a similar entity.[220] It is not clear, however, whether such disclosure really matters very much. In March 2016, the Treasury Department required the disclosure of beneficial owners in all-cash transactions over $1 million in Miami,[221] because large-scale cash transactions are more likely than other transactions to involve illegal activity.[222] As a result, the number of cash sales in Miami plunged by 95 percent between March 2016 and July 2018.[223] Yet housing prices in metro Miami rose by 22 percent during this period,[224] about the same as in other parts of urban Florida.[225] This fact might mean that criminals found other ways of

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[217] *Id.* at 172.
[218] *See* Dagirmanjian, *supra* note __ at 706.
[219] *Id.* at 706, 708-11 (adding that uncertainty of art's value may also facilitate laundering).
[220] *See* Collins and de Goede, *supra* note __ at 26.
[221] *Id.* at 39.
[222] See United States v. Hall, 434 F.3d 42, 52 (1st Cir. 2006) ("Because cash is a frequent by-product of many kinds of illegal activity…. [cash transactions are] probative of money laundering") (citation omitted).
[223] *Id. See also* Nicholas Nehemas and Rene Rodrieguez, *How dirty is Miami real estate? Secret home deals dried up when feds started watching*, Miami Herald, July 20, 2018, at https://www.miamiherald.com/news/business/real-estate-news/article213797269.html
[224] See National Association of Home Builders, *Housing Opportunity Index*, at https://www.nahb.org/research/housing-economics/housing-indexes/housing-opportunity-index.aspx (median home price rose from $246,000 in the second quarter of 2016 to $300,000 in the second quarter of 2018) ("History by Metropolitan Area" table).
[225] Id. (during same period, prices in Tampa rose from $166,000 to $201,000, and Orlando prices rose from $197,000 to $236,000).

laundering money,[226] or it might mean that sales related to money laundering did not add materially to housing demand, and are thus not a significant factor in the real estate market as a whole.

The extent of money laundering in real estate is unclear. However, it is clear that money laundering is not limited to real estate. And the weak impact of Miami's reforms upon housing prices suggests that money laundering may not involve a significant amount of housing. Thus, the existence of money laundering may not be a reason to impede real estate construction.

D. Are Tall Buildings "Energy Hogs"?

The IPS report claims that luxury buildings are "energy hogs, requiring the consumption of new fossil fuel infrastructure."[227] This argument is apparently based on the fact that high-rise properties use about 10 percent more energy per square foot than low-rise properties.[228] This is the case because high-rises require energy-consuming elevators and artificial ventilation, and have more exposure to wind and sun (which means that more resources must be invested in artificial heating and cooling).[229]

But this statistic does not necessarily suggest that cities should discourage high-rises, for two reasons. First, the upper-class buyers of the most expensive condos are not necessarily going to choose low-rise apartments if high-rises are unavailable. Instead, the very rich might choose to live in mansions, such as Microsoft co-founder Bill Gates's 66,000-square-foot

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[226] *See* McPherson, *supra* note ___, at 178-79 (pointing out that disclosure rules did not cover wire transfers, and that sophisticated money launderers can hide identities in wire transfer transactions).
[227] *See* Collins and de Goede, *supra* note __ at 26.
[228] Fannie Mae, *Transforming Multifamily Housing: Fannie Mae's Green Initiative and Energy Star for Multifamily* 13, at https://multifamily.fanniemae.com/sites/g/files/koqyhd161/files/migrated-files/content/fact_sheet/energy-star-for-multifamily.pdf "Fannie Mae" is the Federal National Mortgage Association, a federally sponsored enterprise that guarantees mortgages. *See* Securities and Exchange Commission v. Goldstone, 301 F.R.D. 593, 600 n. 6 (D. New Mexico 2014) (describing Fannie Mae).
[229] *See* Jim Hanford, *High-rises are energy hogs, not climate solutions*, Nov. 28, 2016, at https://crosscut.com/2016/11/high-rises-run-counter-to-the-citys-environmental-goals

mansion,[230]which is far bigger than apartments in even the most grandiose high-rise.[231] Single-family houses generally use far more energy than apartments,[232] and bigger houses use more energy than smaller houses.[233] So even if a high-rise uses more energy per square foot than a house, a wealthy household will consume more energy by living in a large mansion than by living in an expensive condominium.

Second, there is considerable variation among high-rises. Federal data shows that the average high-rise property uses 137 kBtu[234] per square foot, while the average low-rise uses 125.[235] But some high-rises use as many as 400, while others use well below 100.[236] Some high-rises can be retrofitted to become more efficient; for example, recent improvements to New York's Empire State Building may reduce energy use by 38 percent.[237]

Because of these complexities, an attack on high-rises is unlikely to reduce energy

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[230] See Ilyce Glink, 10 of the world's most expensive homes, CBS News, Nov. 22, 2014, at https://www.cbsnews.com/media/10-of-the-worlds-most-expensive-homes/

[231] For example, in New York's 432 Park Avenue (where most units sell for over $10 million), the largest apartment listed for sale in recent years has 8255 square feet- about one-eighth the size of Gates's house. *See* 432 Park, *supra* note __.

[232] *See* U.S. Energy Information Administration, *Apartments in buildings with 5 or more units use less energy than other home types*, at https://www.eia.gov/todayinenergy/detail.php?id=11731 (single-family homes built in 21st century use over 100 million Btu of energy per household, more than twice that of newer apartments)

[233] *See Bigger Homes: An Energy Choice We'll Be Living With For A Long Time*, National Geographic, June 18, 2012, at https://www.nationalgeographic.com/environment/great-energy-challenge/2012/bigger-houses-an-energy-choice-well-be-living-with-for-a-long-time/ ("Our homes and appliances are more efficient — the Department of Energy says homes built between 2000 and 2005 use 14 percent less energy per square foot than older homes. But since they've also gotten bigger, overall residential energy use is still projected to rise.")

[234] KBtu means kilo-British Thermal Units, a measure of energy use. *See* Timothy R. Sloane, *Green Beer: Incentivizing Sustainability in California's Brewing Industry*, 5 GOLDEN GATE U. ENVTL. L.J. 481, 490 (2012).

[235] *See* Fannie Mae*, supra* note __, at 13.

[236] *Id.*

[237] *See* Alyssa Danigelis, *NYC's Empire State Building Takes Energy Efficiency to New Heights, Energy Manager Today*, Sept. 25, 2017, at https://multifamily.fanniemae.com/sites/g/files/koqyhd161/files/migrated-files/content/fact_sheet/energy-star-for-multifamily.pdf. *Cf.* Kheir Al-Kodmany, *Green Retrofitting Skyscrapers: A Review*, at https://www.mdpi.com/2075-5309/4/4/683 (a more technical discussion).

consumption. It could be argued, however, that cities should force condominiums to retrofit by limiting the energy use of these buildings.[238] But if cities regulate high-rises without regulating the energy use of single-family houses, they risk encouraging the rich to move to space-consuming mansions that might use even more energy than even the most gilded high-rise.

IV. Conclusion

Most economic scholarship supports the proposition that more housing construction leads to lower housing prices. Opponents of this view argue that if a city allows more high-end housing, it will attract rich foreign investors, who will then use condominiums as an investment rather than expanding housing supply by renting them out to natives. If this was the case, new condominium buildings would become "ghost buildings" owned by out-of-town investors and occupied by no one. As a result, these buildings would increase demand without increasing housing supply, and thus would increase, rather than reducing, housing costs.

This "ghost building" argument has several flaws. First, the sort of ultra-luxury housing that is unaffordable to wealthy local residents is only a small percentage of the supply of new housing. Second, even the most expensive buildings have some local residents, which means that the construction of such buildings on balance increases the local supply of housing. Third, many (if not most) of the condos purchased by wealthy foreigners are rented out to local residents, which means that these units too add to local housing supply. Fourth, the "ghost building" argument assumes that out-of-town investors will not invade a city's housing market if new buildings are *not* built. However, some evidence suggests that these investors will purchase

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[238] *See* Collins and de Goede, *supra* note __ at 36 (suggesting that condominiums should be "Net-Zero-Carbon").

old housing units as well as new ones- which means that new housing does not increase demand to the extent necessary for the "ghost building" argument to be correct.

A related argument against new luxury housing is that such housing increases housing costs by increasing land costs. However, higher land costs need not lead to higher housing costs if landowners are allowed to build more housing units per piece of land.

Finally, expensive new housing might lead to externalities unrelated to housing costs, such as inequality, money laundering or higher energy use from tall buildings. Some of these externalities are simply unrelated to new housing: for example, the claim that new housing might lead to inequality presupposes that the very rich have no interest in older housing- a claim that is not completely correct. Money laundering and energy use are more significant problems, but can be addressed through policies that do not reduce housing supply.