

# Creating more affordable housing in New York City's high-rise areas

The case for lifting the FAR cap



# Acknowledgments

This report highlights key recommendations from RPA's Fourth Regional Plan for the New York-New Jersey-Connecticut metropolitan area.

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# Executive Summary

New York City has a housing crisis. Homelessness has almost doubled in the last 10 years<sup>1</sup>. Overcrowding rose 20% in the six years between 2008 and 2014<sup>2</sup>, and more than 30% of renters pay more their half of their income in rents<sup>3</sup>. And without real action it will only get worse. RPA forecasts show that New York City has the potential to add a million<sup>4</sup> people by 2040. Without the ability to build more housing, Manhattan and other inner core areas will continue to become more and more expensive, increasing already enormous pressures on existing affordable and rent stabilized housing, pressure that has a ripple effect on the rest of New York City and the region as a whole.

Building more housing is important, but equally important is making sure we build in a smart and equitable way. This means building more housing in neighborhoods that already have the infrastructure to support it. This means encouraging the development of more affordable housing in neighborhoods of all income levels. And this means continuing to ensure that residents have a voice in new development in their neighborhoods, including on good design and neighborhood improvements.

There are many neighborhoods in New York with the infrastructure and amenities to support more housing and help solve the housing crisis. But in order to realize this potential we need to repeal an outdated 67 year-old state statute prohibiting residential buildings larger than 12 times their lot size.

Repealing this law is a necessary first step in enabling high-rise neighborhoods in Manhattan, Downtown Brooklyn, and Long Island City to add mixed-income housing subject to the City's Mandatory Inclusionary Housing Law. But it is important to note that repealing the law does not mean that these developments will just sprout up all over. There are important controls that exist that will continue to ensure that residents have a say in what kind of development is allowed in their community – and in many cases allow them to shape better buildings than are currently permitted.

<sup>1</sup> <http://www.coalitionforthehomeless.org/the-catastrophe-of-homelessness/facts-about-homelessness/>

<sup>2</sup> 2008 & 2014 NYC Housing and Vacancy Survey

<sup>3</sup> 2015 State of New York City's Housing and Neighborhoods, NYU Furman Center

<sup>4</sup> RPA, "Charting a New Course," 2016

## Repealing the FAR cap will enable more local control and creation of more affordable housing

Neighborhoods would still have to pass comprehensive rezonings subject to the City's Uniform Land Use Review Process and approval by City Council. And as part of these rezonings, other neighborhood concerns about new development, such as height, design, and street-level uses would also be addressed to ensure that new buildings meet these needs and enhance the visual and pedestrian experience of their neighborhoods.

## An Outdated State Law That Limits Affordable Housing

In 1961, New York State passed an amendment to State's Multiple Dwelling Law forbidding the creation of Class A residential buildings with a Floor Area Ratio (FAR) larger than 12.0, meaning residences could not be larger than 12 times the size of the lot that they were built on<sup>5</sup>. This law was enacted under the rubric of discouraging large vertical slums that would be health hazards and overwhelm the urban infrastructure. Since 1961, however, urban health has improved tremendously, and overcrowding in dense areas has decreased significantly. Despite the new housing construction in Manhattan since 1960, the population of the borough has actually declined. Today there are only 2.17<sup>6</sup> persons per household, the lowest of all the 5 boroughs. And other urban areas in the region allow for much greater development than the New York City core – Jersey City, for

<sup>5</sup> Class B residences, which include Hotels and Dormitories, are allowed to exceed this if they conform to the underlying zoning and meet certain standards.

<sup>6</sup> American Community Survey 2016 5 year Estimates

instance, allows residential development up to 25 FAR in its Journal Square redevelopment area, despite it having less mass transit, parks, and jobs per capita than Manhattan.

The city took a large step toward housing equality with its Mandatory Inclusionary Housing (MIH) law. But MIH is only the beginning of a process that can add affordable housing for current and future residents of our city. In order to actually require this affordable housing, neighborhoods need to add substantial residential capacity, through increasing zoning density and allowing larger buildings. And many of them – including our wealthiest neighborhoods in Manhattan – are legally prohibited from doing so by the cap on residential density.

Removing this cap does not mean existing height and bulk regulations would no longer apply. Instead, it would simply return more options to New York City. All changes in zoning would still have to go through the City’s extensive review process, allow for community input and feedback, and be voted on by City Council.

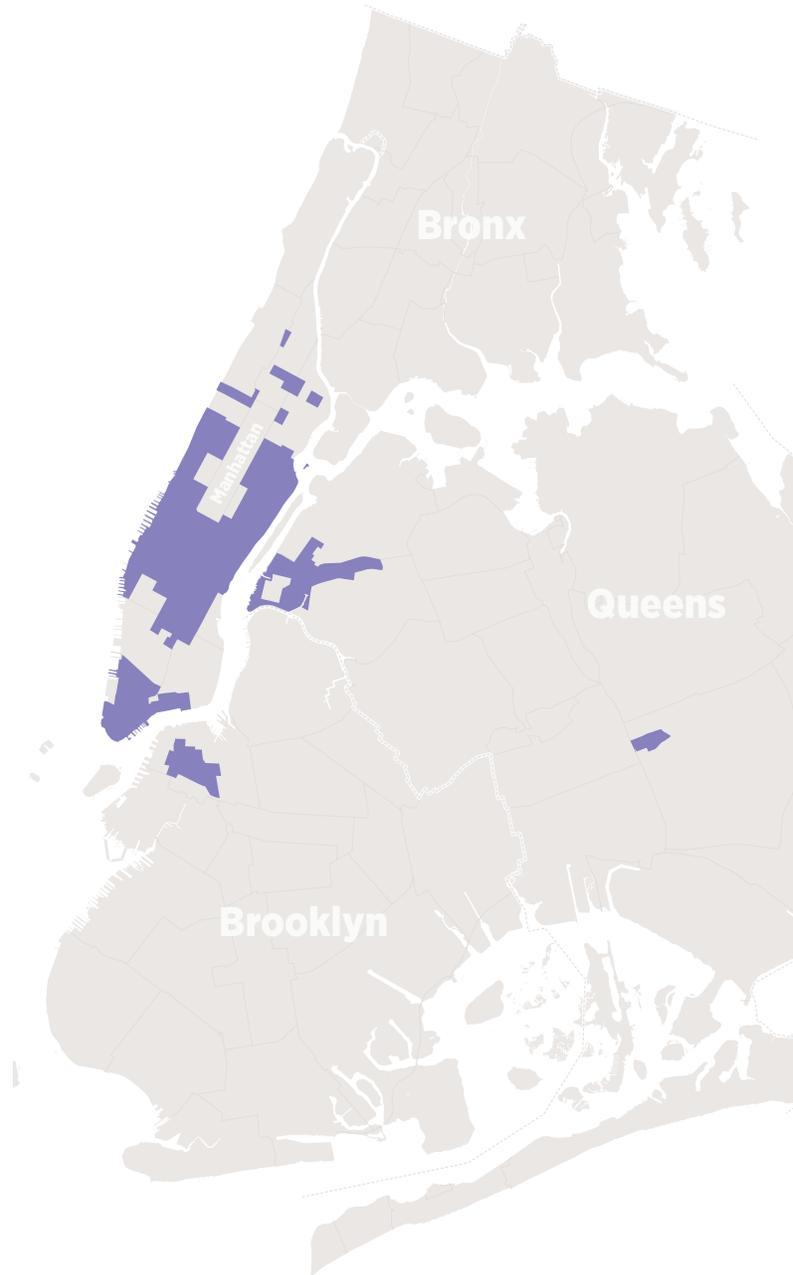
What it would do is allow for the possibility of more housing where it makes the most sense – near jobs, stores, and transit. It would allow for the possibility of guaranteed permanently affordable homes in many neighborhoods that have long been out of reach for all but the wealthiest New Yorkers. And it would mean that these neighborhoods could engage in the city’s Uniform Land Use Review Process – giving them a chance to work with the city to shape future development, instead of having it shape them.

## The Potential For Equitable Development In The City’s High-Rise Neighborhoods

RPA mapped all of the land in New York City where it’s likely currently impossible to add enough residential density to trigger MIH – those zoned for at least 10.0 residential FAR as-of-right (various incentives in these zones generally allow for buildings to reach the full 12.0 residential limit). We removed landmarks and historic districts, which are unlikely to see new development as a result of an upzoning, and overlaid these areas with local census tracts.<sup>7</sup> The result is 149 census tracts representing our non-historic high-rise areas, which are mainly concentrated in Manhattan below Canal Street and between 14<sup>th</sup> and 96<sup>th</sup> street; and also include Downtown Brooklyn, some parts of Long Island City, a few areas in Upper Manhattan and one tract in Jamaica, Queens.

### **New York City’s High Rise Districts: Census tracts where zoning allows for 10+ residential FAR (non-historic districts)**

Source: NYC PLUTO 2016; U.S. Census Bureau



<sup>7</sup> Any tract intersecting with any non-historic areas was included in the analysis.

# An opportunity to diversify

These high-rise areas have the physical infrastructure to support more residential housing.

They make up less than 5% of land<sup>1</sup> in NYC, and are home to 9% of the population<sup>2</sup>, but have access to a disproportionate share of employment opportunities, urban infrastructure and amenities. These tracts contain just over half (51%) of all the jobs<sup>3</sup> in New York City. They are within a half-mile of over 1/3 (36%) of the subway stops in the city. All but two tracts are served by Citi Bike<sup>4</sup>, and 98% are rated as “Walker’s Paradise” by Walkscore<sup>®5</sup>, meaning a large amount of stores and amenities are within walking distance.

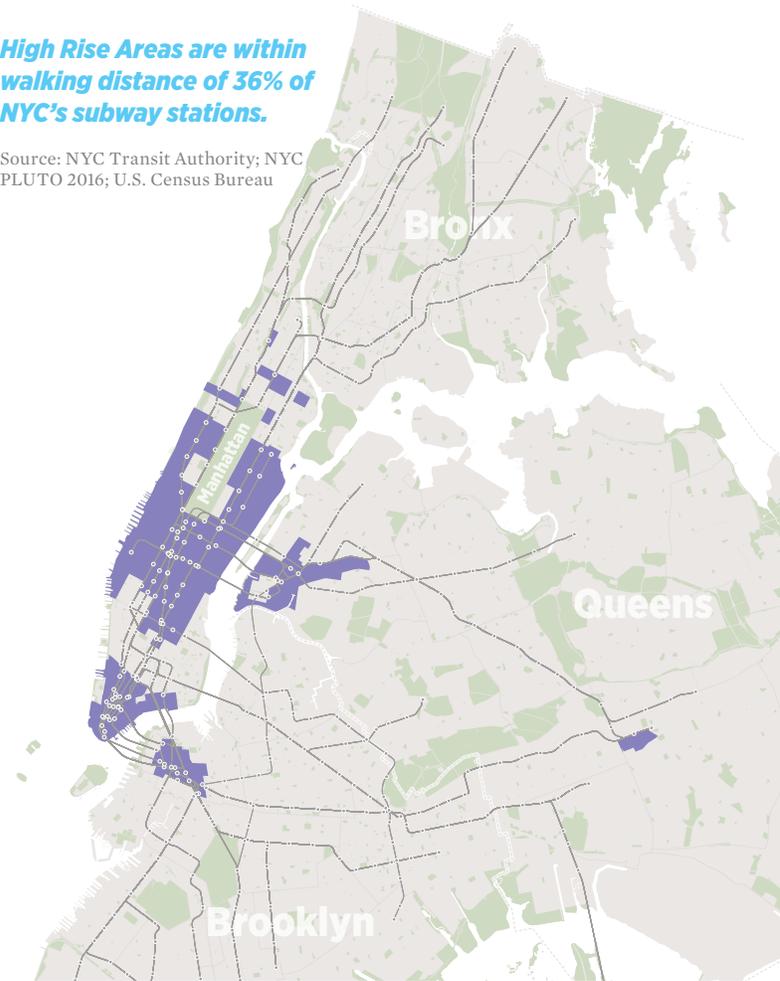
All are within a half-mile walk of a park<sup>6</sup>, including eight destination parks – most notably Central Park – supported by private conservancies<sup>7</sup>, and four others with support from a dedicated partnership, corporation, or friends group<sup>8</sup>. In addition, the R10 zoning designation itself has a built-in incentive for developing accessible open space, through the Privately Owned Public Space (POPS) program, and as a result these areas are home to all but six of the POPS in the entire city. These areas have also been the recipient of much of the recent large-scale infrastructure investments in New York City, such as Brooklyn Bridge Park and the Second Avenue Subway.

## An opportunity to diversify expensive neighborhoods and expand affordability

The high-rise areas are overwhelmingly more affluent, expensive, racially homogeneous and in need of affordable housing than New York City as a whole. More than half

**High Rise Areas are within walking distance of 36% of NYC’s subway stations.**

Source: NYC Transit Authority; NYC PLUTO 2016; U.S. Census Bureau



(51%) of the households in the high-rise areas make above \$100,000, as compared to less than one-quarter (24%) of NYC as a whole. In RPA’s analysis of displacement risk in the region<sup>9</sup>, these high-rise areas were places where significantly fewer people were at risk. The high-rise areas are also not racially & ethnically representative of the diversity of NYC. These areas are 64% non-Hispanic white, as compared to 32% for the city as a whole. When racial diversity is not present in one area of the city it is felt in other areas through segregation and inequality.

By allowing upzoning which would also require affordable housing, we can allow for more affordability, combat segregation, and provide opportunities for low- and moderate-

<sup>9</sup> RPA, “Pushed Out: Housing Displacement in an Unaffordable Region” 2017.

<sup>1</sup> NYC PLUTO 2016

<sup>2</sup> American Community Survey 2016 5 year Estimates

<sup>3</sup> ibid

<sup>4</sup> citibikenyc.com

<sup>5</sup> Walk Score<sup>®</sup> 2014

<sup>6</sup> Parkscore.tpl.org

<sup>7</sup> These are Central Park, Riverside Park, Madison Square Park, Brooklyn Bridge Park, Washington Square Park, Ft. Greene Park, The Battery, and Battery Park City Parks.

<sup>8</sup> These are the Union Square Partnership, The Bryan Park Corporation, Friends of Hudson River Park, and Friends of the High Line

income households in areas of New York City where the housing market has long been inaccessible for all but upper-income New Yorkers.

## Expanding community influence in how new development takes place

With the ability to add more density would also come community process and input. The exact details of larger residential development, such as massing, height, required community facilities or public space – could help to be shaped by the local neighborhood and elected officials together during the Uniform Land Use Review Process (ULURP). Collaboration is the best way for responsible and equitable growth to take place – a collaboration which is already built into our rezoning process. The ULURP process is also an opportunity for residents and the City to negotiate additional benefits for the community, ones that might be difficult to find space for otherwise. For instance, new schools in our dense areas are often times constructed as part of a larger development, and new open space is often the result of the POPS program.

Currently many new developments in our high-rise districts, such as the “Billionaires Row” towers on 57<sup>th</sup> street, are constructed as-of-right despite being largely opposed by the local community. They are also not mandated to have affordable housing, and those that do are currently granted an as-of-right, uncapped exemption from property taxation for 35 years. Since this exemption applies to newly constructed buildings in the highest-market part of New York, it is considerably expensive, costing the city approximately 1.4 billion dollars a year.<sup>10</sup>

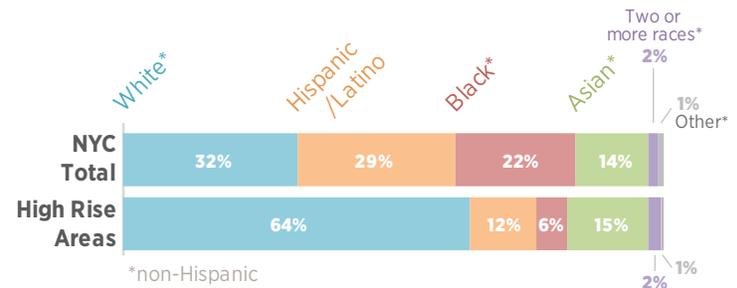
## Putting 12 FAR in Context

There are many places in Manhattan where the changes enabled by lifting the 12.0 FAR cap would not substantially change the feel of the street. Today commercial buildings can be constructed at 15.0 FAR as-of-right throughout the Midtown and Downtown Manhattan, and often are built much larger due to various FAR bonuses, transferable development rights and/or special districts. In the East Midtown Subdistrict and Hudson Yards Special Districts, for instance, construction on commercial buildings more than double the allowed size of residential buildings are already underway.

<sup>10</sup> [https://www.nytimes.com/2017/04/10/nyregion/affordable-housing-city-tax-break-developers.html?\\_r=0](https://www.nytimes.com/2017/04/10/nyregion/affordable-housing-city-tax-break-developers.html?_r=0)

## High Rise Areas are less diverse than New York City Overall

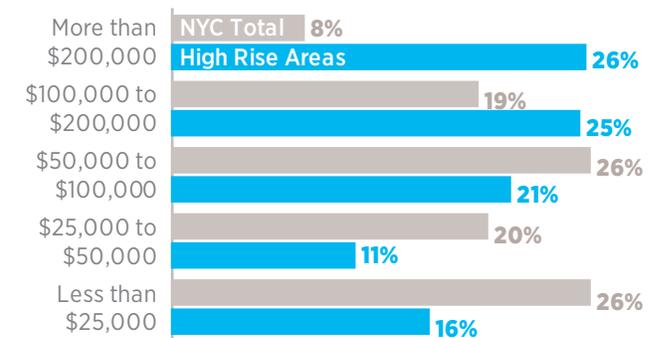
Race and Ethnicity by Area, 2016



Source: American Community Survey 2016 5 year Estimates

## High Rise Areas are wealthier than New York City Overall

Households per Income Cohort, 2016



Source: American Community Survey 2016 5 year Estimates

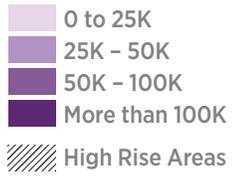
In addition, there are both numerous office and residential buildings constructed prior to the 1961 zoning resolution that are well in excess of 12.0 FAR. And many predominantly residential buildings exceed the 12.0 FAR limit through the addition of office, hotel, entertainment, or retail spaces.

In terms of architectural quality, larger residential buildings have the potential to improve rather than detract from the visual and pedestrian experience of these neighborhoods. There are dozens of individual landmarks in NYC in excess of 12.0 FAR from several different architectural eras – from the Beaux-Arts 15 Park Row (26 FAR), built in 1899, to modern CBS Building (19 FAR) built in 1965. The Empire State Building, which comes in first in the American Institute of Architecture’s list of favorite buildings in the United States, has an FAR of over 30. The Chrysler Building, which comes in 9<sup>th</sup>, has an FAR of 27<sup>11</sup>. While there is certainly no guarantee that new buildings would make a qualitative improvement to the skyline, the city can establish guidelines that encourage good design within the context of the existing district.

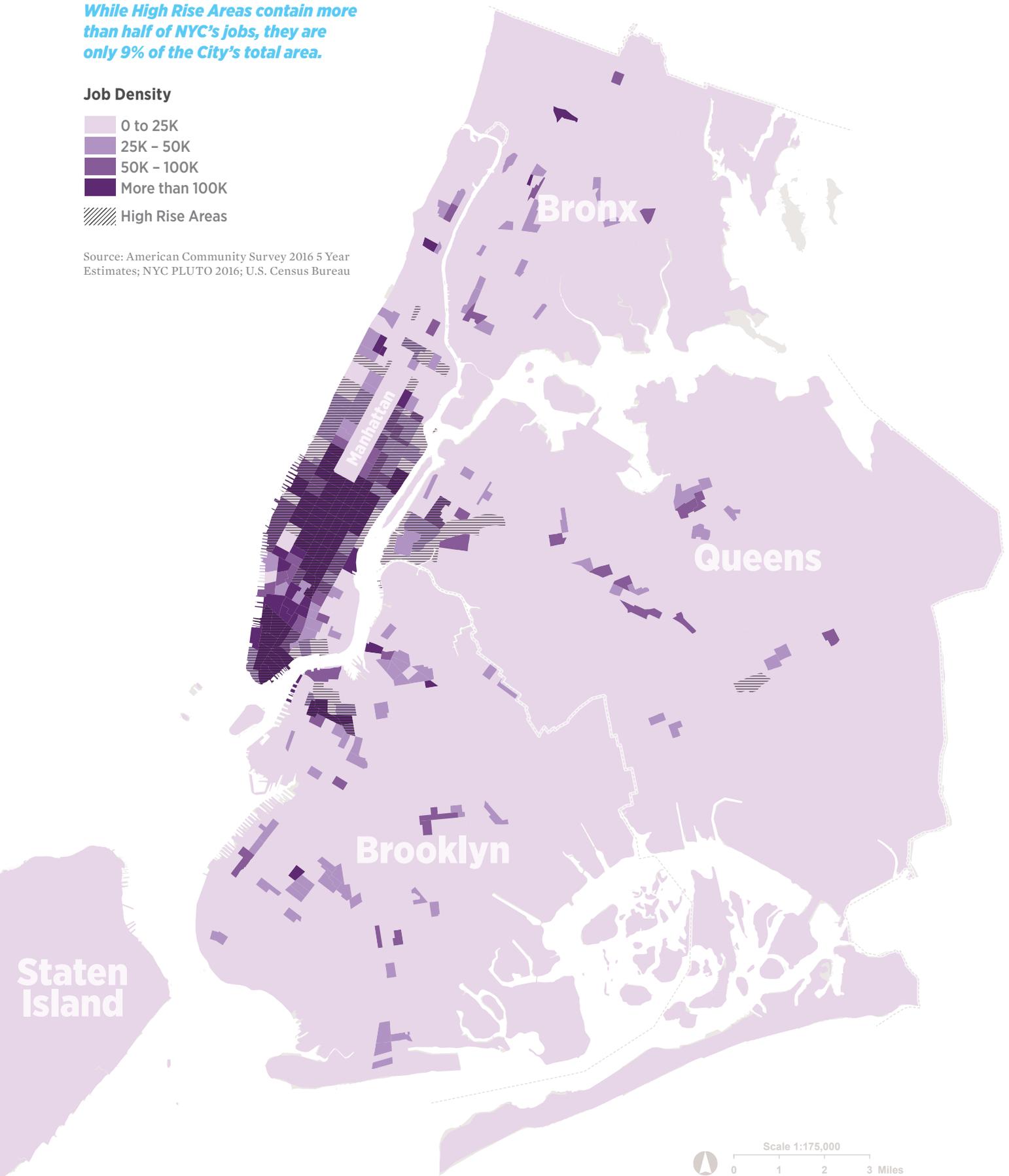
<sup>11</sup> <http://online.wsj.com/public/resources/documents/info-poparch07-sort2.html>

**While High Rise Areas contain more than half of NYC's jobs, they are only 9% of the City's total area.**

**Job Density**



Source: American Community Survey 2016 5 Year Estimates; NYC PLUTO 2016; U.S. Census Bureau

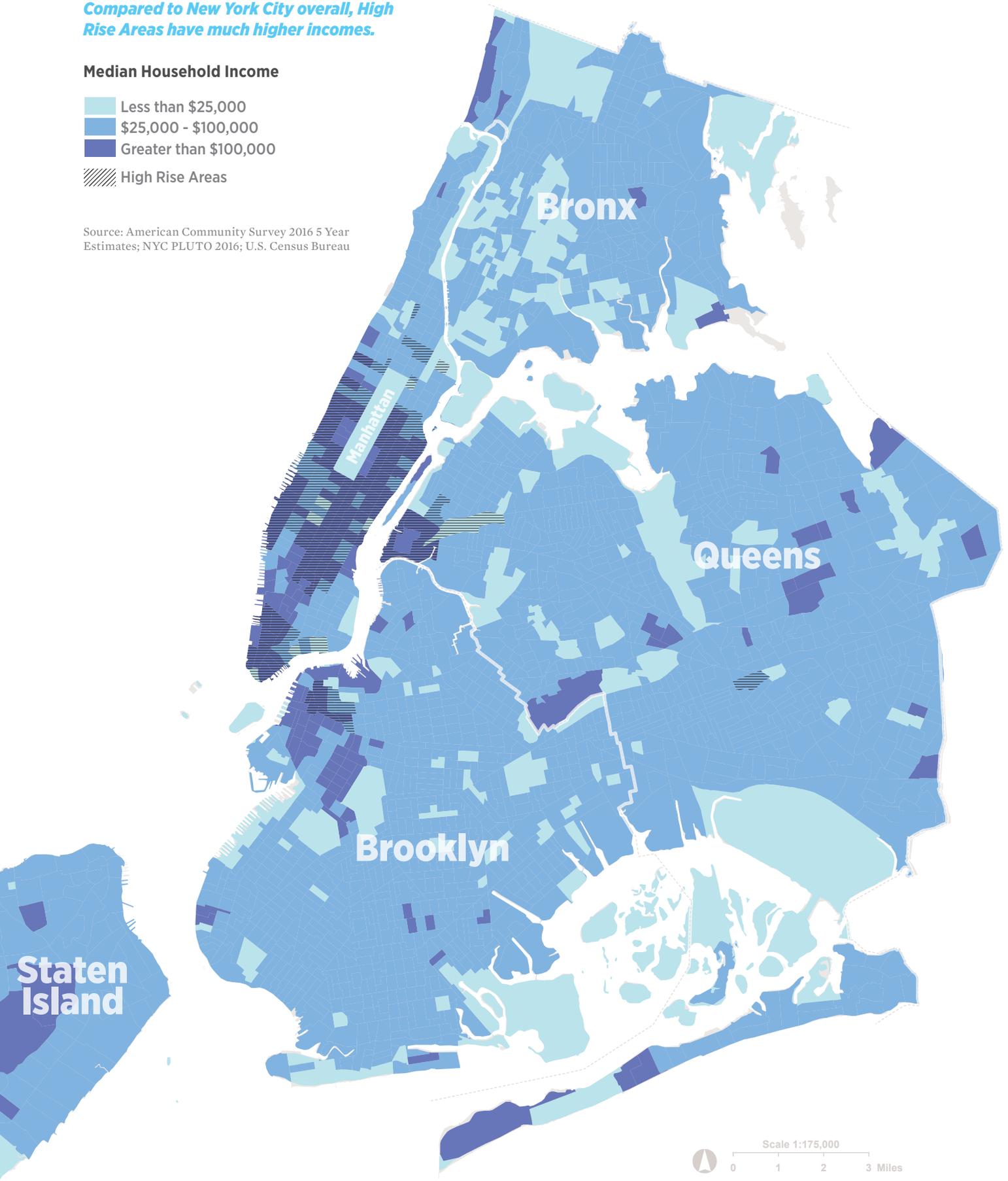


**Compared to New York City overall, High Rise Areas have much higher incomes.**

**Median Household Income**

- Less than \$25,000
- \$25,000 - \$100,000
- Greater than \$100,000
- High Rise Areas

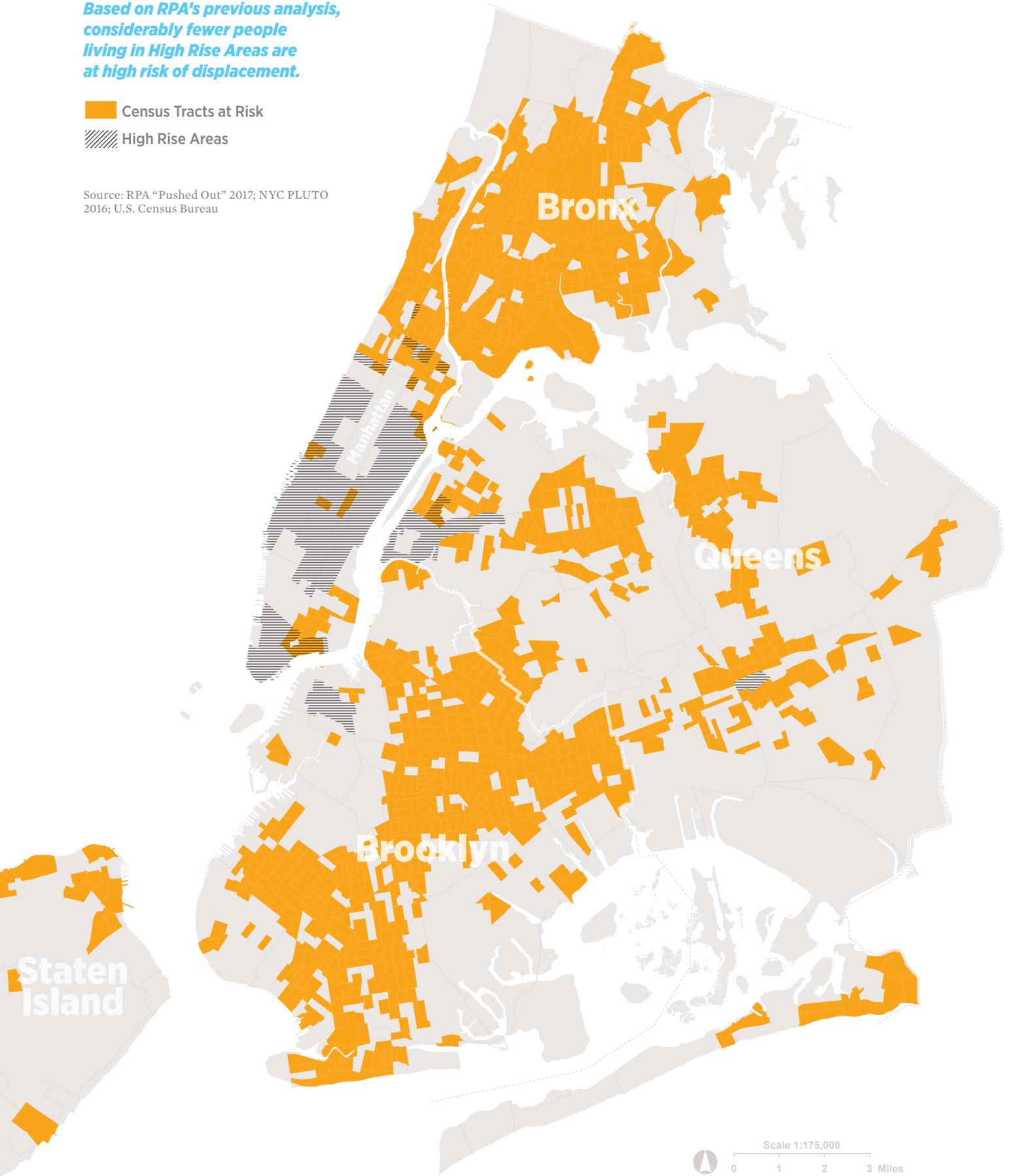
Source: American Community Survey 2016 5 Year Estimates; NYC PLUTO 2016; U.S. Census Bureau



**Based on RPA's previous analysis, considerably fewer people living in High Rise Areas are at high risk of displacement.**

-  Census Tracts at Risk
-  High Rise Areas

Source: RPA "Pushed Out" 2017; NYC PLUTO 2016; U.S. Census Bureau



# Recommendations

In order to produce the desired result of well-designed, mixed-income development repealing the 12.0 residential FAR restriction should be done in conjunction with the following recommendations:

## **Audit for unintended consequences**

The main consideration in passing any revision to the New York State Multiple Dwelling Law is to make sure that larger residential construction would both need to pass through the city's ULURP process and be subject to the Mandatory Inclusionary Housing rules. New York City, through its local zoning code, also currently prohibits the construction of buildings in excess of 12.0 residential FAR from being constructed. However, mechanisms such as transferable development rights (TDRs), appeals to the Board of Standards and Appeals (BSA), or conversions of existing buildings can be used to produce buildings not conforming to the underlying zoning of a specific lot.

In order to ensure that the repeal of this state law would not result in any unintended consequences, the city should conduct an audit of the zoning code to identify any possible scenarios in which residential buildings larger than 12.0 FAR could be constructed without an action subject to ULURP, or where rezonings resulting in residential FAR in excess of 12.0 could possibly not be subject to the City's Mandatory Inclusionary Housing law. If such possibilities are found, they should be addressed in advance of any repeal or modification of the State law.

## **Ensure good design**

Even prior to the repeal of any cap, the City can put in place guidelines to ensure urban and architectural form-based design standards in any newly rezoned high-rise areas. This would give New York City residents a sense of what a repeal of the 12.0 FAR cap would mean for the city in terms of physical design. Height, streetscape connectivity, open space, architectural appearance, and other common concerns could be addressed proactively. Environmental standards could also possibly be a part of any new design guidelines. These guidelines could be developed in conjunction with architecture and planning professionals as well as community representatives. These would not be unalterable standards, but a baseline for new buildings which could be adjusted and improved on a neighborhood-by-neighborhood basis during the ULURP process.

## **Require properly sized apartments**

By lifting the cap on residential development in our high-rise areas, we must ensure that the result is a significant amount of new apartments for New Yorkers as opposed to a few more large luxury penthouses. Recent condominium developments with overly large apartments supply significantly less housing than would otherwise be expected through the zoning code. For instance, while the recent luxury condominium development 432 Park Avenue has a total of 104 apartments, if it had built as many apartments as allowed by the zoning code, it could have provided 508 apartments – almost five times as many.

The city should explore legislation to better discourage overly large and non resident-occupied housing such as the concept of maximum apartment size regulations, or a minimum number of units per building, in districts with over a 12.0 FAR cap, a pied-a-terre tax to discourage non-resident usage, and reforms of the property tax code to properly value high-end condominiums. All of these would have the effect of discouraging fewer oversized luxury apartments in favor of a greater number of smaller apartments.

Addressing building height through a rezoning action might also function as an indirect mechanism to limit overly large apartments, as views brought by very high floors are generally necessary to access the ultra high-end luxury market willing to pay the type of prices needed for these few very large apartments to a better investment for the developer than a larger numbers of smaller apartments.

## **Re-examine MIH regulations**

The city should re-examine their MIH regulations to limit options for building affordable housing offsite or in a separate building on the same tax lot and ensure that construction in newly upzoned areas consists of equitable mixed-income buildings. This is especially true considering the recent changes in the 421a tax exemption law requiring certain levels and amounts of affordable housing in order to obtain the tax exemption.

In addition, on-site affordable housing may also function as another indirect mechanism to limit overly large apartments, as the floor distribution and size requirements of affordable apartment in MIH buildings would discourage buildings with small numbers of overly large apart-



ments. However, the city would need to eliminate the MIH loophole allowing building to circumvent the distribution requirements of the affordable housing in buildings where the affordable housing is rental housing and the market rate housing is condominiums or cooperatives.

### **Protect commercial and community facility uses**

Our high-rise areas are not just residential areas, they also include predominantly commercial districts of national and international significance, which drive our regional economy. Any change in the residential zoning laws should be designed to not impact the viability of commercial construction in the City's core office districts, or newly rezoned areas intended primarily for commercial development.

This has been a problem in the past, even with the 12.0 FAR limit on residential construction. For instance, when Downtown Brooklyn was rezoned from industrial to modern high-rise development in 2004, it was intended to produce the city's third primary office district. However, since residential uses were allowed and the residential market was stronger than the commercial market in the area, the district became predominantly residential instead<sup>1</sup>. By lifting the 12.0 FAR cap and allowing for more residential development, care must be taken to ensure areas meant mainly for the development of commercial or community facilities development stay that way. While most commercial zoning districts allow residential development, this is not required by either state or city law, and the city would be within its power to restrict residential (or other) uses in areas it intends to preserve or develop as commercial districts.

### **Engage in proactive planning.**

Repealing the 12.0 FAR limit is only a first step toward building more mixed-income housing. Specific neighborhoods will then need to be identified and planned for. The

city should set transparent standards to determine which of the high-rise neighborhoods need more housing, and especially more affordable housing. Once these areas are identified, a comprehensive community planning process focusing on design of these larger buildings as well as other community needs should be undertaken. This could be modeled after the city's recent community planning process in East Harlem, which was also rezoned for high-density mixed-income housing.

## **Conclusion**

New York City's ability to shape its neighborhoods shouldn't be contingent upon a law enacted in Albany more than 60 years ago, and intended to address the problems of a previous era. A repeal of this outdated law would allow the city to meet its housing needs while tailoring solutions to the different needs and capacities of each neighborhood. This is why it's important for rezonings to go through our ULURP process, which lets local communities and elected officials comment on and shape development in their neighborhoods.

The ability to zone for more residential housing in our high-rise neighborhoods, housing which would require affordable homes, would lead to more mixed-use, mixed income neighborhoods that contribute to a desirable, livable and affordable city for people of all incomes levels. And this tool wouldn't stand alone – it would allow for local communities to effectively advocate for the type of neighborhood development which would address and alleviate concerns about lack of infrastructure and out-of-context development, and enable New York City and its high-rise neighborhoods to move forward on a new vision together.

<sup>1</sup> [https://www.brooklyn-usa.org/wp-content/uploads/2016/02/Downtown-Brooklyn-2004-Rezoning\\_Final.pdf](https://www.brooklyn-usa.org/wp-content/uploads/2016/02/Downtown-Brooklyn-2004-Rezoning_Final.pdf)



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