

# GENTRIFICATION: YES . . . MY COMMUNITY IS IMPROVING, BUT FOR WHO?

DAVID B. SHEPHERD\*

## TABLE OF CONTENTS

INTRODUCTION.....	557
I. BACKGROUND.....	558
II. THE NEIGHBORHOOD: THE EFFECTS OF LACKING POLITICAL POWER .....	559
III. QUANTIFYING DISPLACEMENT: AN INEXACT SCIENCE.....	561
IV. GROWTH CONTROL: LIMITED IN DURATION AND PART OF A SPECIFIC PLAN ...	565
V. THE PROPOSED REGULATION: GROWTH LIMITING DISTRICTS.....	571
CONCLUSION.....	580

## INTRODUCTION

Gentrification has many benefits; however, it disparately affects many low-income families who are displaced from their homes and communities as a direct result of these perceived benefits.<sup>1</sup> The term “gentrification” was first introduced by Ruth Glass in her 1964 essay, *Introduction: Aspects of Change*, where she describes her impression of London’s gentrification, and explores the origins.<sup>2</sup> Gentrification is generally understood to be an “inflow of financial capital in a previously poorly maintained, highly impoverished neighborhood with the intention of residential and commercial redevelopment for mid to upper-income consumers and potential residents.”<sup>3</sup> In a study of gentrification in West Town, Chicago, University of Chicago policy analyst John Betancur argues that

---

\* J.D. Candidate, Benjamin N. Cardozo School of Law, Class of 2016; B.B.A. Entrepreneurship and Small Business Management, Baruch College–City University of New York (CUNY), Class of 2011. The author would like to thank his faculty advisor, Stewart E. Sterk, for his invaluable advice in shaping the Note. He would like to thank all the many members of the editorial staff who played a role in the finished product. He would like to give a special thank you to his parents and family for always supporting him.

<sup>1</sup> Kathe Newman & Elvin Wyly, *Gentrification and Resistance in New York City*, NAT’L HOUSING INST.: SHELTERFORCE ONLINE (2005), <http://www.nhi.org/online/issues/142/gentrification.html>.

<sup>2</sup> Ruth Glass, *Aspects of Change*, in THE GENTRIFICATION DEBATES 19 (Japonica Brown-Saracino ed., 2010).

<sup>3</sup> TAYLOR WAHE ROSCHEN, RESIDENTIAL DISPLACEMENT IN GENTRIFYING URBAN NEIGHBORHOODS: A STATISTICAL ANALYSIS OF NEW YORK CITY’S HOUSING CHARACTERISTICS 7 (2013), <http://wpsa.research.pdx.edu/papers/docs/Roschen,%20Taylor-WPSA%20Paper.doc>.

definitions such as the above “do not address the highly destructive processes of class, race, ethnicity, and alienation involved in gentrification.”<sup>4</sup> Further, “[t]he most traumatic aspect . . . is perhaps the destruction of the elaborate and complex community fabric that is crucial for low-income, immigrant, and minority communities—without any compensation.”<sup>5</sup>

### I. BACKGROUND

The vast majority of gentrification’s adverse effects arise because the gentrification process itself occurs at such a rapid pace that residents are incapable of handling the transition because of a lack of financial resources.<sup>6</sup> In discussing land use and zoning regulations that may benefit low-income families affected by gentrification, this Note will examine the similarities between some of the issues that occur as a result of gentrification and the issues that other cities have solved using zoning and land use regulations, specifically (1) a population that grew faster than the city could handle, and (2) a growth in population that threatened to change the rural character of the town. These cities (Ramapo, NY, and Petaluma, CA) introduced legislative measures designed to temper how fast population growth could occur,<sup>7</sup> which will be discussed in further detail. The problems of overgrowth and gentrification are comparable in that the problems caused by each relate to the allocation of limited resources.

Curtailling gentrification will enable residents of low-income communities to withstand the market pressures associated with a gentrifying community, and thereby help these residents to remain there while benefiting from the advantages of living in an improving community. Part I of this Note will discuss the origins of the term gentrification, along with the polarizing connotations of the word. Part II will discuss the effect of gentrification on low-income families, and will introduce the concept of social preservationists. Part III will discuss attempts to quantify the extent to which low-income families have experienced displacement in New York City. Part IV will introduce and expound on the land use and zoning regulation known as growth control, along with supporting case law. Part V proposes an extensive regulatory scheme that would temper the pace with which gentrification occurs in select communities in New York City. The regulatory scheme fits within the existing case law because it is an exercise of the state’s police power, which grants states the authority to legislate for the public welfare.

---

<sup>4</sup> John J. Betancur, *The Politics of Gentrification: The Case of West Town in Chicago*, 37 URB. AFF. REV. 780, 807 (2002), <http://uar.sagepub.com/content/37/6/780>.

<sup>5</sup> *Id.*

<sup>6</sup> Newman & Wyly, *supra* note 1.

<sup>7</sup> *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359 (1972); *Constr. Indus. Ass’n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

## II. THE NEIGHBORHOOD: THE EFFECTS OF LACKING POLITICAL POWER

Displacement is very real, but it predominantly affects the portions of the population that generally do not have the political power to do anything about it. Nonetheless, the diverse cultural identity of affected populations is worthy of being preserved. There is utility in preventing the displacement of low-income families without resources who would otherwise be priced out, bought out, or harassed out of gentrifying neighborhoods by the market forces that encourage higher income residents to pursue housing in these neighborhoods.<sup>8</sup> In New York City, families with some of the lowest recorded household incomes tend to reside in such predominately immigrant and minority communities as Harlem and Washington Heights.<sup>9</sup> When gentrification occurs in neighborhoods such as these, families are often displaced from the physical embodiment of their social culture and from the commonality that comes with being a member of that culture.<sup>10</sup> Serious damage will be done to New York City's diverse culture, if the government does not proactively act to temper the displacement that occurs as a result of gentrification. The city would be in danger of losing these subcultures, and subsequent generations will not have an opportunity to experience the cultural hubs that their families previously called home.

To prevent the destruction of culture that comes with the displacement that occurs when a neighborhood begins gentrifying, the government should adopt policy that encourages social preservationism.<sup>11</sup> According to Japonica Brown-Saracino, social preservationists (in this context) are "highly educated and residentially mobile *people, who desire* to live in authentic social space, embodied by the sustained presence of 'original' residents."<sup>12</sup> Social preservationists are not very different economically, or any less educated on average, than typical gentrifiers, but they seem to display more of an appreciation for the history, culture, and people of their new neighborhoods than typical gentrifiers.<sup>13</sup> Brown-Saracino describes typical gentrifiers as people who invest in the future of the space and who "seek to tame the 'frontier'."<sup>14</sup> According to Brown-Saracino, social preservationists have different motivations than gentrifiers: gentrifiers want the indigenous people out of the neighborhoods that they have set their sights on, while social preservationists relish the opportunity to live in neighborhoods that are

---

<sup>8</sup> See Kathe Newman & Elvin K. Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD. 23, 23 (2006).

<sup>9</sup> See Ben Adler, *Brooklyn's Median Household Income Is Less Than \$45,000 So How Can Anyone Afford to Live There?*, SLATE (Jan. 9, 2014), [http://www.slate.com/articles/business/moneybox/2014/01/new\\_york\\_city\\_census\\_data\\_manhattan\\_and\\_brooklyn\\_are\\_much\\_poorer\\_than\\_you.html](http://www.slate.com/articles/business/moneybox/2014/01/new_york_city_census_data_manhattan_and_brooklyn_are_much_poorer_than_you.html).

<sup>10</sup> Newman & Wyly, *supra* note 8.

<sup>11</sup> See Japonica Brown-Saracino, *Social Preservationists and the Quest for Authentic Community*, in THE GENTRIFICATION DEBATES 261 (Japonica Brown-Saracino ed., 2010).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 264.

<sup>14</sup> *Id.*

culturally different from neighborhoods where they have lived in the past.<sup>15</sup> Policy that allows for improvement and development in traditionally impoverished neighborhoods, while restricting growth in such a way that provides an opportunity for indigenous people to remain in these neighborhoods, would create more favorable mixes of social preservationists and indigenous people. This would prove a far better alternative than allowing the displacement that has occurred, and will continue to occur, as a result of the government's continued inaction. Protecting the most vulnerable residents of the neighborhoods from market forces that would otherwise facilitate the displacement of these residents is a legitimate government interest. A government could legitimately exercise its police powers in creating a comprehensive plan as was done with the *Petaluma plan*<sup>16</sup> because unabated gentrification can negatively affect the public welfare.

Social preservationists demonstrate that there is value in preserving not just a neighborhood's unique "aesthetic vestiges,"<sup>17</sup> e.g., brownstones in Bedford-Stuyvesant or Harlem, but also in preserving an "authentic"<sup>18</sup> version of the community, which requires that a substantial number of original residents remain in the neighborhood. Traditionally, gentrified neighborhoods are stripped of their history and association with low-income families and immigrants for the sake of increasing market value,<sup>19</sup> but in doing so, the property values are raised to such an extent that it is almost impossible that any original tenant could afford to live there.<sup>20</sup> Hence, neighborhoods and communities that are *prime* for gentrification should be identified beforehand and designated for growth control regulation.<sup>21</sup> Social preservationists differ ideologically from gentrifiers in that they move to "gentrifying" neighborhoods, not only for the upside of buying in early, but also because the neighborhoods are vastly different from homogenous suburbs; they desire to live in socially diverse neighborhoods.<sup>22</sup> Therefore, the government's regulatory objective should be to ease the transition for low-income families that reside in developing communities, which will give them a better chance to remain in their communities. This objective can be achieved by enacting land use and

---

<sup>15</sup> *Id.*

<sup>16</sup> *Constr. Indus. Ass'n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975). "Petaluma plan" refers to the collective plan of the city council of the City of Petaluma aimed at correcting the imbalance between single-family and multifamily dwellings, curbing the sprawl of the city, and to slow the accelerating growth of the city. *Id.*

<sup>17</sup> Brown-Saracino, *supra* note 11.

<sup>18</sup> *Id.* at 261.

<sup>19</sup> *Id.* at 264.

<sup>20</sup> The website PropertyShark.com created a map reflecting Brooklyn Home Price changes by neighborhood, comparing 2004 prices to 2012 prices (only residential properties were included in the analysis). The map shows that the Greenpoint section of Brooklyn has seen a 47% increase over the eight-year period, while in Williamsburg there has been an astounding 174% increase in that same time period. *New York City, NY Parcels Map*, PROPERTYSHARK (2016), <http://www.propertyshark.com/mas-on/ny/New-York-City/Maps> (Select "Parcel/Building Outlines" and "Neighborhoods" under "Available Maps & Layers").

<sup>21</sup> See *infra* Part V.

<sup>22</sup> Brown-Saracino, *supra* note 11.

zoning laws that will make certain designated communities more desirable to those outsiders who are interested in preserving the neighborhood, and less desirable to those that are interested in displacing residents.

### III. QUANTIFYING DISPLACEMENT: AN INEXACT SCIENCE

Displacement (having to relocate) from one's home and neighborhood is a life-altering experience. In the worst-case scenario, displacement leads to homelessness, but the more common circumstance of displacement is mass relocation that tends to impair a sense of community to which inhabitants have become accustomed.<sup>23</sup> It is generally agreed<sup>24</sup> that public policy should minimize displacement, but it is not agreed that gentrification actually results in displacement.<sup>25</sup> Because of this disagreement, policies regarding gentrification seem to foster displacement rather than inhibit it.<sup>26</sup> Displacement is, simply put, very difficult to quantify because the low-income individuals who have been displaced are "by definition . . . [no longer] in the very places where researchers and census takers go to look for them."<sup>27</sup> Professors Kathe Newman<sup>28</sup> and Elvin K. Wyly<sup>29</sup> of Rutgers University and the University of British Columbia, respectively, have conducted research with the intent of understanding the specific factors that cause *low-income families* to become displaced in gentrifying communities. Newman and Wyly concluded in their 2006 article<sup>30</sup> that original "residents may be displaced as a result of housing demolition, ownership conversion of rental units, increased housing costs (rent, taxes), landlord harassment, and evictions."<sup>31</sup>

Low-income single mothers appear to be the most vulnerable to succumbing

<sup>23</sup> LORETTA LEES ET AL., *GENTRIFICATION* 217 (2008).

<sup>24</sup> *Id.*

<sup>25</sup> Newman & Wyly, *supra* note 8.

<sup>26</sup> LEES ET AL., *supra* note 23.

<sup>27</sup> Monique Taylor, *Harlem: Between Heaven and Hell*, in *THE GENTRIFICATION DEBATES* 218 (Japonica Brown-Saracino ed., 2010) (citing Newman & Wyly, *supra* note 8).

<sup>28</sup> Kathe Newman is an Associate Professor in the Urban Planning and Policy Development Program at the Edward J. Bloustein School of Planning and Public Policy, a member of the Graduate Faculties in the Department of Geography and an affiliated member of the Department of Latino and Hispanic Caribbean Studies at Rutgers University. Dr. Newman holds a Ph.D. in Political Science from the Graduate School and University Center at the City University of New York. Her research explores how and why cities change and how those changes affect people of color, women, and the poor. She is particularly interested in how capital flows transform urban places. She is a member of the Essex Newark Foreclosure Task Force. Her research has explored gentrification, foreclosure, urban redevelopment and community participation.

<sup>29</sup> Elvin K. Wyly is an Associate Professor in the Department of Geography at the University of British Columbia. He studies the relationship between market processes and state policy in producing and reinforcing urban social inequalities. Recent and ongoing projects focus on class, racial, and gender discrimination in mortgage lending and foreclosures in the U.S. urban system; housing affordability and the evolution of suburban development in Canadian and U.S. cities; the transformation and financialization of public housing; the post-financial crisis reconfiguration of segregation, displacement, and gentrification.

<sup>30</sup> Newman & Wyly, *supra* note 8.

<sup>31</sup> *Id.* at 1.

to displacement pressures.<sup>32</sup> These women, and their children, are most likely to be unable to afford the increases in rent that result from increased property taxes, or increased property taxes period, if they are property owners. Liz Bondi<sup>33</sup> wrote that “[i]n terms of the impact of gentrification, women . . . appear to be prominent among the economically weakest sectors of the urban population who are most vulnerable to displacement.”<sup>34</sup> A single mother who must financially support her children, in addition to paying her rent or mortgage expenses, is therefore unlikely to stave off the increased financial pressures that result from living in a gentrifying neighborhood.

Quantifying the scope and scale of displacement is not an exact science since the displaced residents have moved away.<sup>35</sup> Nevertheless, Newman and Wyly attempt to estimate displacement in New York City by analyzing the New York City Housing Vacancy Survey<sup>36</sup> of the years 1991, 1993, 1996, 1999, and 2002.<sup>37</sup> Their analysis concludes that, as a result of cost considerations in gentrifying neighborhoods, 8,341 households a year (rent holders) were displaced between 1991 and 1993, and 11,651 a year were displaced between 1999 and 2002.<sup>38</sup> Although 10,000-12,000 displacements per year is not a large number given New York City’s population of more than eight million, Newman and Wyly argue that had these numbers reflected the number of New Yorkers experiencing injustices such as “racial profiling, illegal employer retaliation against union organizers, employment discrimination, homelessness . . . and so on,”<sup>39</sup> we would not dismiss them as irrelevant. Therefore, we should not dismiss these numbers as too insignificant, or irrelevant, for displacement of *low-income families* is a very real consequence of gentrification.<sup>40</sup>

The most vulnerable residents in a neighborhood experience gentrification as a process of colonization by more privileged classes.<sup>41</sup> One fairly common

<sup>32</sup> Liz Bondi, *Gender Divisions and Gentrification: A Critique*, 16 TRANSACTIONS INST. BRIT. GEOGRAPHERS, N.S. 190, 191 (1991).

<sup>33</sup> Liz Bondi is Professor of Social Geography at the University of Edinburgh. She is also a counselor accredited by Counselling and Psychotherapy in Scotland. Liz Bondi’s research interests span feminist geography, social geography, geographies of health, and counseling studies. Current research focuses on psychotherapies as socio-spatial practices, emotional and psychoanalytic geographies, emotions and qualitative research methods, voluntarism in mental health care, and geographies of subjectivity. Previous research has addressed gender identities and urban change, and geographies of education.

<sup>34</sup> Bondi, *supra* note 32.

<sup>35</sup> Newman & Wyly, *supra* note 8, at 2.

<sup>36</sup> The New York City Housing and Vacancy Survey, sponsored by the New York City Department of Housing Preservation and Development, is conducted every three years to comply with New York state and New York City’s rent regulation laws. The Census Bureau has conducted the survey for the City since 1965. *New York City Housing and Vacancy Survey (NYCHVS)*, U.S. CENSUS BUREAU, <http://www.census.gov/housing/nycnchs/> (last visited Mar. 16, 2016).

<sup>37</sup> *Id.*

<sup>38</sup> Newman & Wyly, *supra* note 8, at 3.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> LEES ET AL., *supra* note 23, at 221.

occurrence that results in such colonization is instances where rental buildings are sold to condominium developers.<sup>42</sup> As a result of these sales, social networks are lost and local services are “improved” in a way that is incompatible with the needs of the original population.<sup>43</sup> Such improvements result in property taxes that are too high for the original population and shopping options that residents fear are out of the price range of the population.<sup>44</sup> As a result, the original population is forced to seek other living arrangements or to travel out of their neighborhoods to satisfy personal shopping needs.<sup>45</sup> To provide an opportunity for the local low-income population to remain in their respective neighborhoods, it is necessary to pass regulations that prevent, lessen, or discourage the more common catalysts of gentrification, particularly the act of selling rental buildings to condominium developers. What should also be taken into consideration when enacting regulations is how quickly improvements are made in gentrifying communities.

There is significant disagreement over the extent to which original residents of neighborhoods are displaced once an area becomes gentrified, “but few anticipate gentrification without such features.”<sup>46</sup> A staunch supporter of gentrification, J. Peter Byrne, argued in his 2003 article, *Two Cheers for Gentrification*,<sup>47</sup> that gentrification affects urban areas in a positive manner by enhancing the political and economic positions of residents, both incumbent and original.<sup>48</sup> Byrne’s position is that when low-income residents interact with their new higher-income neighbors on a consistent basis, the traditional political isolation that is associated with being in a lower financial bracket is curbed.<sup>49</sup> Byrne’s economic argument suggests that as more money is pumped into a formerly impoverished community, more jobs and better shopping opportunities are created.<sup>50</sup> However, this argument is faulty because it incorrectly presupposes that original residents will continue to be members in this new community.

Oponents of gentrification generally argue that the poor are forced out by escalating rents that they do not have the means to afford, and, therefore, low-income original tenants do not enjoy the improvements in their communities.<sup>51</sup> In *Gentrification and Displacement Revisited: A Fresh Look at the New York City Experience*,<sup>52</sup> authors Newman and Wyly argue that even the residents who survive displacement pressures in New York “suffer as critical community networks and

<sup>42</sup> Newman & Wyly, *supra* note 1.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.*

<sup>46</sup> Glass, *supra* note 2, at 282.

<sup>47</sup> See J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 405 (2003).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Newman & Wyly, *supra* note 1.

<sup>52</sup> *Id.*

culture are dismantled.”<sup>53</sup> In an effort to stymie the detrimental effects of gentrification, it is important for governments to preserve community networks, or at the very least, they should be taken into consideration when the government enacts zoning and land use regulations. If a regulation helps low-income families handle the transition that occurs in these rapidly improving, gentrifying neighborhoods, but neglects to preserve the sense of community that the original residents once knew, these residents may very well begin to feel like interlopers. Thus, even though they may be able to afford to stay in their homes for the time being, the original residents, instead of appreciating the changes in their communities, may fear that it is just a matter of time before they are displaced.<sup>54</sup> In his 1947 Gifford Lecture,<sup>55</sup> Historian Christopher Dawson explained how this most important sense of community operates:

A social culture is an organized way of life which is based on a common tradition and conditioned by a common environment . . . . It is clear that a common way of life involves a common view of life, common standards of behavior and common standards of value.<sup>56</sup>

Once these community networks are destroyed, the character of the neighborhood is irreparably changed. Neighborhoods where immigrants could once expect to find ethnic enclaves, reminiscent of their homelands, become “off-limits,”<sup>57</sup> and thereby appear to become homogeneous extensions of the broader metropolitan area containing very little diversity. For example, once diverse communities in New York City, including Brooklyn Heights, Park Slope, and parts of Harlem, now appear to have become virtual social extensions of Manhattan following gentrification.

Some proponents of gentrification argue that gentrification increases safety in a neighborhood, especially for new residents, because gentrifiers form neighborhood watch groups and are more apt to call on city police departments to increase local patrols.<sup>58</sup> However, according to research conducted to understand gentrification’s impacts, the argument that gentrification improves neighborhood safety is faulty.<sup>59</sup> Displacement of indigenous residents does not eliminate the

---

<sup>53</sup> *Id.*

<sup>54</sup> Newman & Wyly, *supra* note 1, at 2-3.

<sup>55</sup> For over a hundred years, the Gifford Lectures series has been one of the foremost lecture series dealing with religion, science and philosophy. GIFFORD LECTURES, <http://www.giffordlectures.org/> (last visited Mar. 12, 2016).

<sup>56</sup> CHRISTOPHER DAWSON, RELIGION AND CULTURE: THE GIFFORD LECTURES 1947 (1958). Christopher Dawson (1889-1970) is recognized as one of the most important Catholic historians of the twentieth century, authoring numerous books, articles, and scholarly monographs. Dawson was a lecturer in the History of Culture, University College, Exeter; Gifford lecturer; and Charles Chauncey Stillman Chair of Roman Catholic Studies at Harvard University from 1958 to 1962. *Christopher (Henry) Dawson*, GIFFORD LECTURES, <http://www.giffordlectures.org/lecturers/christopher-henry-dawson> (last visited Mar. 12, 2016).

<sup>57</sup> Newman & Wyly, *supra* note 1, at 1.

<sup>58</sup> Glass, *supra* note 2, at 280.

<sup>59</sup> LEES ET AL., *supra* note 23, at 233.

social ills that were present in these neighborhoods; rather, displacement moves social problems and low-income individuals to another place.<sup>60</sup> Though outside the scope of this Note, if the legislature is genuinely concerned with increasing safety in poverty-stricken neighborhoods, there are far more effective steps that could and should be taken. Further, while gentrifiers benefit from relatively affordable housing options, increased space, and proximity to work opportunities, it is quite common among supporters of gentrification to disregard the fact that the displacement of poor indigenous populations makes these “benefits” possible.<sup>61</sup> Neil Smith,<sup>62</sup> in his analysis of gentrification in the Lower East Side of New York City, attempts to explain why the displacement of poor people does not seem to be a big concern.<sup>63</sup> The motivations behind improving and developing low-income neighborhoods are generally not intended to harm members of these communities, but gentrifiers constantly disregard the indigenous people of these communities—this disregard requires action. One potentially effective action is to use the zoning enabling act<sup>64</sup> to implement growth controls in areas that, as determined by an independent body, are in danger of gentrification.

#### IV. GROWTH CONTROL: LIMITED IN DURATION AND PART OF A SPECIFIC PLAN

Growth control is a form of land use and zoning regulation that provides a useful framework for the type of regulation that could potentially curtail some of the negative effects of gentrification. Growth control is rooted in the principles of the *Village of Euclid v. Ambler Realty Co.*,<sup>65</sup> a landmark case which stands for the proposition that a zoning regulation is constitutional so long as it is based on a legitimate public interest.<sup>66</sup> Growth control was introduced in *Golden v. Town of Ramapo*,<sup>67</sup> a case where town officials believed that the city’s accelerating growth was occurring far faster than its ability to provide essential services.<sup>68</sup> The issue in the case was the measures created that would eventually allow for full development of the town, but would do so at a pace that would prevent the serious hazards to the

<sup>60</sup> *Id.*

<sup>61</sup> Betancur, *supra* note 4, at 781.

<sup>62</sup> He was Distinguished Professor of Anthropology and Geography at the Graduate Center of the City University of New York, where he founded and for a number of years directed the interdisciplinary Center for Place, Culture, and Politics. *Neil Smith*, AM. ASS’N OF GEOGRAPHERS, [http://www.aag.org/cs/membership/tributes\\_memorials/sz/smith\\_neil](http://www.aag.org/cs/membership/tributes_memorials/sz/smith_neil) (last visited Mar. 22, 2016).

<sup>63</sup> Betancur, *supra* note 4, at 781.

<sup>64</sup> N.Y. TOWN LAW § 272-a (McKinney 2010); N.Y. VILLAGE LAW § 7-722 (McKinney 2010); N.Y. GEN. CITY LAW § 28-a (McKinney 2010).

<sup>65</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926). Amber Realty Company challenged the enforcement of a zoning ordinance arguing that the enforcement would constitute an unconstitutional taking by devaluing his land. *Id.* The Supreme Court decided that this ordinance and as a result all zoning ordinances are constitutional so long as it finds its justification in some aspect of the police power, which is asserted for the public welfare. *Id.* The Supreme Court used the doctrine of nuisance to determine that the zoning exclusions were proper and for the public welfare. *Id.* at 378.

<sup>66</sup> *Id.* at 395.

<sup>67</sup> *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359 (1972).

<sup>68</sup> *Id.* at 366.

public that appeared inevitable because of the limited capacity of the sewage and drainage systems.<sup>69</sup> The Town of Ramapo amended the town zoning ordinance so that subdivision development would not be permitted until proposed municipal public services would be available according to scheduled completion dates detailed in the town's eighteen-year capital plan.<sup>70</sup> The town's plans were challenged in court by residential developers and upheld by the New York Court of Appeals.<sup>71</sup> The Court of Appeals ruled that it was clear that the physical and financial resources of the community were inadequate to provide the necessary services for the change in population.<sup>72</sup> Therefore, a rational basis for the proposed phased growth plan exists.<sup>73</sup> Also, the restrictions were temporary and the city could be expected to proceed with its plan in good faith.<sup>74</sup> The rational basis standard for determining the constitutionality of a federal or state law is satisfied if the challenger of the law fails to prove that there is no conceivable legitimate purpose to the law or that the law is not rationally related to such a purpose.<sup>75</sup>

Growth control measures will provide an opportunity for low-income families to manage better the increased financial strain they will undoubtedly experience as communities begin to rapidly improve and develop. Proponents of these measures recognize that change is less disruptive when it is gradual, usually because a gentrifying community does not have the resources to absorb too many new residents all at once. Growth control thus provides a workable framework for limiting the ill effects of gentrification. It is possible to give residents an opportunity to reap the benefits of living in a neighborhood where there is an influx of capital, without suffering the negative effects of growth that is too rapid, using growth control ordinances.

However, courts have generally refused to uphold growth control ordinances, thereby declining to show deference to municipal legislatures, if a growth control ordinance is (a) not limited in duration, and (b) not tied to a specific and prompt plan that could reasonably create the sort of corrective action that is needed to lift the ordinance.<sup>76</sup> In *Belle Harbor Realty Corp. v. Kerr*,<sup>77</sup> a landowner met all the municipal requirements for issuance of approvals and permits for construction of adult homes, but the city withheld the approvals because the municipality's sewage system could not accommodate even one single family property without creating a situation that would likely result in harm to the residents of the municipality.<sup>78</sup> The

---

<sup>69</sup> *Id.* at 367.

<sup>70</sup> *Id.* at 368.

<sup>71</sup> *Id.* at 359.

<sup>72</sup> *Id.* at 383.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Nebbia v. New York*, 291 U.S. 502, 537 (1934).

<sup>76</sup> *Planning Bd. of Town of Ramapo*, 30 N.Y.2d at 367; see also *Constr. Indus. Ass'n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

<sup>77</sup> *Belle Harbor Realty Corp. v. Kerr*, 350 N.Y.S.2d 698 (2d Dep't 1973).

<sup>78</sup> *Id.* at 700.

court in *Belle Harbor* ruled that the city could not burden a single landowner because of a general condition imposed on the community.<sup>79</sup> The situation in *Belle Harbor* can be distinguished from the one in *Town of Ramapo* because the lack of facilities in *Belle Harbor* had no relation to any community plan, as was the case in *Town of Ramapo*.<sup>80</sup> In addition, in *Belle Harbor*, there was no comprehensive plan for the improvement of the sewerage system; therefore, there was no possibility of accommodating the structures that the area was zoned for.<sup>81</sup> However, the *Belle Harbor* Court ruled that the city was permitted to impose other restrictions on building permits or could implement a temporary moratorium on development through the exercise of its police power.<sup>82</sup> The court relied on *Westwood Forest Estates v. Village of South Nyack*,<sup>83</sup> which held that landowners were not permitted to “contribute to a situation which would subject the residents of Belle Harbor to health dangers in the form of accumulating sewage.”<sup>84</sup> Thus, a municipality’s police power allows it to pass zoning laws so long as it is asserted for the public welfare.<sup>85</sup>

Zoning regulations may not be employed to resolve a purely private matter.<sup>86</sup> In order to use zoning regulations effectively to mitigate the negative effects of gentrification there must be more than a mere desire to keep things the way they are.<sup>87</sup> There must be a benefit to the public welfare.<sup>88</sup>

Public welfare is an important concept, not limited to the regulation of dangerous structures or activities. As the U.S. Supreme Court stated in *Berman v. Parker*:<sup>89</sup>

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.<sup>90</sup>

Therefore, there is no reason to believe that public welfare would not include preventing the *current* residents of gentrifying communities from being displaced from their homes, thereby preserving the character of the neighborhood. As a parallel to the physical detriments that occurred in both *Belle Harbor* and *Town of*

<sup>79</sup> *Id.*

<sup>80</sup> *Belle Harbor Realty Corp.*, 350 N.Y.S.2d 698; *Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359.

<sup>81</sup> *Belle Harbor Realty Corp.*, 350 N.Y.S.2d at 700.

<sup>82</sup> *Id.* at 701.

<sup>83</sup> *Westwood Forest Estates v. Village of S. Nyack*, 23 N.Y.2d 424 (1969).

<sup>84</sup> *Belle Harbor Realty Corp.*, 350 N.Y.S.2d at 701.

<sup>85</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926).

<sup>86</sup> *National Land & Inv. Co. v. Kohn*, 419 Pa. 504, 529 (1965).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Berman v. Parker*, 348 U.S. 26 (1954).

<sup>90</sup> *Id.* at 33.

*Ramapo*, gentrification has a physical effect on a neighborhood—diverse individuals, who are often minorities, who once inhabited a neighborhood must uproot their physical space because growth has taken place in that neighborhood at such a rapid rate that they are incapable of affording basic necessities.<sup>91</sup> When the indigenous residents are forced to relocate, the aesthetics of the neighborhood are changed as this population takes its culture, music, and idiosyncrasy with it, leaving the neighborhood as essentially bland urban suburbs.

A zoning regulation may not permanently prevent future development; however, it can be used to allow a municipality to plan for the future.<sup>92</sup> Any suggested zoning regulation must provide a comprehensive plan that includes how the municipality will adjust to the increased responsibilities and economic burdens, which time and natural growth invariably will bring.<sup>93</sup> The municipality must also show a nexus between the ordinance and the reason for imposing the restriction,<sup>94</sup> and it must make an individualized determination that the regulation is related both in nature and extent to the impact of the development that is proposed.<sup>95</sup>

*Construction Industry Association of Sonoma County v. City of Petaluma* describes such a comprehensive plan.<sup>96</sup> In this case, the City Council of the City of Petaluma adopted several resolutions collectively referred to as the Petaluma Plan (“Petaluma Plan”).<sup>97</sup> The plan was enacted in response to changes occurring in the city that threatened the city’s small town character (analogous to the threat of gentrification in New York City), including an imbalance between single-family and multifamily dwellings, a sprawl across the east side of the city, and a generally rapid growth in the city.<sup>98</sup> Prior to the Petaluma Plan, Petaluma implemented a construction and zoning moratorium, which was intended to give the City Council and the city planners an opportunity to study the housing and zoning situation and develop a plan.<sup>99</sup> The Petaluma Plan was limited to five years, and it capped housing development at 500 dwelling units per year.<sup>100</sup> The plan applied only to housing units that were a part of development projects involving five or more units.<sup>101</sup> Therefore, single-family homes and multifamily apartment buildings with four units could be built pursuant to previous zoning regulations.<sup>102</sup> The plan also created a “greenbelt”<sup>103</sup> boundary around the city, which served as a boundary

---

<sup>91</sup> Newman & Wyly, *supra* note 8, at 1.

<sup>92</sup> *National Land & Inv. Co.*, 419 Pa. at 528.

<sup>93</sup> *Id.*

<sup>94</sup> *Nollan v. Ca. Coastal Comm’n*, 483 U.S. 825 (1987).

<sup>95</sup> *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

<sup>96</sup> *Constr. Indus. Ass’n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

<sup>97</sup> *Id.* at 901.

<sup>98</sup> *Id.* at 900.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 901.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> 9. *Protecting Green Belt Land*, PLANNING PRACTICE GUIDANCE,

preventing urban expansion for at least five years.<sup>104</sup> The Petaluma Plan's purported purpose was to ensure that "development in the next five years, will take place in a reasonable, orderly, attractive manner, rather than in a completely haphazard and unattractive manner."<sup>105</sup> The city adopted the limitation on development units in order to protect its "small town character"<sup>106</sup> and "surrounding open space."<sup>107</sup> The Petaluma Plan also encouraged balanced development in the different areas of the city, providing variety in densities, building types, and prices.<sup>108</sup> The Construction Industry Association of Sonoma County and two landowners challenged the Petaluma Plan.<sup>109</sup> The Northern District Court in the State of California held the Petaluma Plan unconstitutional, and struck down important aspects of the plan including the 500 dwelling unit cap, citing that the cap was an unconstitutional hindrance to the freedom to travel and that the plan was primarily enacted "to limit Petaluma's demographic and market growth rate in housing and in the immigration of new residents."<sup>110</sup>

The Petaluma Plan would not cause the quality and choice of housing available to low- or middle-income residents to deteriorate.<sup>111</sup> Experts testified, the plan would increase the availability of multi-family units, meaning that Petaluma would realistically have an opportunity of providing housing for low-income families. However, the appellate court found that if the plan was implemented in not just Petaluma, but throughout the region, there would be a significant shortfall in needed housing in the region.<sup>112</sup> This finding indicates that growth control measures must be extremely limited in scope to avoid detrimental adverse housing shortage concerns.

On appeal, the Construction Industry Association of Sonoma County argued that the Petaluma Plan had an exclusionary purpose and effect,<sup>113</sup> but the appellate court determined that the existence of such exclusionary purpose and effect does not mean the regulation was illegal, for "in reviewing the reasonableness of a

---

<http://planningguidance.communities.gov.uk/blog/policy/achieving-sustainable-development/delivering-sustainable-development/9-protecting-green-belt-land/> (last visited Mar. 23, 2016). The aim of a Greenbelt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Greenbelts are their openness and their permanence. *Id.* Green Belt serves five purposes: to check the unrestricted sprawl of large built-up areas; to prevent neighboring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and, to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. *Id.*

<sup>104</sup> *City of Petaluma*, 522 F.2d at 901.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 902.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Constr. Indus. Ass'n of Sonoma Cty. v. City of Petaluma*, 375 F. Supp. 574, 576 (N.D. Cal. 1974), *rev'd*, 522 F.2d 897 (9th Cir. 1975). The lower court's opinion contains the details of the plan.

<sup>111</sup> *City of Petaluma*, 522 F.2d at 902.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 905.

zoning ordinance, our inquiry does not terminate with a finding that it is for an exclusionary purpose."<sup>114</sup> According to the court, most, if not all, zoning regulations have the purpose and effect of excluding some activity, type of structure, or a density of inhabitants.<sup>115</sup> Therefore, the determination of whether a zoning regulation is reasonable hinges on whether the exclusion bears any rational relation to a legitimate state interest.<sup>116</sup> If the exclusion does not bear any rational relation to a legitimate state interest, the regulation will be held invalid.<sup>117</sup>

The alleged public welfare in *Petaluma* was to preserve the small town character and avoid uncontrolled and rapid growth.<sup>118</sup> In determining whether this interest was a valid public welfare, the court relied on two cases: *Belle Terre v. Boraas*<sup>119</sup> and *Ybarra v. City of Town of Los Altos Hills*.<sup>120</sup> The U.S. Supreme Court, in *Belle Terre*, and the Ninth Circuit Court of Appeals, in *Ybarra*, both upheld as reasonable zoning regulations that were far more restrictive than the regulation at issue in *Petaluma*.<sup>121</sup>

In *Belle Terre*,<sup>122</sup> the Supreme Court upheld the village of Belle Terre's zoning regulations that restricted land use to one-family dwellings and implemented a permanent ban on lodging houses, boarding houses, fraternity houses, and multiple dwelling houses.<sup>123</sup> The village passed the regulations to prohibit the construction of, or conversion of a building to anything other than a single-family dwelling in order to ensure that it would never grow much past its then-current population.<sup>124</sup> The Court ruled that since the prohibited dwellings presented urban problems, the prohibition was reasonable and within the public welfare.<sup>125</sup> The Court defined urban problems as the occupation of a given space by more people, the increase in traffic and parked cars, and the noise that comes with increased crowds.<sup>126</sup> The Court also defined legitimate guidelines for a land-use project that is addressed to family needs to include: a quiet place where yards are wide, few people, and motor vehicles restricted.<sup>127</sup>

In *Los Altos Hills*, the Ninth Circuit reviewed a zoning ordinance that, as a practical matter, prevented poor people from living in the City of Los Altos Hills,

<sup>114</sup> *Id.* at 906.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 901.

<sup>119</sup> *Belle Terre v. Boraas*, 416 U.S. 1 (1974).

<sup>120</sup> *Ybarra v. City of Town of Los Altos Hills*, 503 F.2d 250 (9th Cir. 1974).

<sup>121</sup> *Id.*; *Belle Terre*, 416 U.S. at 1.

<sup>122</sup> *Belle Terre*, 416 U.S. at 1.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 6.

<sup>126</sup> *Id.* at 9.

<sup>127</sup> *Id.*

and restricted the density, and the population of the town.<sup>128</sup> The ordinance explicitly provided that a housing lot could not be less than an acre, and that lots could not contain more than one primary dwelling unit.<sup>129</sup> The Ninth Circuit found that the ordinance was rationally related to a legitimate government interest: the preservation of the town's environment.<sup>130</sup>

The ordinances and regulations in *Belle Terre*<sup>131</sup> and *Los Altos Hills*<sup>132</sup> had the purpose and effect of permanently restricting growth; however, in each case the court upheld the law, finding that the regulation served a legitimate governmental interest within the concept of public welfare.<sup>133</sup> The Court in *Petaluma* found that under *Belle Terre* and *Los Altos Hills* the "concept of the public welfare"<sup>134</sup> is sufficiently broad to uphold the City of Petaluma's "desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace."<sup>135</sup> Given the scope and purpose of the ordinances and regulations upheld in *Petaluma*, *Belle Terre*, and *Los Altos Hills*, it would appear to be permissible to implement *temporary* zoning regulations in New York State pursuant to the State's *police power*. These regulations would limit the growth of these communities, and ease the transition for the original members of the community for the *public welfare* purpose of reducing the likelihood that these original members of the community (i.e., low-income families) will face displacement pressures. If there is an influx of upper middle class residents in an area that was previously entirely inhabited by low-income families, then it is because the low-income families could no longer afford to compete for housing in order to reside in those communities. A municipality should be concerned with its residents' ability to compete for housing, especially since displacement can result in homelessness. The City of New York should then, through an assertion of its police power, enact regulation that is in accordance with the below proposed regulation.

#### V. THE PROPOSED REGULATION: GROWTH LIMITING DISTRICTS

The solution to preserving housing for low-income families whose communities are vulnerable to gentrification is to create favorable zoning districts that will foster social preservationist communities rather than dense homogeneous "urban suburbs."<sup>136</sup> Since municipalities have the right to enact zoning

---

<sup>128</sup> *Ybarra v. City of Town of Los Altos Hills*, 503 F.2d 250 (9th Cir. 1974).

<sup>129</sup> *Id.* at 252.

<sup>130</sup> *Constr. Indus. Ass'n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897, 907 (9th Cir. 1975).

<sup>131</sup> *Belle Terre*, 416 U.S. at 1.

<sup>132</sup> *City of Town of Los Altos Hills*, 503 F.2d at 250.

<sup>133</sup> *Id.*; *Belle Terre*, 416 U.S. at 1.

<sup>134</sup> *City of Petaluma*, 522 F.2d at 909.

<sup>135</sup> *Id.*

<sup>136</sup> Social preservationist communities would be fostered rather than gentrified communities because traditionally impoverished communities would have an opportunity to undergo improvements without displacing the majority of the indigenous population. Without wide scale displacement, gentrifiers are

regulations, as long as they “find their justification in some aspect of the police power, asserted for the public welfare,”<sup>137</sup> the municipality’s reasonable interest in not displacing low-income families for the sake of building big, beautiful condominiums and luxury rentals is in the best interest of overall public welfare. The *Village of Euclid*<sup>138</sup> established that because of the constant increase in urban population and complexity of our civilization it is necessary for the state to regulate property use, even if the result is a marked decrease in property values or impedes the maximization of property values.<sup>139</sup> In the case of New York City, the state may achieve the proposed regulation through a public agency, for instance, City Planning Commission, or through the creation of a new public agency because the state’s police power to sanction for the public welfare must adjust to meet the “changing conditions.”<sup>140</sup> Changed conditions, here, refers to fluctuating market forces as well as the varying needs of citizens, in relation to the effects of whatever zoning measures are enacted, that may change from time to time.

New York State is a home rule state. This means that municipalities, including New York City, have the discretion to pass any land use and zoning laws, so long as: (1) the law relates to the local government of the area; (2) there is no express or implied conflict between a state statute and the local law; and (3) there is no violation of the constitution limits of the state.<sup>141</sup> Addressing each in turn, the zoning regulation proposed in this Note relates exclusively to the local municipality of New York City; specifically, the proposed regulation will relate to the five counties located within the City of New York.<sup>142</sup> The proposed regulation will simply create new special use districts,<sup>143</sup> which already exist in New York City; therefore, such a regulation would not conflict with any state or local law. Finally, the New York State Senate enacted the Municipal Home Rule Law,<sup>144</sup> which

---

far less interested in relocating to these neighborhoods, but social preservationists find the culture and history of these neighborhoods appealing. Brown-Saracino, *supra* note 11, at 261.

<sup>137</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 392.

<sup>140</sup> *Id.*

<sup>141</sup> JOE STINSON, THE HOME RULE AUTHORITY OF NEW YORK MUNICIPALITIES IN THE LAND USE CONTEXT (1997), <http://www.pace.edu/LawSchool/landuse/stinson.html>.

<sup>142</sup> The counties are: New York County (Borough of Manhattan), Kings County (Borough of Brooklyn), Bronx County (Borough of the Bronx), Richmond County (Borough of Staten Island), and Queens County (Borough of Queens). *New York City Counties*, NYC.GOV, <http://www1.nyc.gov/nyc-resources/service/2123/new-york-city-counties> (last visited Mar. 12, 2016).

<sup>143</sup> The City Planning Commission has been designating special use districts since 1969 to achieve specific planning and urban design objectives in defined areas with unique characteristics. Special districts respond to specific conditions; each special district designated by the Commission stipulates zoning requirements and/or zoning incentives tailored to distinctive qualities that may not lend themselves to generalized zoning and standard development. *Special Purpose Districts*, NYC DEP’T OF CITY PLANNING, <http://www1.nyc.gov/site/planning/zoning/districts-tools/special-purpose-districts.page> (last visited Feb. 21, 2016).

<sup>144</sup> N.Y. MUN. HOME RULE LAW §§ 1-59 (McKinney 1994).

is a means by which the state legislature may divest itself of the burdensome responsibility of reviewing and voting on matters of purely local concern . . . . The legislature is thereby freed to focus its attention on matters of statewide concern, as is appropriate for a state legislature.<sup>145</sup>

The New York Court of Appeals ruled in *Town of Ramapo*<sup>146</sup> that growth control measures may be exercised in an area so long as they are not permanent, for “zoning . . . is a means by which a governmental body can plan for the future—it may not be used as a means to deny the future.”<sup>147</sup> To this end, the New York City Planning Commission<sup>148</sup> (“Commission”) should identify neighborhoods that have begun experiencing gentrification, giving particular attention to areas where there has been exorbitant increases in rents, like those that have occurred in certain areas of Brooklyn.<sup>149</sup> These areas should *temporarily* be rezoned as growth limiting districts (“GLDs”). GLDs, as the name suggests, will limit development in an area by exerting temporary growth control measures. After a GLD has been in place for a five-year period, the Commission will evaluate whether the pressures that result in displacement of low-income families have substantially decreased, and will vote to decide whether the GLD designation should be lifted. If the Commission finds that the pressures are still present, or have not substantially decreased, then it can vote to renew the GLD designation for additional five years.

The GLD designation process will be similar to the processes of nominating and designating an area as a New York City landmark.<sup>150</sup> To become a GLD, the proposed neighborhood or collection of buildings must: (1) based on the United States’ census data,<sup>151</sup> be occupied by at least 51% of families who are considered “low income”;<sup>152</sup> (2) have a distinct “sense of culture”; and, (3) have a coherent streetscape. The City Planning Commission will identify potential GLDs through two methods: (1) the Commission initiated research into areas where there is significant, marked, noticeable, or other amount of increase in housing and living

<sup>145</sup> STINSON, *supra* note 141, at 9.

<sup>146</sup> *Golden v. Planning Board of Town of Ramapo*, 30 N.Y.2d 359 (1972).

<sup>147</sup> *Nat’l Land & Inv. Co. v. Kohn*, 419 Pa. 504, 528 (1965); *see also id.*

<sup>148</sup> The New York City Planning Commission is responsible for the conduct of planning relating to the orderly growth and development of the City, including adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population. The Commission has thirteen members. The Mayor appoints the Chair who is also the Director of City Planning. The Mayor also appoints six other members, each Borough President appoints one member, and the Public Advocate appoints one member. The Chair serves at the Mayor’s pleasure while the other 12 Commissioners each serve for staggered terms of 5 years. *City Planning Commission*, NYC DEP’T OF CITY PLANNING, <http://www1.nyc.gov/site/planning/about/commission.page> (last visited Jan. 12, 2016).

<sup>149</sup> *New York City, NY Parcels Map*, *supra* note 20.

<sup>150</sup> *How the Designation Process Works*, NYC LANDMARKS PRESERVATION COMM’N, <http://www.nyc.gov/html/lpc/html/propose/process.shtml> (last visited Jan. 12, 2016).

<sup>151</sup> *See* U.S. CENSUS BUREAU, <http://www.census.gov> (last visited Jan. 12, 2016).

<sup>152</sup> In other words, a family of four in GLD districts can make no more than 80% of New York Metropolitan Area Median Family Income. *See also* CTR. FOR URBAN PEDAGOGY, ENVISIONING DEVELOPMENT GUIDE NO. 1: WHAT IS AFFORDABLE HOUSING? NYC EDITION 20 (Rosten Woo & John Mangin eds., 2009), [http://welcometocup.org/file\\_columns/0000/0011/cup-fullbook.pdf](http://welcometocup.org/file_columns/0000/0011/cup-fullbook.pdf).

expenses, signaling possible displacement of low-income families; and, (2) a Request for Evaluation (“RFE”) of particular communities from members of the public, elected or civic officials, or other parties.

After the Commission’s research department conducts its research, or the Commission receives an RFE, the research department of the Commission will decide if the suggested community should receive a GLD designation.<sup>153</sup> If the research department concludes that a particular community may be worthy of the designation, photographs, statement of significance, and the Committee’s recommendation are sent to each commissioner for comment. After reviewing comments, the Commission’s chairperson will decide whether to ask the full Commission to vote publicly to initiate a formal review. If a formal review is initiated, property owners will be notified—this will be the first formal step in the designation process. After a formal review, the full Commission will vote at a public meeting to decide whether to schedule a public hearing on the potential community or communities that will be considered for the GLD designation. A vote by a majority of the Commissioners present is required to schedule a public hearing. Anyone may testify about a proposed designation before the full Commission. Notices of public hearings are published in the City Record and will be sent to the property owners, the affected community boards, and elected officials. Notices are also listed on the Commission’s website. Before testimony begins at the public hearing, a member of the research department makes a brief presentation about the community or communities under consideration for designation. The research department will write a detailed report about the community and properties, which will be mailed to the owners in the community for review and comment. The Commissioners review the draft report and use it, along with public testimony, as the basis for a decision. The Commission will then vote on designations at a public meeting. A vote by a majority of the Commissioners is required to approve or deny a proposal for GLD designation. If seven Commissioners do not vote in favor of designation, that community is removed from further consideration. Within ten days, the Commission will file copies of the final report with the City Council, and sends a Notice of Designation to owners and the City Clerk’s Office. The Commission will submit a report to the City Council about the impacts of the designation on zoning, projected public improvements, and any other city development plans. The City Council will have 120 days from the time of the filing to modify or disapprove the designation. A majority vote will be required to disapprove the designation, but a Council approval is not required. The Mayor can veto the City Council vote within five days; the City Council can override a Mayoral veto by two-thirds vote within ten days.

The proposed regulation would limit the amount of multifamily housing that would be permitted within these zones; therefore, it is imperative that the proposed

---

<sup>153</sup> A community may be meritorious of the GLD designation, if the Commission has a reasonable belief that the area is being negatively affected by an influx of capital.

regulation satisfies the two-part test delineated in *Berenson v. Town of New Castle*:<sup>154</sup>

The first branch of the test . . . is simply whether the board has provided a properly balanced and well-ordered plan for the community. Secondly, in enacting a zoning ordinance, consideration must be given to regional needs and requirements . . . . There must be a balancing of the local desire to maintain the status quo within the community and the greater public interest that regional needs be met.<sup>155</sup>

To satisfy the first prong of the *Berenson* test, a plan shall be delineated for communities that will temporarily be delegated as GLDs. Development in traditionally low-income neighborhoods shall be encouraged, but it will also require preservation of housing for low-income families. These families are financially vulnerable, and are often comprised of single mothers and their children.<sup>156</sup> As for the second prong of the test, the proposed plan would have the same result the *Petaluma* Court explained would happen if that plan was spread throughout the San Francisco region. If the plan here is too widespread, it would result in a decline in the regional housing stock and its quality because the plan would artificially depress the market value of housing regionally. Therefore, the plan must be crafted in such a way that the greater New York City metropolitan region would not have more than fifteen GLDs at any given time. The proposed regulation includes a provision that provides developers with an incentive to increase the number of total units in the GLDs and throughout the region. Within a GLD, developers will have the ability to increase a proposed development in size and scope if the developers delegate a certain percentage of units, as yet determined, as permanently affordable.<sup>157</sup>

The proposed regulation will last for periods of five, ten, fifteen, and twenty years, depending on the New York City Planning Commission's best judgment. As was the case in the *Petaluma* plan, the proposed regulation will not apply to proposed projects of four or fewer units. Therefore, single-family homes and multi-family buildings of four-units or less that are not a part of a larger project within a community that has received a GLD designation will only be required to comply with New York City's normal zoning regulations. The proposed regulation presupposes that all other New York City zoning ordinances will continue to remain in effect. Therefore, designations pertaining to what land is available for residential development will continue to be based on already established New York City zoning regulations and ordinances. The proposed regulation is not intended to deny the future or block all development in potentially gentrifying communities;

---

<sup>154</sup> *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975).

<sup>155</sup> *Id.* at 110.

<sup>156</sup> Bondi, *supra* note 32.

<sup>157</sup> "Affordable" in this context is a term used by the government which means below the area median. See CTR. FOR URBAN PEDAGOGY, *supra* note 152.

rather, the intention is to define the limitations of future development for the sake of low-income families.

If a residential building is torn down in one of the designated GLD areas, the proposed regulation will require that the building be replaced only by another residential building that has both the same number and size of units. This means that if a developer purchased an eight-unit building, he or she would not be able to turn it into anything other than an eight-unit building. The assumption is that a developer is less likely to take this route, and thus it is much more likely that indigenous residents would continue to live in the building if there are renovations and the GLD designation would be lifted sooner. This will give indigenous residents a better opportunity to remain within their communities, and the proposed regulation will incentivize developers to choose to renovate buildings in their current state rather than to flatten and rebuild them from ground up.

If there is significant development in a traditionally low-income community, and original residents are in a position to be able to remain in these neighborhoods, “social preservation”<sup>158</sup> occurs. Once social preservation occurs, J. Peter Byrne’s theory of gentrification becomes possible.<sup>159</sup> Byrne’s argument centers on the idea that social mobility is created by an infusion of capital in traditionally poorer neighborhoods. The proposed regulation encourages social growth in the community as it develops, offering indigenous residents an opportunity to reap economic rewards associated with residing in a “revitalized” neighborhood, including job creation within the community and better shopping opportunities. Low-income residents should be able to gain economic and political strength previously unheard of in such neighborhoods.

To encourage development and social growth of low-income residents, the proposed regulation suggests that in GLDs where there are large developments of 100 units or more, 40% of the units must be preserved for affordable housing. These units will be made available by the order of three levels of priority. If a building is demolished to make way for the development, the first priority would include the former residents of that building who were temporarily displaced to make way for the new building. The second priority would include residents of the immediate community, and the third priority would include residents of neighboring communities within a five to ten-mile radius. If a building is not demolished, the first priority would include residents of the immediate community or residents who were displaced from the immediate community within the time that the ground breaking occurred on the site of the project. Where a building is not demolished, the second priority would include residents of neighboring communities within a five to ten-mile radius. Finally, the third priority, where a building is not demolished, would be residents of the borough where the building is

---

<sup>158</sup> See Brown-Saracino, *supra* note 11.

<sup>159</sup> See Byrne, *supra* note 47.

located.

The proposed regulation would also call for a restriction on the number of building permits issued in GLDs during the time the GLD is effective. Community Boards 3 and 4 represent communities in Brooklyn (Bedford-Stuyvesant, Stuyvesant Heights, Ocean Hill, and Bushwick) that show signs of gentrification, i.e., rapid increases in the cost of rent.<sup>160</sup> In 2014, a total of 355 permits<sup>161</sup> were issued for residential properties of five or more units in these communities. This total number does not include permits for work on property owned by the government and permits for work done on façade, plumbing, signage, or amenities. Compared to prior ten years, where there were ninety-two permits<sup>162</sup> issued in the same communities for residential properties of five or more units, with the same exclusions. That amounts to a 285% increase in ten short years, which suggests that improvements are occurring rather rapidly. A regulation that places an artificial cap on the number of permits granted in these communities is one possible method that can be used to restrain the influx of capital. Such a regulation will require the Commission to find an optimal cap for each community that will encourage development, but do so at a pace that will give original residents a chance of remaining in their communities. For instance, in the communities of Bedford-Stuyvesant, Stuyvesant Heights, Ocean Hill, and Bushwick, the optimal cap is likely to be between 92 and 355 (total for all four communities). Once that cap number has been proffered, developers that wish to do substantial work, such as gut renovations or erect new buildings, must acquire points to do so that will be known as the “Petaluma points.”<sup>163</sup>

This portion of the proposed regulation would be largely based on the plan in *City of Petaluma*.<sup>164</sup> In that case, the Ninth Circuit ruled that the city was well within its rights to zone for the purpose of preserving a rural environment, for the ordinance was rationally related to a legitimate government interest (i.e., environmental welfare of city), and, therefore, was not an abuse of state police power.<sup>165</sup> All things being equal, it stands to reason that barring anything unpredictable a court should find nothing wrong with an urban zoning plan with the purpose of limiting the pace of growth in a small sample of a very large city. In

<sup>160</sup> *New York City, NY Parcels Map*, *supra* note 20.

<sup>161</sup> Number extrapolated from the New York City Department of Buildings website: January: 18, February: 29; March: 23; April: 21; May: 32; June: 36; July: 42; August: 23; September: 33; October: 31; November: 33; December: 34. See *2014 Monthly Statistical Reports: Job Monthly Statistical Reports*, NYC BLDGS., <http://www1.nyc.gov/site/buildings/about/foilmmonthly-2014.page> (last visited Jan. 24, 2016).

<sup>162</sup> Number extrapolated from the New York City Department of Buildings website: January: 4; February: 7; March: 4; April: 11; May: 3; June: 10; July: 10; August: 7; September: 10; August: 7; September: 10; October: 9; November: 12; December: 5. See *2004 Monthly Statistical Reports: Job Monthly Statistical Reports*, NYC BLDGS., <http://www1.nyc.gov/site/buildings/about/foilmmonthly-2004.page> (last visited Jan. 24, 2016).

<sup>163</sup> See *supra* Part V.

<sup>164</sup> *Constr. Indus. Ass'n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897, 907 (9th Cir. 1975).

<sup>165</sup> *Id.* at 908-09.

*Petaluma*, the city passed a zoning ordinance that, excluding projects of four units or less, for a five-year period, placed a 500-unit limit on development per year, as well as a 200-foot wide “greenbelt” around the city that served as a boundary for urban expansion during that five-year period.<sup>166</sup> The Petaluma Plan called for the annual 500-unit limit to be dispersed based on an intricate and innovative point system referred to as the Residential Development Control System.<sup>167</sup> Builders accumulated points for conforming to the city’s general plan and environmental designs, for good architectural design, and for providing low and moderate-income dwelling units.<sup>168</sup>

The proposed regulation will require a similar points system—the Petaluma points for developers to qualify for permits to perform “extensive work” within GLDs.<sup>169</sup> Points will be awarded to developers for: (1) good faith efforts to decrease displacement among vulnerable residents as much as possible; (2) creating and maintaining low and moderate income units; (3) conforming with the plan of the city; (4) good architectural design; and, (5) creating recreational facilities. Developers will be evaluated on a scale of zero to five for each of the five criteria. The points in each category will be tallied, and the developers who have a minimum of fifteen points will qualify for a building permit to perform extensive work.

In addition, there will be an incentive zoning option that will offer bonuses to developers who would like to surpass the minimum GLD requirements in providing opportunities for original residents to remain in their communities by creating affordable housing. Incentive zoning is defined in enabling legislation for towns, cities, and villages enacted in 1991 and 1992<sup>170</sup> as “the system by which specific incentives or bonuses are granted . . . on condition that specific physical, social or cultural benefits or amenities would inure to the community.”<sup>171</sup> The benefits of an incentive zoning plan must be in accordance with community needs and be a part of a comprehensive plan.

Incentive zoning undertakes to add an affirmative thrust to the land use regulations by encouraging the establishment of uses regarded as desirable, or by inducing the addition of desirable features when new construction is carried out. It is a carrot-and-stick technique that employs administrative concessions to induce needed construction or desired features thereof.<sup>172</sup>

The normal limits for GLDs, including the 40% affordable housing and

---

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 901.

<sup>168</sup> *Id.*

<sup>169</sup> Extensive work will be work that requires more than a reasonably small amount of demolition prior to construction.

<sup>170</sup> 1 NEW YORK ZONING LAW AND PRACTICE § 7:17 (4th ed. 2014).

<sup>171</sup> N.Y. TOWN LAW § 261-b(1)(c) (McKinney 2010); N.Y. GEN. CITY LAW § 81-d(1)(c) (McKinney 2010); N.Y. VILLAGE LAW § 7-703(1)(c) (McKinney 2010).

<sup>172</sup> 1 NEW YORK ZONING LAW AND PRACTICE § 7:17.

building permit restrictions, may be superseded in exchange for including certain “amenities” in a development project. The particular “amenity” that the proposed regulation seeks to incentivize is affordable housing options, specifically for the current residents of buildings that developers are seeking permits to improve, as well as housing for the population within a radius of a few miles of the development site. If developers agree to provide more affordable housing units than the 40% that the proposed regulation requires, the developer will be allowed to recover the lost floor area ratio (“FAR”) for the amount of the increase in affordable units by adding extra market units and thereby building higher. However, the final FAR of the project may not exceed 1.5 times the FAR of the original building that was demolished.

The government uses the term “affordable housing” to refer to rental units that are affordable for families in the middle or at the lower end of the income scale.<sup>173</sup> To calculate income limits for affordable housing programs, the government uses Median Family Income (“MFI”), or the Area Median Income (“AMI”).<sup>174</sup> The government defines housing as affordable if a family spends no more than 30% of their total income to live there.<sup>175</sup> This threshold is referred to as the “affordable rent burden.”<sup>176</sup> Based on a family’s affordable rent burden, the government determines which families are eligible to live in certain housing developments.<sup>177</sup> The MFI is the income in the middle of the distribution; in other words, it is what the family in the middle of the income distribution earns.<sup>178</sup> Half the families earn more, and half the families earn less.<sup>179</sup>

In New York, eligibility for affordable housing programs is calculated by looking at the MFI or AMI for the New York Metro Area.<sup>180</sup> This includes the five boroughs (Manhattan, Brooklyn, the Bronx, Queens, and Staten Island) and Putnam County.<sup>181</sup> The MFI for the New York Metro Area for a family of four is \$76,800; to put that number into perspective, the MFI for New York State is \$67,900 and for the United States is \$64,000.<sup>182</sup> In New York, housing developments are specific to MFI, thus 0% to 30% of New York Metro Area MFI, or \$0 to \$23,050, is considered extremely low income; 30% to 50% of MFI, or \$23,050 to \$38,400, is considered very low income; 50% to 80% of MFI, or \$38,400 to \$61,450, is considered low income; 80% to 120% of MFI, or \$61,450 to \$92,150, is considered moderate income; 120% to 250% of MFI, or \$92,150 to

---

<sup>173</sup> CTR. FOR URBAN PEDAGOGY, *supra* note 152.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 15.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 25.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 24.

\$192,000, is considered middle income; and, 250% of MFI and up, or \$192,000 and up, is considered high income.<sup>183</sup>

The incentive zoning portion of the proposed regulation will require that the affordable housing units within each of the five boroughs of New York City be “affordable” based on the MFI of a family of four within that borough. Brooklyn’s MFI is \$49,000; therefore, based on the New York Metro Area scale, every unit, in order to be considered affordable, must at the very least be available to those in the low income category.<sup>184</sup> The Bronx’s MFI is \$38,000; therefore, every affordable unit must be available to those in the very low income category.<sup>185</sup> Queens’ MFI is \$61,000; therefore, every affordable unit must at the very least be available to those in the low income category.<sup>186</sup> Staten Island’s MFI is \$83,000; therefore, every affordable unit must at the very least be available to those in the moderate income category.<sup>187</sup> Finally, Manhattan’s MFI is \$75,000; therefore, every affordable unit must at the very least be available to those in the moderate income category.<sup>188</sup>

This form of incentive zoning can be successful, and has in fact been practiced with some success, in downtown Seattle.<sup>189</sup> In Seattle, developers may build residential buildings up to 290’ as of right, but they may build up to 400’ if they participate in the bonus program.<sup>190</sup> In order to participate in the bonus program, developers first commit to building a LEED Silver<sup>191</sup> certified structure.<sup>192</sup> The mandate is for developers either to build affordable housing on site or to contribute to an affordable housing fund.<sup>193</sup>

#### CONCLUSION

It is important that city officials and policy makers realize that gentrification, while it results in increases in property values and thereby taxes, has serious consequences for a segment of the population that traditionally does not have the resources to do much about it. This segment of the population should not be forgotten because it lacks the financial resources and the political clout to force a change. Liz Bondi’s research shows that the most vulnerable members of this segment of population are single mothers *and their children*.<sup>194</sup> Low-income

<sup>183</sup> *Id.* at 28.

<sup>184</sup> *Id.* at 24, 28.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> STEWART E. STERK & EDUARDO M. PENALVER, *LAND USE REGULATION* 45 (2011).

<sup>190</sup> *Id.*

<sup>191</sup> LEED, or Leadership in Energy & Environmental Design, is a green building certification program that recognizes best-in-class building strategies and practices. LEED, <http://www.usgbc.org/leed> (last visited Mar. 6, 2016).

<sup>192</sup> STERK & PENALVER, *supra* note 189, at 45.

<sup>193</sup> *Id.*

<sup>194</sup> Bondi, *supra* note 32.

families are being forced from their homes by the market conditions that result in housing demolition, ownership conversion of rental units, increased housing cost, landlord harassment, and evictions. It is in the public's best interest for the City of New York to take proactive steps to mitigate these detrimental occurrences.

One approach that the city could take is to pass ordinances and regulations that will slow the pace of growth that occurs in neighborhoods that are particularly susceptible or attractive to gentrifiers. This approach is viable because it is the acceleration of the growth within these neighborhoods that results in the conditions that negatively affecting low-income families. This approach is based on a modification of the growth control principles in *Town of Ramapo*.<sup>195</sup> In *Town of Ramapo*, the city was unable or incapable of absorbing the number of new residents that would move into the community. This approach, however, recognizes that while the City of New York may be able to absorb the new residents that will migrate, the current residents of traditionally impoverished communities are incapable of absorbing the amount of change that will occur, at the rate that it will occur, if the gentrification process continues unchecked.

The proposed regulation should withstand judicial challenge because courts have continued to show deference to legislators with respect to growth control measures, so long as the ordinance is (1) limited in duration, as is the proposed regulation to five, ten, fifteen, or twenty years, depending on the City Planning Commission's recommendation; and, (2) part of a specific comprehensive plan. The proposed regulation is tied to the plan of creating GLDs,<sup>196</sup> which would be designated as special use districts<sup>197</sup> designed to incentivize development policies that help to preserve the indigenous members and culture of a neighborhood.

The proposed regulation will provide an opportunity for the various communities that have felt the displacement pressures associated with gentrification to remain within the communities they call home. Low-income residents stand a better chance of benefiting from the upgrades in their communities and improve their own economic conditions if market pressures don't force them to leave the community. The proposed regulation does not deny the future,<sup>198</sup> rather it recognizes that change will come and improvements and development are in everyone's best interest, but it reflects the idea that change is more beneficial when it is gradual, not when it occurs at such a rapid pace that members of the public are affected at an alarming rate. If the courts' decisions regarding growth control measures are any indication, one would expect that a regulation that will keep thousands of families off the streets, out of shelters, and within the communities they have come to call home is also a genuine use of police

<sup>195</sup> *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359 (1972).

<sup>196</sup> See *supra* Part V.

<sup>197</sup> N.Y. MUN. HOME RULE LAW § 1 (McKinney 1994).

<sup>198</sup> See *Nat'l Land & Inv. Co. v. Kohn*, 419 Pa. 504, 528 (1965).

power, more so even than in *Petaluma*.<sup>199</sup>

To summarize, the proposed regulation presupposes the continued existence of zoning ordinances, which shall continue to designate what land or areas will be designated for residential development and what size building may be erected on such land. The proposed regulation will of course have the effect of excluding persons from the community who might have otherwise considered migrating to the community. However, as the Ninth Circuit decreed in *City of Petaluma*,<sup>200</sup> practically all zoning regulations have the purpose and effect of excluding some activity, therefore such an exclusion is not dispositive of a regulation that is unreasonable. Rather, the temporary exclusion of gentrifiers bears a rational relation to the legitimate state interest of preserving housing for low-income families.

---

<sup>199</sup> *Id.*

<sup>200</sup> *Constr. Indus. Ass'n of Sonoma Cty. v. City of Petaluma*, 522 F.2d 897, 906 (9th Cir. 1975).