

TO CONTROL GENTRIFICATION: ANTI-DISPLACEMENT ZONING AND PLANNING FOR STABLE RESIDENTIAL DISTRICTS

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INTRODUCTION

Displacement from home and neighborhood can be a shattering experience. At worst it leads to homelessness, at best it impairs a sense of community. Public policy should, by general agreement, minimize displacement. Yet a variety of public policies, particularly those concerned with gentrification, seem to foster it.

Section I of this paper provides a very brief account of the nature and causes of gentrification and displacement, including their relationship to abandonment.¹ This section also examines public decision making and illustrates the range of public decisions that are made in the absence of any comprehensive and explicit policy for dealing with displacement.

Section II argues the need for a comprehensive and planned approach to the problem. Section III proposes one broad way to implement a policy to combat displacement: Residential Stability or Anti-displacement Zoning, in the form of a set of floating zones, which may be used in various areas threatened by displacement in accordance with their specific local needs but which are part of a city-wide policy to minimize displacement. Section IV catalogues a variety of other measures that might be used, separately or together, to implement an anti-displacement goal. The focus throughout is on the possibilities for municipal action, an unfortunate limitation, perhaps, but one consistent with current political realities.

A Model Anti-displacement Residential Stability Zoning Ordinance is set forth in the Appendix.

I

THE PROBLEM

The problem of displacement in New York City is severe. Displacement occurs at both ends of the spectrum of spatial change in the city: abandonment and gentrification. There is reason to believe that as many as 140,000

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1. A more theoretical discussion may be found in Marcuse, *Gentrification, Abandonment, and Displacement: Their Linkages in New York City*, 28 *Wash. U.J. Urb. & Contemp. L.* 195 (1985).

households a year are displaced by these two causes combined in New York.² Combined, they threaten to reduce the supply of housing available for moderate- and low-income people in the city by driving up rents and reducing the availability of affordable housing.

The factors that have led to the present situation can be summarized briefly. They include: the shift of the economy from manufacturing to services; the concentration of control and management; the multiplying international linkages of business; the proportionately increasing use of managerial, professional, and technical personnel and the decreasing reliance on unskilled manufacturing and service workers; the increasing economic polarization of the population; the expanded needs of business for downtown commercial and office space; and the tendency of the government and the real estate industry to follow and accentuate the results of these processes at the residential and neighborhood levels. These trends are experienced in urban centers nationwide and are likely to continue in the foreseeable future.

There is, then, no reason to expect a change in the underlying dynamics producing housing shortages. However, the pace of gentrification will vary. Frank DeGiovanni, in his careful study of six cities found "nationwide macroeconomic changes"³ decisive in determining the extent of activity at any given time. He stated that, "Macroeconomic changes should not, however, be seen as synonymous with 'prosperity' or 'recession'."⁴ Rather, prosperity at the upper end and depression at the lower end of the economic spectrum are the key factors. These are only ambiguously captured by measures of national economic growth, which implicitly assume that both ends of the economic spectrum will prosper or suffer together. The historic facts contradict this. Indeed, today we are witnessing a period of high business profits and substantial unemployment, exactly that combination which theory would lead us to believe would most exacerbate displacement.

At the same time, the willingness of government to comply with the wishes and preferences of those most decisive in the private market has never been greater. Public expenditures in areas of widespread abandonment are being reduced, while they are being increased in areas of gentrification.

At budget hearing after budget hearing, the most hotly debated issues concern appropriate distribution of public and private resources among urban neighborhoods, and the related question of the appropriate policy towards gentrification. A sound resolution would hinge on the evaluation of the long-term effects of abandonment and gentrification, and the establishment of a

2. There is evidence that between 31,000 and 60,000 households are lost to abandonment each year, and that between 10,000 and 40,000 are lost to gentrification. See Marcuse, *supra* note 1, at 212, 216.

3. DeGiovanni, *Patterns of Change in Housing Market Activity in Revitalizing Neighborhoods*, 49 *J. Am. Plan. A.* 22, 33 (1983).

4. *Id.* DeGiovanni is correct to the extent that these terms are defined by gross national product growth rates, personal income, or other measures undifferentiated by group or class.

comprehensive program to deal with the special effects of governmental policies.

Both residential and commercial rents increase sharply with rapid gentrification. A recent New York City Department of City Planning study⁵ attributes much of the stability of rents found on the largely residential Upper West Side—where gentrification is the dominant phenomenon—to rent regulation, and points out the benefits in terms of preserving diversity of occupancy; but it criticizes proposals for commercial rent control harshly.

The case for “planned shrinkage” or “triage”⁶ continues to be heard, if muted, in public discussion at a time of budget surplus. Should budget deficits reappear, or the conflicts among priorities sharpen, the argument against public investment in poor neighborhoods and in favor of the stimulation of private investment in prospering neighborhoods will resurface.

Just as city policies may aggravate the problems of displacement, they can also reduce or even eliminate them. Local government has an inherently powerful regulatory role in the area of land use, which the courts have increasingly recognized as a legitimate method of furthering the public welfare.⁷ If the city’s objective is to improve the worst housing conditions, the basic concepts are not difficult to lay out. They would run as follows:

(1) Reduce the polarization of the economy and the neighborhood conditions that flow from it. Economic policies are clearly essential for this result, but housing policies can contribute. Neighborhoods in danger of either abandonment or gentrification must be given control of their own destinies;

(2) Make adequate resources for that purpose available to neighborhood groups.⁸ Public policies dealing with housing (including the control of private actions, particularly speculative ones) must be designed to eliminate displacement in all its forms.

(3) Finally, identify approaches that will reduce displacement or improve

5. Department of City Planning, City of New York, Private Reinvestment & Neighborhood Change 33, 85 (1984).

6. See Staff of Subcomm. on the City of the House Comm. on Banking, Fin. and Urban Affairs, 95th Cong., 1st Sess., Report on How Cities Can Grow Old Gracefully 47 (Comm. Print 1977) (R. Starr, *The Changing Life of Cities*); id at 67 (W.R. Thompson, *Land Management Strategies for Central City Depopulation*). Marcuse, *Triage as Urban Policy*, 12 Soc. Pol’y 33 (1982).

7. See *Southern Burlington County NAACP v. Mt. Laurel Township*, 92 N.J. 158, 456 A.2d 390 (1983) [hereinafter *Mt. Laurel II*].

8. Such resources may include: Pratt Inst. Center for Community and Envtl. Dev. and Metropolitan Action Center at Queens College, CUNY, *Inclusionary Zoning and Housing Trust Fund: A Proposal for Equitable Development in New York City* (Dec. 1983) [hereinafter *Inclusionary Zoning*]; P. Marcuse, *Report on Study of Displacement in New York City with Preliminary Conclusions and Recommendations* (1983) (prepared for the Community Service Society of New York) (unpublished). One may also want to investigate the local initiatives of the Association for Neighborhood and Housing Development in New York City and the plans of a number of thoughtful community groups in East Harlem, the Lower East Side, Brooklyn, the South Bronx, and Clinton. The following sections of this paper discuss some of these ideas in detail.

housing for those most in need, and reject those that do neither. Gentrification does not provide the "cure" for abandonment. The private market will encourage gentrification in only a limited number of neighborhoods where there has been abandonment (only pockets and perhaps some borders, but certainly not centers, of abandonment).⁹ Even if gentrification were an assured successor to abandonment, the cure would be as bad as the disease: gentrification is as inherently linked with the displacement of lower-income households as is abandonment. Public resources invested to "up-grade" a neighborhood (gentrify it) will not help existing lower-income residents without specific provisions designed to achieve that end.¹⁰

II

THE NEED FOR A COMPREHENSIVE APPROACH

We must take a comprehensive look at gentrification if we are to deal effectively with the displacement arising from it. Gentrification has real benefits for a city: improvements in the physical quality of its housing stock, attraction of higher-income residents and businesses, and an increase in the tax base. However, displacement has serious costs for a city as well: residents are dislocated at substantial personal cost, neighborhoods are disrupted, and existing infrastructure and services are inefficiently used.

Unfortunately the solution to the problems posed by gentrification is not simply a matter of weighing the costs against the benefits, because those paying the costs and those reaping the benefits are different classes of people.

The recommendations that follow address the problem of displacement created by gentrification. Some of the procedures suggested are only applicable where gentrification co-exists with abandonment, as it does in New York City. This situation has been defined elsewhere as one of concentration, as opposed to one of expansion, as found, for instance, in Santa Monica, where issues of in-migration and absolute growth also need to be addressed.¹¹

The general policy approach that follows calls for the public to control and channel development pressures into socially constructive roles, rather than attempting either to curtail them (as may be necessary in Santa Monica) or to allow them free and unbridled rein (as is largely the case now in New York City). A plan to distribute residential development, according to a publicly agreed upon concept of a city's future configuration can, with only a

9. For a discussion of pockets, borders, and centers of abandonment, see Marcuse, *supra* note 1, at 204.

10. See Robbins, *Lower East Side Disputes City Plans for First Street Building, City Limits*, Aug.-Sept. 1983, at 7. The recent effort to use city-owned buildings in the Lower East Side for "artists' housing," heavily subsidized by New York City, is an apparent example of such a policy. Artists were certainly perceived by the community, and perhaps intended by many in city government, to be the opening wedge in introducing a new higher-status demographic group into a community suffering for years from abandonment, but potentially well located for gentrification.

11. Marcuse, *supra* note 1, at 230.

limited and efficient expenditure of public funds, achieve the objectives of secure, affordable, and decent residences for all in stable and democratic neighborhoods.

There are two key requirements for the achievement of this goal:

(1) In areas of abandonment, public investment must be increased and public resources concentrated for the immediate benefit of residents already living in these communities, and for reduction of the outward pressure from these areas. Thus the pressure towards gentrification elsewhere will also be reduced. This policy is the exact opposite of that of triage;

(2) In areas of gentrification, carefully developed and detailed procedures must be adopted to determine the extent and location of permissible gentrification, with provisions precluding displacement and ensuring that the benefits of gentrification inure also to those most in need of protection and assistance.

These two policies should not only improve the residential quality of life for households in cities like New York, but should also contribute to over-all economic growth. Three of the chief factors given by businesses, in almost every study of the benefits and detriments of locating in New York City, concern the cost of housing, the fear of crime and vandalism, and the breakdown of municipal services.¹² The policies outlined here deal directly with such concerns, and promise to contribute to the city's economic and employment-generating capacity as well as its residential quality.

How might this goal be achieved? What follows is only an outline of some possibilities. There are many other implementation strategies that could be devised, many of which might be far superior to this one. My purpose here is only to show that displacement can be prevented with the resources now available in most cities. With this established, our discussion can at least be advanced to a consideration of the "best" methods to prevent displacement rather than "whether" it can be prevented at all.

III

ANTI-DISPLACEMENT ZONING

"Anti-displacement" is a negative concept. If displacement is to be avoided, the policy objective must be a positive one; the provision and maintenance of decent, secure, and affordable housing in stable and non-discriminatory neighborhoods for all city residents. The term "anti-displacement" is nevertheless convenient to describe this full and positive objective in the discussion that follows.

The key element of a comprehensive anti-displacement plan for New York could be the construction of either general zones or special districts for the handling of residential development.¹³ Special districts, particularly in

12. See Staff of Subcomm. on Fiscal and Intergovernmental Policy of the Joint Economic Comm., 95th Cong., 2d Sess., Study on Central City Businesses—Plans and Problems (Joint Comm. Print 1977).

13. Little doubt exists as to the legality of zoning and planning to achieve the goals dis-

residential areas, are highly commended. The proposal of the Joint Planning Council for the Lower East Side—to establish a Special Community Preservation District there, with a Local Enforcement Unit—adopts this approach.¹⁴ The disadvantage of the special district approach is that it is, indeed, for “special” districts: each situation requires a special ordinance. On the other hand, it is hard to conceive of a single zone that could adequately handle all of the different situations that might arise in a large city.

The “floating zone” concept envisions the creation of “Anti-displacement Zones,” which combine a single zoning text applicable anywhere in the city with the flexibility of treatment and selectivity of application that different local community situations may require. I adopt this approach here, and in the Model Ordinance in the Appendix.

I suggest five anti-displacement floating zones below which one may think of as ranging from “Discouragement Zones” at the one extreme, where gentrification may be most likely to lead to displacement, to “Encouragement Zones” at the other extreme, where most forms of development would be strongly supported. The provision for different zoning types within a single ordinance should also help to clarify that the success of each is dependent on the existence of the others. In none of the zones would displacement be allowed without the guarantee of adequate relocation, and in none would a decrease in the amount of housing available at affordable rents to low- and moderate-income households be permitted.

Five types of anti-displacement zones might be visualized (examples are drawn from New York City neighborhoods).

1. *Mature Development Zones*

Mature development zones (i.e., parts of the Upper West Side, Clinton, Chelsea or Park Slope) are areas in which essentially no new development or rehabilitation which would increase rents or prices or displace any households would be allowed. These would designate areas already significantly developed, in which development pressures are strong but where an existing integrated community wishes to preserve its character and democratic composition. In effect, only housing improvement for those already in a unit would be allowed, and strong protections against harassment or any measures designed to precipitate displacement from a unit would be provided.

2. *Conditional Development Zones*

Conditional development zones (i.e., parts of the Lower East Side, Manhattan Valley, and the southern edge of Harlem) are areas in which some de-

cussed here. *Mt. Laurel II*, 92 N.J. 158, 456 A.2d 390; *Berenson v. Town of New Castle*, 38 N.Y.2d 102, 341 N.E.2d 236, 378 N.Y.S.2d 672 (1975); *Udell v. Haas*, 21 N.Y.2d 463, 469, 235 N.E.2d 897, 902, 288 N.Y.S.2d 888, 893 (1968).

14. Lower East Side Planning Council, *This Land Is Ours: A Strategy for the Preservation and Development of Affordable Housing on the Lower East Side* (Mar. 1984).

velopment would be allowed, but only if no displacement will result on designated sites, and only if the balance of the community will be maintained; that is, only if suitable lower-rent units are provided with each higher-rent unit developed or created through rehabilitation. It might also be appropriate to refine zoning definitions to specify the type of residential use to which a unit can be put. The Special Clinton District, one of New York City's Special Purposes Districts, uses this approach in part, in requiring special permits for certain types of activities and conditioning the grant of such permits on community-relevant factors.¹⁵

3. *Limited Development Zones*

Limited development zones (i.e., Avenues C and D in the Lower East Side, the Mt. Morris Park area, and Highbridge, perhaps) are areas in which land is available for development and vacant housing can be rehabilitated. New development or rehabilitation would be allowed as of right in accordance with existing zoning provisions, but with a ceiling on the total permitted. When that ceiling is reached, the zone automatically shifts to a Conditional Development Zone.

4. *Expansion Zones*

Expansion zones (i.e., most of the South Bronx and major parts of Brooklyn) are areas in which development would be encouraged, as of right, and where infrastructure investment and improvement by the city would be concentrated. These zones would receive priority access to city subsidies, tax abatements, etc.

5. *Inclusionary New Construction Zones*

Inclusionary new construction zones (Staten Island or parts of Queens) are areas in which development would be permitted on vacant land where there is no threat of displacement, pursuant to the full gamut of inclusionary housing devices by now well known and discussed, for instance, in the *Mt. Laurel II* court decision.¹⁶

The right combination of local and city-wide decision making is crucial if this approach is to work. Local governments must make the initial decisions: only the participation of community residents can ensure that the future of the community comports with community desires, and only at the local level can the type of fine-tuned planning necessary for the definition of these zones take place. At the same time, certain guarantees must be included to ensure that the sum total of such local zoning is not exclusionary, and that it offers a fair opportunity for city residents to obtain the housing they want or need.

At the local level, the problem of finding a representative and democratic

15. New York, N.Y., Zoning Resolution of the City of New York ch. 6, art. IX (1982) [hereinafter Zoning Resolution].

16. *Mt. Laurel II*, 92 N.J. 158, 456 A.2d 390.

body with the necessary legitimacy is a difficult one. Under the New York City Charter, one possibility is the local community board. Under Section 197-a of the 1975 amendments to the Charter, each community board already has the power to prepare a master plan for its area, a power that one might easily see as the basis for implementing the present proposal. Community boards are appointed and not elected, however, and the extent to which they fairly represent their communities varies. Where there is substantial local discord, it might be more feasible to permit local community organizations that are independent of community boards to prepare district plans. Community boards also typically encompass areas with populations over 100,000. Planning at a smaller level than this often makes good sense.

At a larger level, each city needs to prepare a plan of its own future development and goals, with some conception of the balance and nature of the population it hopes to serve and the activities it wants to harbor. That picture need not be at the level of detail contained in the abortive New York City Master Plan of 1969,¹⁷ but it cannot be dispensed with entirely, either.

On a city-wide basis, the success of local plans will depend to a large extent on how the plans fit together. This requirement is not merely physical (do adjacent areas have plans that take each other into account?), but also quantitative (do the plans provide for the desired levels of growth, mobility, dispersion, and concentration?). Again, comprehensive planning direction is necessary. An iterative process would be appropriate, with a city-wide body, presumably a city planning commission, reviewing local plans and referring them back to local communities with recommendations.

All participants should be involved in negotiations to determine where the ultimate decision-making power should rest (perhaps, the decision might be made differently for various aspects of each plan). One model might view the relationship of the local plan to city-wide policies as analogous to the relationship of Housing Assistance Plans under CDBG legislation to Federal standards.¹⁸

IV

ACTIONS FOR STABLE RESIDENTIAL NEIGHBORHOODS

No single piece of legislation can guarantee the maintenance of secure and affordable housing for the residents of a given neighborhood. Anti-displacement zoning is perhaps the broadest and most comprehensive approach, but to be effective its principles must be equally reflected in all of a city's actions regarding housing, planning, and development. Public investment strategies, housing policies, welfare regulation, taxation, code enforcement, and other local programs and policies must all be directed towards the coordinated objective of avoiding displacement and protecting neighborhoods. A

17. New York City Planning Commission, Plan for the City of New York (1969).

18. 42 U.S.C. § 5304(c)(1) (1982).

number of strategies are suggested below.¹⁹

A. Tax Exemption and Tax Abatement Policies

New York, like many other cities, uses its tax policies to influence its physical development. The City's J-51 program²⁰ provides an exemption from real property taxation for the value of improvements to qualifying real property and an abatement of taxes on the pre-improvement value of the property to an amount substantially equal to the costs of those improvements. This exemption has been a major incentive for the upgrading of residential properties in New York. At the same time, it has contributed substantially to displacement. Most observers believe, for instance, that the wide-scale conversion of Single Room Occupancy Hotels, which drove out many elderly and poor, was only possible because of J-51.

Yet tax abatement and exemption programs could be effective devices to avoid displacement and expand the availability of sound and affordable housing. Recently passed legislation in New York State has suggested one alternative; that of limiting the geographic areas in which such exemptions and abatements can be used. Geographic definitions could produce improvements where they are needed and avoid them where they would produce displacement. Coordination with anti-displacement zoning and planning is an obvious way to implement such a policy (e.g., tax benefits as of right in Expansion Zones, limited in Limited Development Zones, and excluded in Mature Development Zones).

In addition to geographical limits, tax abatement and exemption programs could be channeled specifically to limit rents and restrict occupancy. In addition, speculation could be barred. Real property tax policy could, in other words, directly serve comprehensive planning and housing policies, including anti-displacement policies. Federal tax legislation has used similar conditional methods; state and local tax legislation could do the same.

B. Tax Assessment Policies

Few cities in the United States have assessments that are really uniform in practice, nor are the distortions random or neutral. In most cities, properties are assessed at their current values when they are newly completed or sold; in general, the longer a property has been held, the more out of date the assessment is likely to be. Properties that have appreciated in value since they were last reassessed receive a tax benefit by the delay in reassessment, and properties that have declined in value are harmed. The result is that lower-rent properties in "declining" neighborhoods are over-assessed, thus increasing rents for their lower-income residents, while properties in gentrifying

19. The best general discussion of legal options to combat displacement is Bryant & McGee, *Gentrification and the Law: Combatting Urban Displacement*, 25 Wash. U.J. Urb. & Contemp. L. 43 (1983).

20. New York, N.Y., Admin. Code tit. J, ch. 51, § J51-2.5c (Supp. 1984).

neighborhoods, appreciating rapidly in value, are under-assessed, thus giving them greater value in a speculative market. Similarly, in some cities (including New York) single family homes are assessed at a lower percentage of their fair market value than are rental properties. This creates a regressive distortion in housing costs. These results are precisely the opposite of those required by an anti-displacement policy.

Assessment procedures that are designed to reflect sharp increases in prices, and to reduce assessments where real values are sinking, would slow both trends.

C. *Anti-speculation Taxes*

The sharp separation between revenue-raising measures and expenditure policies, although a sacred tenet of conventional public finance, is often disregarded in practice. Thus, the use of tax policies, to regulate the activities they tax, is common. Cities need additional revenue to combat displacement. An anti-speculation tax is a traditional tax which can link revenue and expenditure objectives (as are the other taxes suggested below). If the proceeds of such taxes are used to fund anti-displacement programs (i.e., through a housing trust fund) a symmetry of revenue and expenditure is achieved.

The approach of such an anti-speculation tax, conceptually analogous to an "excess profits tax," is to tax "speculative" sales at a higher- than-usual rate. "Speculative" sales are sales within less than a stated period of time²¹ or sales which produce more than a stated percent or profit,²² or some combination of both.

A capital gains tax on the sale of real estate is a more general form of anti-speculation tax; it differs by taxing long term profits, and may have an impact upon speculation through progression in rates or by varying rates with a holding period or both.²³

D. *Luxury Housing Tax*

Any tax that is imposed on housing and that has a progressive impact helps to mitigate displacement. The proposal for a Luxury Housing Tax, which would tax the rental income from high-rent units and proceeds on the sale of high-priced homes (and condominiums/cooperatives), would have this effect.²⁴ This tax makes luxury housing more expensive, thereby maintaining stability of occupancy. If rates are income-linked, some of the inequities of rent regulation programs can be avoided. If the proceeds of such a tax are

21. See text accompanying notes 26-27 *infra*.

22. Cf. DeGiovanni, *supra* note 3 (different definition of "speculation").

23. The logic is analogous to that of a tax on major commercial building sales, the proceeds of which are earmarked for mass transit improvements whose necessity is accentuated by commercial development.

24. See Marcuse, *A Luxury Housing Tax, City Limits*, Dec. 1983, at 15.

then earmarked for housing for low-income households, the anti-displacement effects can be even greater.

E. Progressive Real Property Tax

A progressive real property tax would have the same effect as a luxury housing tax on a more comprehensive basis. This tax, however, may require a constitutional amendment in those states (like New York) in which the restrictions on local property tax levying mechanisms are incorporated into the state constitution.²⁵

F. A Housing Trust Fund

A housing trust fund can serve two purposes: it can be a conduit for funds from a variety of sources earmarked for housing for low-income households, and it can be an expenditure device that permits innovative and democratic proposals to be implemented effectively. A typical, and well-conceived proposal has been developed by the Pratt Center, in conjunction with the late Paul Davidoff's Metropolitan Action Center, for New York.²⁶ The proposal calls for payments into a housing trust fund from the proceeds of certain types of new residential or commercial development, and provides for community input into expenditures from the fund to support low-income housing and to minimize displacement. Despite some important support,²⁷ the idea has not progressed beyond the discussion stage in New York.

G. Support for Community Anti-displacement Efforts

A key ingredient in any effective anti-displacement strategy is an informed and involved community. The early warning signs of displacement-inducing gentrification are often only visible to those living in the community where they are occurring; statistical indicators only reveal the results when the process is well under way. Thus, support for community monitoring of neighborhood change, through direct assistance, technical assistance and providing information to such groups, should be an important ingredient in a comprehensive anti-displacement effort.

Community and tenant groups can do much more than monitor negative developments; they can build, rehabilitate, manage, and/or supervise housing. They are perhaps, in low-income communities, the most reliable decision-makers when it comes to the preservation of the low-cost housing stock and its

25. For other possibilities of adjusting the tax structure to reflect social priorities not confined to displacement issues, see Conference on State and Local Policies, *State and Local Tax Revolt: New Directions for the '80s* (1980).

26. See *Inclusionary Zoning*, *supra* note 8.

27. For one of the best and most comprehensive current discussions, see Tegeler, *Developer Payments and Downtown Housing Trust Funds*, *Clearinghouse Rev.*, Nov. 1984, at 679. See also Statement by Commissioner R. Susan Motley on Lincoln West Development, New York City Planning Comm'n Meeting (July 15, 1982); City of New York, Report of Mayor's Development Commitment Strategy Commission (1983).

continued availability to low-income individuals. New York City, through its Community Management Program, its Tenant Interim Lease Program, and a variety of other efforts now largely under the jurisdiction of the Division of Alternative Management Programs (DAMP), has experimented successfully with a variety of programs calling on resident participation to aid in improving housing and neighborhood conditions. Such efforts have contributed significantly to reducing displacement, although they are neither large enough nor well enough funded to make the full contribution of which they are capable.

H. Priorities in the Capital Budget, Community Development Block Grant Budget, and Expense Budget

Most cities attempt to follow planned priorities in their budgeting, but few succeed. Even where there is a long-range plan, anti-displacement goals are rarely included. Yet public expenditures (or the failure to make public expenditures) are a decisive factor in the gentrification-abandonment-displacement process in cities such as New York. Investments made in community resources, such as new schools, fire houses, senior citizen centers and day care centers, determine who shall live where. Disinvestment in the South Bronx and Harlem has been a major factor in the problems besetting these areas. Clearly, reinvestment would be a major improvement. The tendency of city investment to follow private investment, in gentrifying areas, accelerates both the gentrification and the displacement process.

I. Rent Regulation and Condominium and Cooperative Conversion Controls

Restricting rent increases and protecting against eviction are necessary parts of any anti-displacement strategy. Obviously, the extent of permitted rent increases, and the manner in which such increases are set, is critical to the effectiveness of rent regulation. The relationship between improvements and rent increases is particularly relevant to the displacement issue. When a particular system of rent regulation provides exceptional benefits for a landlord who makes capital "improvements," as New York's does,²⁸ the incentive to make such improvements is artificially increased. Thus rents may be raised for those unable to afford increases, and displacement may result. The pattern will be particularly evident in gentrifying areas, where the improvements may be speculative investments, which may force lower-income households to move out.

Vacancy decontrol has a particularly insidious effect on the rationality of a system of rent regulation. On the one hand, it permits sharp rent increases

28. Under the Major Capital Improvements provision of New York City's rent control regulations, a landlord may indefinitely continue to collect higher rents once improvements have been made, thus receiving a higher profit from each rent payment after the cost of the improvements has been long amortized. New York, N.Y., Admin. Code tit. Y, ch. 51, § Y51-5.0g(4)(g)-(k) (1975).

on decontrol,²⁹ so that a low-rent apartment is likely to turn into a middle- or high-rent apartment, with consequent change in who can live there. On the other hand, residents in units too big for them, or residents who might wish to move, do not vacate because they will be moving from a rent controlled unit to one at which rent will inevitably be much higher, because of vacancy decontrol. A uniform and comprehensive system of rent regulation is therefore desirable if displacement is to be minimized.

J. Community-Level Land Use Decisions

Zoning changes and a variety of other public land use decisions accompany much gentrification and displacement. Public permission is required for most improvements or modifications in a structure or its use. Anti-displacement zoning would limit any resulting displacement. Even so, many discretionary actions will remain, and controls can be implemented even without specific anti-displacement zones.

Community input can control displacement when such land use decisions arise. New York City's Uniform Land Use Review Procedure³⁰ provides a model for the institutionalization of community input, although it has several weaknesses. The 50 members of each of the City's 59 Community Boards are appointed by elected officials. However, direct election would be more legitimate. Decisions of the community boards are now advisory. The City Planning Commission, which must act on all zoning matters coming before a community board, may override a board's actions with the same number of votes it needs to sustain such actions. Greater power in local Boards would mean greater local participation in decision making.³¹

K. Accelerated Foreclosure of Property in Tax Arrears

Abandonment, like gentrification, causes displacement, and both aggravate the displacement caused by the other. Thus anti-abandonment policies reduce displacement. The worst consequences of landlord abandonment occur after the landlord ceases to pay taxes and abandons the property. Services and maintenance deteriorate, tenants move out, vandalism and fires occur, and the building is rendered uninhabitable and unsalvageable. If a city acts quickly, it

29. For a comparison of vacancy decontrolled rent increases with controlled rent increases see P. Marcuse, *Rental Housing in the City of New York 262* (1979) (over three years, the increases at the median for vacancy decontrolled units was 53.2% compared to 21.3% for units remaining under rent control and 15.4% for those remaining under rent stabilization).

30. New York, N.Y., Charter §197-c (Supp. 1984).

31. There has always been concern that decentralization of land use decisions can permit some local communities to discriminate and keep out the poor and minorities. The fear has substantial historical basis. All powers need not be delegated to all communities. The criterion of potential displacement could separate those in which local power will help to maintain integration from those where it can lead to segregation. In effect, the provisions of the Anti-displacement Zoning Ordinance discussed in Section II provide for such asymmetrical community power, since Community Boards in Mature Development Zones have greater power over new development than those in Expansion Zones.

could interrupt the process and keep the building in habitable condition. New York City's rapid foreclosure law,³² which permits the City to take the property after an arrearage of only four quarters, is a model for fast city action. Implementation is another matter; the average time before New York City takes title is probably closer to 36 months than to 12.³³ A concerted policy of rapid foreclosure and taking would do much to retard abandonment, and thus displacement.

L. Use of City-owned Property

Every city owns a substantial amount of real estate, intentionally or accidentally. Generally it is used for public purposes; sometimes it lies fallow awaiting a public use or private disposition. New York City is exceptional only in the extent of its ownership of residential real estate, which was acquired under the tax foreclosure procedures just discussed. Such city-owned property can be used to foster city-wide planning goals by restricting use upon disposal, or by retaining the property and controlling its use. Where physically sound residential property is involved, the city can use it to foster stability and avoid displacement, which in many cases will result in continued public ownership.

This may be particularly important in those areas where a city is seriously trying to sell off its property: where there is a strong market demand. If units are sold in these areas, it is likely that they will be used for high income households, particularly if the city is selling the property to raise revenue rather than to improve residential stability. Such policies tend to aggravate displacement. A commitment to permanent city ownership, or disposition only for the housing of current neighborhood residents, would be much more consistent with a city-wide anti-displacement policy.

M. Anti-harassment Provisions

An unscrupulous landlord can force a tenant to vacate a unit without using legal eviction procedures. Tactics include everything from cutting off services to the building, including light and heat, to moving drug addicts and prostitutes into vacant apartments. In some cases in New York City landlords have used direct physical intimidation through strong-arm men. Criminal penalties against such tactics are appropriate,³⁴ and certification that no such tactics have been employed can be made (and have been made in New York City) a condition of the grant of a variety of benefits that a landlord might seek.³⁵

32. New York, N.Y., Admin. Code tit. D, ch. 17, § D17-4.0 (Supp. 1984).

33. Reynolds, *Neighborhoods Pay The Price of Slower Tax Foreclosures*, *City Limits*, Jan. 1984, at 5.

34. See New School for Social Research, *Anti-Harassment Procedures in the City of New York* (1983) (prepared under the direction of Victor Bach) (unpublished). This report provides details of the practices under, as well as the strengths and weaknesses of, the anti-harassment provisions in New York City.

35. E.g., New York, N.Y., Admin. Code tit. J, ch. 51, § J51-2.5a (1984) (tax exemptions of

CONCLUSION

These are simply some of the possibilities for action at the city level to prevent displacement. Whatever the merits of any particular proposal, one thing is clear: the major question is not whether gentrification can be controlled and displacement eliminated, but whether there is the desire to do so. This must ultimately be decided in the political arena. If the desire to avoid displacement is real, the means to do it are at hand; only a few of the possibilities have been suggested above. If the desire is not there, no matter how perfect the available means, the end will not be achieved.

abatements); *Id.* at tit. C, ch. 26, § C26-118.8b1(b) (Supp. 1984) (permits to alter or demolish single room occupancy structures).

APPENDIX

Following is a draft of a Model Ordinance that may achieve the purposes of the Anti-displacement Zoning Ordinance discussed in Section II of this paper. It is intended for use in conjunction with the preparation of a city-wide plan addressing the issues of residential quality, affordability, and location. It is assumed that the city's zoning ordinance already provides for floating zones. The Model Ordinance draws on three sources: the Clinton Special District Zone of the City of New York;³⁶ the proposal of the Lower East Side Joint Planning Council;³⁷ and the work of excellent students in my class in Planning Law at Columbia University's Division of Urban Planning, Fall Semester, 1984. As with any model ordinance, it requires adaptation to the local and state statutory, and perhaps state constitutional, provisions of the jurisdiction in which it is to be applied.

*Model Anti-Displacement Zoning Ordinance**1. Findings and Purpose*

[Actual findings elaborating upon the following should be set forth with appropriate detail: the shortage of affordable housing for low- and moderate-income households; the aggravation of that shortage by the displacement of households from units and neighborhoods that they have long occupied; the resulting spatial patterns of segregation by race and income disparities; the deleterious consequences of that shortage in terms of health, social integration, and neighborhood stability; studies by the City Planning Commission dealing with such problems and proposing comprehensive and carefully developed plans to deal with them; and the approval of such plans by the City as consistent with its over-all policies, goals, and objectives.]

It is the purpose of this ordinance to implement the policies, goals, and objectives adopted by the City as set forth above.

2. Definitions

"Low-income household." A household earning 50% or less of the median income for households of that size in the City, subject to such deductions as shall be established by the Agency. If the equivalent determination is currently being made by the Housing Authority of the City, for purposes of eligibility for assistance under Section 8 of the Housing and Community Development Act of 1974 or its successor, or failing determination under such Act, for any other purpose currently required by federal law, such determination shall be final and binding for purposes of this Ordinance.

"Moderate-income household." A household earning 80% or less of the median income for households of that size in the City, subject to such deductions as shall be established by the Agency. If the equivalent determination is

36. See Zoning Resolutions, *supra* note 15.

37. See Lower East Side Planning Council, *supra* note 14.

currently being made by the Housing Authority of the City, for purposes of eligibility for assistance under Section 8 of the Housing and Community Development Act of 1974 or its successor, or failing determination under such Act, for any other purpose currently required by federal law, such determination shall be final and binding for purposes of this ordinance.

“Low-rent unit.” A dwelling unit available at a rent equal to or less than 25% of the income of a low-income household, or a unit available for sale at a real current carrying cost equal to or less than 25% of the income of a low-income household.

“Moderate-rent unit.” A dwelling unit available at a rent equal to or less than 25% of the income of a moderate-income household, or a unit available for sale at a real current carrying cost equal to or less than 25% of the income of a moderate-income household.

“Local Community Organization.” [If the City has an existing level of neighborhood government appropriate to use in this section, it should be specified. New York City’s Community Boards, for instance, subject to the criticism made in Section III of this paper, might be suitable for this purpose. If not, a mechanism for the establishment of such a level of government may be considered. If no such body exists, or if such body does not choose to act, a procedure should be set forth by which an existing community organization, after submitting petitions signed by a specified percentage of the residents of its area, with appropriate representation from each part of that area, is recognized for purposes of this section.]

“Local Enforcement Unit.” [The manner of appointment should be provided for. In general, representation from the Office of the Mayor, of local legislative/electoral districts, the relevant administrative agencies, the Commission, and the Local Community Organization should be provided for. The proposal of the Joint Planning Council of the Lower East Side, which originated the concept under this name and spent substantial time considering alternatives, suggests the following for New York City. One member shall be appointed by each of the following: Borough President, the affected city councilperson(s), the Commission, and the Department of Housing Preservation and Development. One community board member and four community residents shall be elected by the public to serve.]

3. *Commission—The City Planning Commission.*

“Anti-displacement Zone.” Any of the zones specified in the succeeding provisions of this Ordinance.

“Relocation Plan.” A plan providing for the relocation, into housing of appropriate size, quality, cost, and location, of any occupant required to move because of any action authorized by permit under this Ordinance. Such plan must provide that it is legally enforceable by the affected occupants, the Local Enforcement Unit, and the City, and shall contain such other terms and provi-

sions as the Commission may by regulation prescribe or the Local Enforcement Unit may reasonably require.

“Certificate of No Harassment.” A certificate, in such form and with such content as the Commission may by regulation prescribe, stating, under penalty of perjury, that no harassment of occupants has occurred in connection with any vacancy in any structure for which an Anti-displacement Permit is requested within three years prior to such request.

“Permanently Available Low/Moderate-Rent Units.” Units, which subsequent to any action for which a permit has been granted under the provisions of this Ordinance, are low-rent or moderate-rent units, and to which provision has been made that the units remain such for the foreseeable future, with provision that their occupancy be restricted to households, which at the time of entry into occupancy are bona fide low-income or moderate-income households. There shall be no merger of the category low-rent or low-income with moderate-rent or moderate-income except that the provision of low-rent units shall qualify to meet the requirement for the provision of moderate-rent units. The provisions referred to in this definition shall comply with requirements adopted by Regulation of the Commission to carry out the purpose for which they are required.

4. *Establishment of Floating Zones*

Five floating zones are hereby established:

MATURE DEVELOPMENT ZONES. A Mature Development Zone shall be a zone in which it has been determined by the Commission that new construction or rehabilitation is likely to have the effect of displacing currently residential low- or moderate-income households, whether by increasing rents or prices or otherwise leading to the movement out of the zone of households desiring to remain resident there.

CONDITIONAL DEVELOPMENT ZONES. A Conditional Development Zone shall be a zone in which it has been determined by the Commission that new construction or rehabilitation may have the effect of displacing currently residential low- or moderate-income households, whether by increasing rents or prices or otherwise leading to the movement out of the zone of households desiring to continue residing there; but a zone in which the application of the provisions of this ordinance relating to Conditional Development Zones will be sufficient to preclude such displacement.

LIMITED DEVELOPMENT ZONES. A Limited Development Zone shall be a zone in which it has been determined by the Commission that there is available land for development, and in which existing housing can be rehabilitated, without displacement of residential low- or moderate-income households, providing the limitations as to the extent and location provided for as to Limited Development Zones are not exceeded. If such limitations are exceeded, there may be displacement of currently residential low- or moderate-income households, whether by increasing rents or prices or otherwise, leading

to the movement out of the zone of households desiring to continue residing there. A Limited Development Zone shall become a Conditional Development Zone when the limitations imposed for development or rehabilitation within it have been reached.

EXPANSION ZONES. An Expansion Zone shall be a zone in which it has been determined by the Commission that there is available land for development, and in which existing housing can be rehabilitated, without displacement of residential low- or moderate-income households, and in which such development and rehabilitation is likely to increase the supply of affordable housing available to households of low- and moderate-income.

INCLUSIONARY NEW CONSTRUCTION ZONES. An Inclusionary New Construction Zone shall be a zone in which it has been determined by the Commission that there is no danger of displacement of residential low- and moderate-income households by development or rehabilitation; but a zone in which housing, for such households, can only be achieved if the provisions of this Ordinance relating to Inclusionary New Construction Zones are applied.

5. *Establishment of Anti-displacement Zones*

An Anti-displacement Zone may be established either at the initiative of the Commission or on petition of a Local Community Organization.

6. *Petition for Establishment of a Zone*

Any Local Community Organization may petition for the establishment of an Anti-displacement Zone under the provisions of this Ordinance. Such a petition shall contain the signatures of at least one percent of the residents of the area petitioned for designation, with representation from each block/sub-area reflected in such signatures.

“Local Area Study and Local Plan.” Upon the filing of such petition, the Commission shall make available to the petitioning organization such technical assistance as it may reasonably request for the purpose of undertaking the studies and preparing the plans specified below, or upon the request of the petitioning organization, shall make available to it the equivalent funds for such organization to retain its own technical assistance. If action is commenced by the Commission on its own initiative, the Commission shall prepare or cause preparation of the studies and plans specified below.

A Local Area Study shall examine and report on the supply and condition of housing in the area under consideration. The following factors shall be considered: its costs and availability; the demographic composition of the population, and the impact of housing conditions upon it; the level and quality of public services and infrastructure available to residents; likely future developments in the area, absent changed zoning or other development or housing policies by the City, the consequence to low- and moderate-income households of such likely future developments. It shall examine the relevant potential

applications of the Anti-displacement Zones of this Ordinance to such area, and project the likely effects of such applications.

A Local Plan, calling for the designation of one or more of the Anti-displacement Zones, provided for in this ordinance, to all or any part or parts of such area (or recommending against such designation), and prescribing the conditions for such designation, to the extent not specified in this ordinance, and the locations for such designation, shall then be prepared. After approval, with or without modifications, by the Local Community Organization, if the study and plan were locally initiated, or after completion, if initiated by the Commission, such study and Local Plan shall then be submitted to the Commission for consideration.

7. Determination by Commission of Application of Zones

The Anti-displacement Zones provided for by this Ordinance shall be applied, the boundaries of the relevant areas shall be established, and the location for the designation of the requirements of this Ordinance within each Zone shall be specified, by the City Planning Commission, after due notice and hearing in accordance with its existing procedures. If such Local Plan has been submitted by a Local Community Organization, it shall require a two-thirds vote of the full membership of the Commission to reject or modify it; absent such rejection or modification within three months of submission, such Local Plan shall become effective, and the Anti-displacement Zones established therein legal and binding.

8. Permit: Requirement and Procedures for Issuance

An Anti-displacement Permit shall be required for any construction, alteration, conversion of use, or improvement made in any Anti-displacement Zone.³⁸ Public notice shall be given of any application for such a permit and based on the petition of twenty residents of the area included in the Zone, or on the initiative of the Local Enforcement Unit, a hearing shall be held on such application. A vote by three-fourths of the members of the Local Enforcement Unit present and voting shall be final and binding on the applicant, subject to reversal only by a two-thirds vote both of the Local Community Organization and of the Commission. A vote by a majority of the members of the Local Enforcement Unit may be appealed by any interested party to the Local Community Organization; a decision by two-thirds of the members of the Local Community Organization present and voting shall be final and binding, subject only to reversal by a two-thirds vote of the Commission.

38. The definition of "construction, alteration, or improvement" should be consistent with that of relevant local law. Procedures for integrating this permit process with existing procedures should also be thought out, so that duplication is minimized and unnecessary bureaucratic steps avoided.

9. *Permit: Criteria for Issuance*

A permit shall only be issued for any proposed action if the following conditions have been met:

In all Anti-displacement Zones: the number of permanently available low- and moderate-rental units after completion of the proposed action is not less than the number of low- and moderate-rent units in existence in any structure affected by the action prior to such action.

In all Anti-displacement Zones: the proposed action is in conformity with the Local Plan, as well as all other provisions of the Zoning Ordinance and Laws of the City.

In Expansion Zones: notwithstanding any other provision of this Ordinance, it shall take a negative vote of three-fourths of the Local Enforcement Unit, sustained by a two-thirds vote of the full Local Community Organization and a two-thirds vote of the full Commission, to deny a permit for any action in an Expansion Zone.

In Limited Development Zones: the proposed action does not exceed the limitation on that type of action, as to extent or location, imposed in the Local Plan for that Zone.

In Conditional Development Zones: the number of permanently available low- and moderate-rent units available after the proposed action exceeds the number of low- and moderate-rent units available before the action, by a number that shall be established by formula in the Local Plan, in such a way as to maintain and promote integrated low- and moderate-income occupancy within the area as well as expand the supply of housing available to low- and moderate-income households.

In Mature Development Zones: there is no demolition of existing structures involved, unless those structures have been declared unsafe by the appropriate city agency.³⁹

In Mature Development Zones: the number of permanently available low- and moderate-rent units available after the proposed action exceeds the number of low- and moderate-rent units available before the action, by a number that shall be established by formula in the Local Plan, in such a way as to maintain and promote integrated low- and moderate-income occupancy within the area as well as expand the supply of housing available to low- and moderate-income households.

In Mature Development Zones: there is no displacement of any household wishing to remain in residence from any structure affected by the proposed action, regardless of the existence of adequate relocation.

In Mature Development Zones: there is no increase in density and no increase in market value created by the proposed action except as to increases

39. An individual who knowingly creates conditions or permits conditions to continue (leading to a finding that a structure is unsafe), with intent to justify obtaining a permit under this section, should be made subject to criminal sanctions under a separate ordinance.

in value, such as may be agreed upon between an occupant in residence for more than three years and the owner, or in the case of an owner-occupant, such as may be undertaken by an owner after more than three years in occupancy.

In Inclusionary New Construction Zones: [There is appropriate provision made for housing for low- and moderate-income households, in accordance with the full range of actions which local and state provisions permit to be required for inclusionary purposes. The provisions referred to in *Mt. Laurel II*⁴⁰ may be consulted for relevant suggestions.]

10. *Rules and Regulations*

The Commission shall adopt Rules and Regulations to implement the provisions of this Ordinance, after consultation with all then existing Local Community Organizations and subject to the Commission's regular procedures for notice and hearing. Proposed Rules and Regulations rejected by majority of the then existing Local Community Organizations shall only be adopted by a two-thirds vote of the full Commission. A majority of Local Community Organizations then existing may propose Rules and Regulations to the Commission, which shall become effective three months after submission to the Commission unless rejected or modified by a two-thirds vote of the full Commission.

11. *Administration*

The administration of the provisions of this Ordinance in any Anti-displacement Zone shall be the responsibility of the Local Enforcement Unit, which shall have all powers and authority necessary for that purpose. It shall further maintain an inventory of low- and moderate-rent units within its area, shall render assistance to low- and moderate-income households with housing problems coming to it for help, and shall monitor developments within its area. It shall be consulted by, and shall advise, all public agencies whose actions or proposals affect housing within the area, and shall prepare such studies and reports of its own as it may deem advisable. It shall report regularly to the Local Community Organization and keep it advised of all important changes and developments within the area.

40. See *Mt. Laurel II*, 92 N.J. 158, 456 A.2d 390.