

ing due to their financing sources. It is often easier to market rental projects in new market areas. Rental programs are better suited than ownership programs for reaching lower-income households. Ownership programs provide low- and moderate-income households an opportunity to obtain the equity appreciation of homeownership, if the affordability of units is not mandated for an extended time. Home ownership has also been found to be associated with other neighborhood and family benefits.

15. The duration of affordability also involves trade-offs. Some argue that since the housing development (with its extra density) is permanent, so should the affordability mandate. On the other hand, permanent affordability may dampen the enthusiasm of rental developers (who would look askew at a permanent obligation), and also affordable homebuyers (since they, too, would not realize increases in value from the turnover of affordable units).
16. "Flexible targeting" involves a menu of options where the higher the income for the targeted population, the greater the obligation for the development. Flexible targeting is especially useful in developments involving financial funding sources that have their own income eligibility requirements. (For example, NewHOP targets households earning no more than 165 percent of AMI; while the federal tax-exempt bond program targets households earning no more than 50 percent of AMI.)

Parking, height and bulk controls

17. Zoning is a restrictive regulation. If more housing is wanted, it is necessary to relax the restrictions. Different observers and communities will have different preferences for relaxing parking, height, setback or open space requirements. This is an especially important consideration if a bonus approach is used to promote inclusionary housing (though it also relates to housing production in general). The ability of sites to accommodate FAR bonuses as large as 20 percent differs from district to district and from site to site. An expanded voluntary inclusionary program would require significant additional research and modeling to see which other zoning controls are best relaxed in

which districts.

18. Parking requirements represent an underappreciated zoning constraint. They limit the ability of development to realize the full FAR of their sites; often create less efficient building layouts; and in certain circumstances even count as floor area. The Zoning Resolution decreases the amount of parking required as permitted density increases, with parking being altogether optional in Manhattan below 96th Street. Parking requirements are reduced for small zoning lots in R6 districts, housing for the elderly, Quality Housing development, and government-assisted housing. Thus, there is precedent for reducing the parking requirement for inclusionary housing units. This would, however, add to the inconvenience of neighborhood residents as an increased number of residents join in the search for on-street parking.
19. The underground parking alternative is very expensive (typically \$30,000 per space), as well as inefficient on smaller sites. Underground parking might itself require incentives in areas outside Manhattan, where the market rate for rental of parking spaces is not as lucrative. Less expensive above-ground solutions pose design challenges: lower-floor layout inefficiencies; blank streetwalls; and less or worse open space for residents. Design guidelines can be used to offset these problems.
20. Shared parking could be promoted where there is a mix of uses. Offsite parking locations could be made more flexible. Shared and off-site parking might be combined on the same site. After all, one-third of the city's car owners do not use their vehicle for commuting purposes. Offsite parking raises concerns about shifting the environmental and visual impacts of parking from one area to another. Design and planning guidelines can be used to offset this problem.
21. Easing setback requirements or adding height can create additional floor area and units. Other municipalities have different means of achieving their setback and open space objectives; but none to our knowledge have explicitly eased such requirements in connection with affordable housing. Relaxing height restrictions is a more common tool for encouraging affordable housing. In

New York City, potential ways to relax height range from allowing floor area in attics in lower density districts, to easing sky exposure planes, to simply allowing additional floors—which can increase project revenue by creating more units with views. The benefit of the incentive must be weighed against community impact and community concerns, about creating structures that do not conform to the local context.

iv. Recommendations

Basic concepts

Maximum flexibility: The most successful programs (in terms of minimizing negative market impacts and maximizing affordable housing production) would be those that allow each developer to choose from a menu of options for the inclusionary zoning incentives and obligations that make the most sense for them on each occasion.

Voluntary regimen: The outcomes of a mandatory program are unpredictable, and so is the outcome of any legal challenge. Sufficient incentives should be employed to make inclusionary housing the norm rather, as it has been, the exception.

Area rezoning: Each area rezoning is unique (particularly in terms of the change in land values) and thus deserves an independent assessment of the likely trade-offs associated with inclusionary housing. This logically leads to area-specific inclusionary zoning regimes, to be weighed and adopted on a case-by-case basis. This regime might include mandatory inclusionary zoning, in addition to or instead of voluntary (i.e., bonus-related) inclusionary housing, where significant increases in property values more than offset the impact of inclusionary housing mandates on residual land value.

Variances and site rezoning: Site-specific actions would be negotiated, also with the possibility of mandatory inclusionary obligations. Either or both the Department of City Planning (DCP) and Department of Housing Preservation and Development (HPD) should be the City's designee for such negotiations.

Bulk, height, parking and other requirements: These should be selectively relaxed – both to provide incentives and to accommodate the additional affordable

housing units. The alterations should be in the order of modest changes that preserve the overall intent of Quality Housing, contextual and related zoning/planning objectives.

Elements of a flexible regimen

Financial analysis: The numeric figures employed below are the least defined element of the recommendations. These figures need more financial testing to calibrate them to the city's extraordinarily varied market and physical conditions. DCP and HPD should agree on the benchmarks to be employed. These benchmarks would vary somewhat by borough and zoning district within each borough, as a surrogate for different market conditions.

Density incentives: From a zoning perspective, the most universal incentive would have to do with increased floor area and thus larger or more units. (The Institute used 20 percent as a point of departure.) Floor area was preferred to unit count, so as to provide the developer with added flexibility with regard to unit mixing.

Inclusionary target: A modest goal should be set—modest enough to allow all sorts of developers to take an interest in inclusionary affordable housing, including—with regard to larger projects—stepping up the target to the 20 percent standard used in connection with federal tax-exempt financing. (The Institute used 10 percent as a point of departure.)

Social/economic integration: One of the benefits of inclusionary housing has to do with social/economic integration within a development or neighborhood; but we viewed this benefit as secondary to the avowed purpose of increasing affordable housing production. The inclusionary targets that trigger the incentives could be tied to geography. (The Institute considered using a sliding scale of these multipliers: 1.0 for on-site, 1.1 for off-site within the same community board or neighborhood, 1.2 for off-site beyond this range, and—as discussed later—1.3 for opt-out. Applying multipliers like these to an on-site obligation of 10 percent for a 100-unit development would yield obligations of 10 units for on-site, 11 units for local off-site, 12 units for off-site beyond this range, and 13 units for opt-out.)

Unit mixing and location: In those cases involving on-site provision of affordable units, the team preferred

the approach used by most municipalities with inclusionary housing regulations: that the affordable units be indistinguishable in location and from the outside from the market-rate units, but that they need not be equally distributed within the development. As with the use of floor area instead of unit counts, the intention is to provide developers with added flexibility.

Opt-out: Many developers—especially those with smaller projects—will find the transactional efforts associated with on-site and off-site provision of affordable units daunting. The opt-out provision would allow them to contribute to a City fund for affordable housing renovation, production and refinancing. (As noted, the Institute toyed with a multiplier of 1.3 times the development cost—excluding site acquisition/preparation—of the on-site obligation.)

Income targets: Another sliding scale should be employed to provide flexibility as to the targeted populations. This is especially useful given the wide variety of market and demographic conditions in the city. (The Institute considered multipliers ranging from 0.5 for households earning 50 percent of area median income (AMI), to 1.5 for households earning 135 percent of AMI. Applying multipliers like these to an obligation of 10 percent for a 100-unit development would yield obligations of 5 units at 50 percent of AMI or 15 units at 135 percent of AMI.)

Tenure: Developers could employ ownership, rental or mixed models (e.g., affordable rental units within market-rate condominium developments, mutual housing, etc.). The affordable housing obligation should be enforced for a long period and should be gradually eased for ownership. (For affordable rental units, the Institute considered toying with 50 years, consistent with some federal tax incentive programs. For ownership units, the Institute considered starting at 15 years—consistent with Partnership Housing; this could then be reduced at 5 percent a year for 20 years—consistent with some City tax incentive programs; this would then mean deregulation of the affordable ownership unit at 35 years.)

Bulk, height and parking

Lower- density districts: The Institute tested a 20 percent bonus in R4 Predominantly Built-up districts, where relaxation of envelope controls (height and sloping plane) and parking requirements would allow

the bonus to be absorbed.

Moderate- density districts: The Institute tested a 20 percent bonus in R6 and R7 districts, employing the Quality Housing regimen. The necessary increases in bulk and height could generally be carried out without countermanding the intent of Quality Housing and contextual zoning. However, parking proved the major impediment.

High-density districts: The Institute tested a 20% bonus in R9 districts, where the added density seems more easily accommodated than in the other test cases.

Parking: Parking proved the major constraint. The added affordable and bonus units prompted the need to employ expensive structured parking, shift to larger units than might otherwise be preferred, or altogether forego the incentives and thus the inclusionary housing. The Institute concluded that the same parking reductions available for subsidized affordable housing should be provided to the inclusionary affordable units. Off-site (remote) parking should be liberalized to permit it in residential areas, also to provide a further incentive for voluntary inclusionary development. Additional innovations should be explored.

Minority opinions

As-of-right versus discretionary determinations: Some study participants felt that no program could be flexible enough and universally sensible: that each situation is so unique that the as-of-right regime of the New York City zoning ordinance needs to be put aside for inclusionary housing for something akin to site plan review.

Mandatory: Some study participants felt that there should not be mandatory inclusionary housing, even in connection with area rezoning and variances. Other participants felt that a small mandatory obligation (on the order of 5 percent) would have at worst a temporary impact on housing production in Manhattan, where profits are extraordinarily high and the risks quite low. The impact would, in their view, be akin to the temporary impact on land values and transactions that accompany a noticeable step up in interest rates.

Area rezoning: Some study participants felt that a generic voluntary program that would be replicable in

other areas is preferred to a program that would be based upon, and thus be specific to, the first test-case.

Public subsidies: Some study participants were wary of providing a zoning bonus in connection with developments also employing public subsidies. One concern was that if not necessary, the public subsidies would be diverted from other projects and areas.

Tenure: Some participants felt that since the incentives are carried out through greater building bulks that last forever, the affordability mandates should be perpetual.

Parking: Some study participants felt that design guidelines should be adopted in connection with above-grade parking. A few participants felt that underground parking should be mandated where practical.

Bulk and parking: Some study participants felt strongly that a series of design testes needs to be conducted by the DCP, for the full panoply of likely development scenarios in each of the pertinent zoning districts.

B. Current financing programs and resources in support of inclusionary zoning

Affordable housing in New York City is predominantly developed with the support of existing incentive-based mechanisms provided by City and State agencies. These include direct (monetary) subsidies, land subsidies, low-interest and bond financing, and tax credits/abatements. Oftentimes, individual developers utilize multiple modes of such support. Therefore, it is certain that future developers of sites under inclusionary zoning parameters will, too, look to support mechanisms to supplement the bonus provided under an inclusionary regime, be it voluntary or mandatory. Thus, the question at hand is which programs, and to what extent, can support an inclusionary regime.

At the outset, it is important to identify structures that cannot be applied to an inclusionary regime. Direct and land subsidy programs as provided by the New York City Housing Authority (NYCHA) and the Department of Housing Preservation and Development (HPD) are not compatible with inclusionary zoning. Such programs include Partnership New Homes, HomeWorks, Nehemiah, Neighborhood Entrepreneurs and Neighborhood Redevelopment. These programs all had specific goals (i.e., develop vacant city-owned land, dispose of partially occupied city-owned buildings, etc.) that have been accomplished and the programs have either expired or will be phased out in the near future. Very little City-owned land remains so neither are land subsidies very practical for this purpose. The New York State Division of Housing and Community Renewal (DHCR) operates subsidy programs as well: the Neighborhood Preservation Associates Program only provides small operating subsidies for nonprofits, while the State Legislative Item Program issues grants sporadically and cannot be relied upon.

Certain financing programs are not employable with an inclusionary housing bonus because their targets are far too specific. HPD has three such programs: Supportive Housing Loan, whereby funds are provided only for projects housing very low-income and indigent individuals with special needs; Senior Citizens Home Assistance, which is limited to houses in which the owner-occupant is a senior citizen; and the Home Improvement Program, which is only available to owner-occupied properties. It would be very difficult

for a developer to satisfy the objectives of these programs and provide affordable units for the inclusionary bonus, while at the same time turning a profit.

On the other hand, there are numerous financing programs that clearly complement inclusionary bonuses. HPD's Participation Loan Program is used to substantially rehabilitate existing privately owned buildings. The Small Building Loan Program is designed for occupied small buildings. The Neighborhood Homes Program is for the disposition of 1- to 3-family houses owned by the City and would thus be useful for inclusionary to the extent that it can contextually fill out bulk. The State Housing Finance Agency's (HFA) Affordable Housing Program has ongoing funding. While it is available only for home ownership, it could be still used for inclusionary.

The HFA, the City's Housing and Development Corporation (HDC) and the Community Preservation Corporation (CPC) all provide low-interest and bond financing options. HFA's and HDC's funds supporting these efforts could be used for any economically viable purpose. The funds are lent by bondholders and thereby need to provide economic return to the bondholders. Moreover, use of the funds is limited to rental housing. CPC's funds are private and derived from financial institutions. As such, they are very flexible and could be used for whatever purpose the banks propose. The banks do require return of capital and yield on funds. DHCR's loan programs (i.e., Housing Trust Fund, Homes for Working Families Initiative, Housing Development Fund, and Senior Housing Initiative) could be used for inclusionary but all have limitations in as much as they have been devised to achieve limited programmatic goals. Also, resources for these programs are limited.

Certain tax credit programs can also be used to support development under an inclusionary regime. HPD's 421-A program has a specific inclusionary component already (i.e., Manhattan properties must include 20 percent affordable units to be awarded this credit). 421-B, which is available only to 1- to 3- family houses, and 421-G, which is for conversions of commercial buildings in lower Manhattan, have limited applicability. 420-A is available only to nonprofits who operate housing for charitable purposes. 420-C is available to nonprofit controlled housing companies or partnerships that operate predominantly low-income housing;

these could be used in an inclusionary regime. J-51 is an as-of-right abatement related to upgrading physical plant of existing building, nonetheless could be applied to an inclusionary development. Article XI is an abatement whereby a discretionary action is taken by the Council and could be used in an inclusionary regime.

HFA's Low-Income Housing Credits could be used in an inclusionary regime but tenants' household incomes would have to be at or below 60 percent of area median income (AMI), approximately \$37,000. Similar limits apply to DHCR's New York State Home Program. This is a Federal program administered by DHCR. Funds are restricted to 50 percent AMI on rentals and 80 percent AMI on home ownership. The funds are administratively cumbersome to use, require Davis-Bacon wage rates, which together increase overall cost of projects.

C. Legal basis for inclusionary zoning

The New York City Zoning Resolution permits the use of Inclusionary Housing as a bonus – i.e., as a choice offered to a developer in exchange for additional density. The Zoning Resolution does not, however, mandate affordable housing. The focus of zoning historically is on use, bulk, and parking, not socioeconomic engineering.

The first Inclusionary Housing provision was adopted by the City Planning Commission in 1987 and applied only to the highest density (R10) residential districts. Under these regulations, which are still in effect, the maximum floor area ratio (FAR) could be increased from 10 to 12 through the provision of affordable housing meeting the specifications set forth in the Zoning Resolution. The use of this bonus is voluntary.

The program specifications, although non-discretionary, are not simple. Found in Section 23-90 of the Zoning Resolution, they include provisions regulating floor area compensation, types of affordable housing, standards for affordable units, tenant selection, rent levels, income verification, permits and certificates of occupancy, insurance and duration of the obligation. All of these requirements must be incorporated into a “lower income housing plan” which must be approved by the Department of Housing Preservation and Development. HPD, in turn, is authorized to adopt additional guidelines for lower income housing plans. It takes an expert developer and expert consultants to successfully utilize this program.

At the time of adoption, the Commission was asked by some commentators to make the program mandatory. This was rejected by the Commission, which stated that the “proposed program is optional rather than mandatory in order to test its feasibility, and develop a basis for evaluation of the effectiveness of the regulations. If the program were mandatory, and few projects were built, it would be impossible to know whether the causes were external to Inclusionary Housing, or whether the Program was so onerous or cumbersome that it limited incentive to build.” (N850487ZRY(A), April 1, 1987, Cal. No. 42).

Consistent with the priorities of the current administration, and in response to a growing housing need, the City Planning Commission has recently renewed

its focus on Inclusionary Housing by incorporating an expanded bonus mechanism into the recently enacted Special Hudson Yards District and proposing expanded bonus mechanisms in rezoning actions currently undergoing review for Greenpoint-Williamsburg and West Chelsea. As part of the new Inclusionary Housing proposals, lower density residential districts would be eligible for the bonus in connection with zoning amendments that increased the allowable residential density, thereby widening the geographic scope of the program. However, the program would remain voluntary.

As in 1987, some commentators have called for a more aggressive approach through mandating, as opposed to permitting, Inclusionary Housing. The rationale for this approach, simply stated, is that when rezoning significantly increases the value of land, a portion of that value should be dedicated to affordable housing.

This raises two questions: will mandatory Inclusionary Housing pass judicial scrutiny; and is mandatory Inclusionary Housing good zoning and public policy? These issues are discussed below.

i. Summary and conclusion

Inclusionary Housing should remain voluntary, with expanded opportunities for use by developers in a voluntary context, for example in conjunction with zoning amendments that create additional FAR. The availability of as-of-right density bonuses for Inclusionary Housing, on a voluntary basis, is consistent with the historical use of this program as a zoning tool. Mandating Inclusionary Housing raises complex legal and policy issues and is not recommended at this time.

ii. Legal issues

There are two related legal concepts that apply to the Inclusionary Housing issue: takings; and exactions. While most Inclusionary Housing programs are not likely to rise to the level of takings, there is a question as to whether a mandatory program would be a legal exaction.

Takings are most often claimed under the Fifth and Fourteenth Amendments to the U.S. Constitution when the government physically occupies private property or so heavily regulates that property as to deprive the

property owner of all reasonable economic use. In these cases, the government (i.e., the taxpayer), must compensate the owner for the loss in value. While the government is permitted to “take” private property for public use, it must compensate the owner based on the fair market value of the property that is taken.

It is unlikely that mandatory Inclusionary Housing would rise to the level of a taking in all but the most extreme economic case – i.e., where the regulation deprived the owner of all or substantially all of the value of the property. In New York’s best known takings case, *Penn Central Transportation Co. v. New York City*, the U.S. Supreme Court held in 1978 that the decision of the Landmarks Preservation Commission not to permit the construction of a 50-story tower atop Grand Central Station, which was originally designed to accommodate such a structure, did not rise to the level of taking because the terminal could remain in use as a train station. If the loss of a 50-story tower did not constitute a taking, it is unlikely that the mandatory dedication of a relatively small percentage of a project to affordable housing would.

However, there is another concept in takings law which must be considered in the mandatory Inclusionary Housing context – the “nexus” or causal relationship between the regulation and the achievement of its stated goal.

In the case of *Dolan v. City of Tigard*, decided in 1994, the U.S. Supreme Court faced two related takings claims from the owner/developer in the context of the expansion of an Oregon electrical supply store. One claim was that the mandatory dedication of a strip of land in the floodplain adjacent to a waterway, for flood control purposes, constituted a taking. The second was that the mandatory dedication of pedestrian and bicycle path, for the purpose of traffic reduction, also constituted a taking.

The Court had no problem finding that prohibiting construction in a floodplain is rationally related to the control of flooding. The scientific connection between natural drainage, construction and flooding was well-documented and well-understood, especially in a soggy place like Oregon. Construction next to a waterway increased drainage and the potential for flooding, and the regulation was therefore appropriate.

However, the Court did not accept the connection between providing a pedestrian and bicycle path and reducing automobile traffic. Not only is this connection, as a matter of common sense, more tenuous, but the City did not base its requirement on any meaningful traffic studies. While the goal of encouraging people to walk and bike might be laudable, and might in fact result in a reduction in auto traffic, forcing a developer/owner to dedicate land to meet this requirement required a planning rationale supported by hard evidence, not mere good intentions.

The case for mandatory Inclusionary Housing is clearly based on good intentions. As the City Planning Commission stated, in its 1987 report, “socio-economic heterogeneity is important to the well-being of the City.” This remains as true as it was in 1987. However, where are the detailed planning studies to support mandatory affordable housing? What are the potential adverse affects on development and the City’s economy? What role should government subsidies play, as opposed to or in conjunction with zoning? Will a mandatory Inclusionary Housing program be “so onerous or cumbersome that it [will limit] incentive to build”?

Until these questions have been more carefully studied in the formal planning sense, with opportunity for public participation and debate, the imposition of mandatory Inclusionary Housing might conceivably not pass the Dolan test. However, because Dolan involved a dedication of private property for public use, it is not clear that requiring an owner to provide a percentage of affordable housing would be accorded the same degree of protection by the courts in the context of a taking.

However, based on similar concerns, mandatory affordable housing could run afoul of limitations on exactions. Exactions are land, money, infrastructure or services required by the government in exchange for the right to develop. Streets, sewers, parks and the like are physical exactions that are well established as part of the development process. The requirement to provide affordable housing in exchange for right to develop one’s property constitutes a type of social exaction that is less clearly established.

Similar to the Dolan test, the courts typically analyze whether an exaction is permitted by looking to the

underlying causal connection between the development and the exaction. Does the development require a new street to be constructed to provide access? Does it require a new sewer? Is open space required to accommodate new workers at lunchtime? These are questions that are relatively simple to quantify and answer.

Less clear is the causal connection between development and socioeconomic diversity. The debate over “gentrification” has always been a part of New York City development and politics and will undoubtedly continue to be debated in the future. Does the production of market-rate housing reduce the amount of affordable housing, by driving prices up, or does it relieve the pressure on less expensive housing, by increasing the overall supply? Does New York need more regulations or fewer in order to provide the housing that its population requires? Does governmental interference in the free market result in more or less housing for all New Yorkers?

Until the connection between development and the supply of affordable housing has been established with sufficient certainty to support a requirement for an affordable housing exaction, the imposition of such an exaction is questionable. Since the inception of the program in 1987, it has only been available in R10 districts. This does not provide a sufficient empirical basis to convert the program from voluntary to mandatory.

iii. Public policy

The concept of zoning exactions is not new to New York. The Zoning Resolution requires sidewalk widenings, relocation of subway stairs, street trees, ground floor retail, and other physical improvements that are directly related to the impacts of a new development.

The Zoning Resolution also recognizes the use of bonusable incentives to encourage developers to provide socially desirable amenities, such as public plazas and subway improvements. These amenities, while desirable, are not as readily linked to the development of a specific project and have a more general public application. Therefore, the developer is incentivized, but not required, to provide them.

Until there is a clearer understanding of the impact of

new development on the supply of housing in this City, as well as the impact of mandating affordable housing on the overall housing supply, it would be wise to maintain Inclusionary Housing as a voluntary program, while at the same time expanding the zoning districts, geographic areas and circumstances in which it may be used. This should not discourage experimentation and creativity – on the contrary, the measured expansion of the opportunities for voluntary use of Inclusionary Housing will provide invaluable experience with this form of regulation.

As the City Planning Commission stated in its 1987 report establishing the Inclusionary Housing program, “when there is sufficient evidence to form an opinion on the success or failure of the proposal, a broad program review will be undertaken and amendments proposed if necessary.” Does the City have the evidence required to enact amendments changing the program from voluntary to mandatory? The answer is no. While the experiences of cities like Davis, San Francisco and Sacramento, California, Santa Fe, New Mexico, and Boston and Cambridge, Mass., may be instructive, more experience in the five boroughs is clearly needed before mandatory Inclusionary Housing is put on the table. This experience can be gained through the targeted expansion of the voluntary program.

Strategies for New York City affordable housing development: Three alternative strategies

- 3: Strategy one: Market-driven approach for private sites**
- 4: Strategy two: Government-driven approach for private sites**
- 5: Strategy three: Government-driven approach for public sites**

3: Strategy one: Market-driven approach for private sites: The rezoning of Commercial corridors and manufacturing districts for enhanced residential development

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3: Strategy one: Market-driven approach for private sites: The rezoning of commercial corridors and manufacturing districts for enhanced residential development.

A. Summary

i. Overview

Strategy One organizes an approach to increasing, on a systematic long-term basis, the production of affordable housing in New York City through private-market residential production. Other than maintaining tax abatement on affordable residential units as exemplified by the J-51 or 421-A programs, there are no public subsidies or public dollars introduced into the model. Acquisition and financing are accomplished at private market levels and through private market institutions. To accomplish this, the strategy proposes a significant shift in zoning for a select group of commercial corridors and manufacturing zones in various parts of the City, in effect releasing a large amount of currently underdeveloped and poorly classified land for both market and affordable residential development purposes.

The technical structure of this strategy is described in this section, including (1) recommendations with regard to the rezoning of these corridors and districts; (2) an analysis of the potential housing yield resulting from this approach and its relation to the need/demand profile depicted in Part One of this report; (3) a review of a series of model proformas illustrating the potential profitability of such deals to market developers; and (4) a depiction of the density consequences of the proposed zoning changes to a series of typical commercial corridors and manufacturing districts and their neighborhoods.

The conclusion at the end of this section presents the recommended implementation program.

ii. Assumptions

Strategy One proceeds from two core assumptions:

1. There will be no large sums of public dollars in the near or foreseeable future of New York City to fuel the development costs of affordable housing;
2. The cost of land, as opposed to all other costs, is the most significant impediment to the develop-

ment of affordable housing in New York City. In this regard, the current zoning resolution is the most significant constraint on the development of more affordable housing in New York City .

iii. A new regulatory framework for the New York City housing market

Building on these two assumptions, Strategy One concludes:

- The most significant quantitative component of affordable housing development in New York City must be related to and extracted from private market initiatives;
- The current zoning resolution inhibits a free housing market in New York City by constraining the development for residential purposes, both market and affordable, of a very significant number of units in specific locations throughout the city;
- Through changes to the zoning resolution sufficient incentives, even with concomitant mandatory affordable housing requirements, can be built into the regulatory framework
- A newly structured housing development market that will result in significant numbers of new affordable housing units in New York, sufficient over a ten-year period to meet the projected demand of 80,000 units of affordable housing established in this report as the base requirement for the 2005 to 2015 period.

The creation of a new housing market, responsive to sufficient private market incentives, is the most important priority in establishing a new context for housing production in New York City. These incentives involve sufficient deregulation of the zoning regulations affecting the development of certain sites throughout the city so as to provide a strong incentive for significant new levels of housing production to be achieved. Within this framework, it is the issue of land availability, and the distortion of the land markets in New York City that the burden of the current zoning resolution imposes that affect the production of housing most severely, and that greatly inhibit the creation of housing affordable to the bulk of the middle-income populations of the city.

iv. Caveat: A tentative model

Because of the complexity of the involved develop-

ment variables—especially actual land valuations across the various corridors and districts of the city and the community impacts as a result of the increases in density and changes in use--the model presented here is tentative in terms of its quantification and conclusions. As presented in this section, at this stage of its development it serves to indicate the potential of this proposal, to initiate discussion and debate in regard to its overall merits and drawbacks, and to prepare the groundwork for extensive modeling of its quantitative and urban consequences within the aegis of alternative strategies and the future of the city. The Institute is currently in discussion with a group of New York City foundations for support for this ongoing analysis during the coming year, and the preparation of a final proposal, with complete geographic and economic analysis and documentation.

v. Closing

The Newman Real Estate Institute argues that Strategy One as proposed below and as modified in consort with subsequent analysis and refinement, can significantly alter the pace and quantity of affordable residential development in the City without being dependent upon public subsidy interventions or special government finance programs.

B. Principles

i. Planning principles

Strategy One grounds itself in the following planning principles:

- the development of new affordable housing must stem from a structural change to the housing development process within New York City and the regulation of the supply of land in New York City;
- new affordable housing program strategies must be market-driven without resort to or dependence upon significant public subsidies or special finance programs; (Tax abatement programs similar to the current J-51 or 421-A programs are incorporated into the economic model in this strategy);
- the cost of land, as opposed to construction costs, is the single most critical factor inhibiting the development of affordable housing in New York City;
- that the zoning resolution and the current regulatory structure inhibit a free or a sufficiently-free housing development market in New York City;
- that a new structure for affordable housing development regulation can only emerge from a residential development structure that will enable a more profitable development of market housing to occur;
- this more free market will, in itself, introduce certain development activity which will free the structure of the existing housing development markets in New York City;
- that in addition to this, a new regulatory framework within the zoning resolution can be adopted that enables a significant amount of affordable housing to be developed in consort with market-rate housing;
- the basis of this new approach is to increase the allowable development area significantly and to introduce the requirement of the co-terminus development of on-site affordable units within the new project structures;
- that this approach, grounded in a mixed-income housing model, is also beneficial to areas of economic and social integration throughout the city.

ii. Technical principles

Strategy One is built around the following four technical premises and objectives:

1: Rezoning for market-driven incentives:

The rezoning proposed in Strategy One shall allow for substantial density increases over existing commercial and manufacturing zoning densities. The rezoning will allow an individual site owner/developer to exercise the rezoning option for residential development at the new level of density on the basis of the developer's agreement to build a mixed-income, 70 percent market: 30 percent affordable development. The owner may also elect to remain within the current structure and level of the existing zoning. The level of rezoning is intended to create sufficient market incentive for the private developers to act vigorously to supply both increased market housing and affordable housing production beyond that which current inclusionary proposals can yield. The definition and distribution of this 30 percent requirement and schedules of unit yield, developer profit and physical consequences of new densities based on the 70/30 percent division between market / affordable units is presented below.

2: Increasing land availability throughout the City:

Strategy One proposes an extensive analysis of geographic areas of the City--especially Brooklyn, the Bronx, Queens, and Staten Island—which can become the focus of new housing development, including affordable housing and the availability of development sites within these geographic domains. Commercial corridors and manufacturing districts, as described below, become the focus for rezoning and increased residential development;

3: Financing through private-market structures:

Development must proceed upon the assumption that private market-driven acquisition, standard acquisition financing rates, average project construction costs, and standard construction financing rates will prevail. In effect the subsidization of the affordable units is internally driven within each project, in effect a transfer of some portion of profit from the market incentive/bonus to the development of the affordable units;

4: Yielding a significant number of affordable units:

The scope of the program shall be able to address effectively the level of current need/demand established in Part One of this report as the basis of new construction requirements for affordable housing. This demand is approximately 8,000 affordable housing units per year, across a ten-year time frame.

C. Mixed income development

Strategy One also grounds itself in the proven acceptance of mixed-income development for New York City. This is not the context for either restatement or new analysis of patterns of economic or social segregation that have evolved in New York City--as in other American cities and suburbs. The core structure of Strategy One is to enable the success of mixed-income development to emerge as an important component of the tools for building affordable housing throughout New York City.

Mixed-income development has found acceptance in New York City in the unlikeliest of realms: the upper end of the rental housing market in Manhattan. Since the introduction of the 80/20 percent formulas and its subsidy corollaries over 25 years ago, a large number of Manhattan rental buildings have been developed without endangering the stability or economic success of these projects. Strategy One builds on this success and seeks to extend it to geographic arenas and development categories across New York City, not as a strategy of redistribution, but as a pragmatic development approach which enables market housing development to be linked to sufficient density incentives for the building of market units when affordable units are provided as well within a "break-even" context.

Further, a critical component of Strategy One is that no off-site options for the development of the affordable housing are allowed. In order for the developer to receive the benefit of the substantial increases in density proposed here, the affordable units must be built on-site, in an integral fashion with the market units. This is not an issue of ethics or morality but one of land efficacy: so-called "on-site" mixed-income housing focuses the economic incentives and energy of a development on the development site itself, as opposed to creating the often impossible requirement of "finding" some other recipient site for the development of the affordable units--a near-impossible task for most developers within New York City.

D. Land

Strategy One emerges from the recognition that the vast majority of sites available for residential development in New York City are under private ownership. (Part Four of this Study, the Affordable Housing Atlas, has plotted those sites that are yet in public ownership and their distribution throughout the City.) This report on affordable housing options for New York City has placed the issue of land costs at the heart of the problem of creating affordable housing in New York. Land is the highest single component of development costs in New York and the most volatile, even in comparison with construction costs or financing costs or the costs of the approval and regulatory process. The core of Strategy One therefore addresses the issue of land costs and land acquisition for affordable housing across the City.

Viewed as a commodity at least within the context of the development process, land costs are tied directly to both perceptions and realities of land availability. The assumption is often made that New York City as a whole is near its saturation point in terms of "available land." Affordable housing, as one competing use among many but one use which from an economic framework is least able to absorb the land costs, is most vulnerable among all development uses to both the perception and the realities of scarce land availability and high land costs.

Land availability in New York City is from a public perception focus often thought of in terms of the actual physical ground area of specific sites spread across the land terrain of New York. Land availability, in fact, is much more critically influenced by the New York City Zoning Resolution. The use regulations and density limits that the Zoning Resolution imposes are the most critical factors in the New York City land market in determining price and availability. Whatever one's position in regard to the necessity-for-fairness or the inhibitor-of-economic-efficiency of zoning in general or the New York City Zoning Resolution in particular, its centrality to the problem of land availability for affordable housing is beyond denial.

The effect of regulatory structures that no longer affect development or geographic conditions is to act as a severe development control over efficient, mar-

ket-oriented development, with no clear public benefit in return. In fact, it is the underlying contention of this proposal that these land-use regulations, in their effect on inhibiting suitable land for development for residential purposes, have contributed significantly to the inhibition of housing supply and the consequent high prices of housing, either rental or ownership, in New York City. Further, it is the contention of this proposal that these land-use regulations and the consequent impacts of curtailed housing production capabilities that contribute to the high cost of housing more than other factors--including building code regulations and construction costs--and are thus responsible for a greatly inhibited free-market development of housing in New York City, that would otherwise be able to build more housing, at more affordable levels, for a wider New York City market.

E. Rezoning

The core of Strategy One calls for the structured rezoning of selected geographic areas in New York City. This rezoning involves three principal elements: The identification of the appropriate zones throughout the City; the determination of the newly appropriate land uses; and the designation of the new density limits. These elements are described here:

i. Rezoning for residential land uses

Strategy One proposes a substantial restructuring of a group of commercial corridors and manufacturing districts in Brooklyn, the Bronx, Queens and Staten Island.

The origin of the zoning/land-use categories of commercial and manufacturing go back to the earliest formulations of land-use regulation in New York City. These controls had two principal land-use goals: the segregation of commercial and manufacturing uses from residential ones, and a limitation on the size of the commercial or manufacturing structures.

Yet manufacturing uses as classically conceived--places of hard-materials transformation, usually in the context of heat-focused materials processes or large-machinery materials-transformation--with noise, contaminant by-products and residues, and complex raw-materials-receiving and finished-product-distribution systems--are increasingly the exceptional style of manufacturing activity in New York City rather than the norm. Many manufacturing districts in New York City have become remnant neighborhoods of vacant or greatly underutilized structures.

Commercial corridors throughout many of New York's boroughs also display the evidence of established zoning use-categories that no longer match current economic development opportunity. The restrictive, segregating approach to land-uses organized in the zoning resolutions of 50 and 75 years ago have yielded under-built and underutilized commercial corridors, often directly adjacent to higher-density residential neighborhoods. The quest for companionable uses for these corridor sites has long been a zoning game played out by the New York development community.

In the end however, there has been a general reluc-

tance to propose fundamental zoning change for new uses along these corridors. In consequence, although each corridor has its own characteristics, they share together a sporadic build-out pattern and a proliferation of antiquated commercial structures or one-story taxpayer-style temporary structures. And, although residential development at the designated commercial-zone FAR is often permitted, since it is an exceptional use the consistency of a strong residential corridor (with accessory commercial uses on the ground floor, for instance) does not emerge as the development pattern. All of this potential land bordering stable residential districts is lost to residential development as a consequence of the commercial corridor zone.

ii. Rezoning for residential density

The second inhibiting issue is the limited current density levels permitted in these commercial corridors and within these manufacturing districts. This section attempts to quantify the potential yield to housing production which shifts in the density patterns within these specific geographic districts could yield in New York City. We have modeled, both economically and physically, the density increases at five levels of FAR increment above an average base density of 2 FAR: 3 FAR, 4 FAR, 5 FAR, 6 FAR and 7 FAR plus 1 FAR of commercial for each of these five categories.

iii. The geography of the rezoning

The changes are focused on selected commercial corridors and manufacturing districts described in this report

a. The designated commercial corridors

The geographic locus of this proposal is a group of currently zoned commercial corridors and manufacturing districts in Brooklyn, the Bronx, Queens, and Staten Island. These corridors are depicted in the Atlas in sections three and four, and their development potential is summarized below. The rationale for the selection of these particular corridors includes:

- the contrast in use and level of build-out between these corridors or districts and their surrounding residential neighborhoods;
- the presence of strong public transportation resources;
- the wide-width of the corridors;

- the diversity of existing uses along these corridors, including the proliferation of one-story and two-story structures, in contrast to the solidity of the residential blocks that sit “behind” the corridors;
- background presence of residential districts behind the corridors;
- the proven desirability of these overall neighborhoods for residential purposes.

Refer to the commercial corridor maps:

- Figure 5: Citywide
- Figure 6: The Bronx
- Figure 7: Queens
- Figure 8: Brooklyn
- Figure 9: Staten Island

b. The designated manufacturing districts

The rezoning for residential development of a group, or portions of a group of manufacturing districts in these same boroughs.

Refer to the manufacturing district maps:

- Figure 10: Citywide
- Figure 11: The Bronx
- Figure 12: Queens
- Figure 13: Brooklyn
- Figure 14: Staten Island

iv. The terms of the restructuring

The purpose of the rezoning is simple: to enable residential uses at an appropriate density to be assigned to each corridor. Different corridors may have different FAR levels assigned to them, and segments of a corridor may be different than neighboring segments along the same corridor, given the current context of both the corridor and its directly proximate neighborhoods. This report, at this point, makes no determination as to what levels of zoning change are appropriate, but it provides a set of models at various land valuation levels to provide a relatively full portrait of the development scope and consequences along the corridors and within the districts.

Within this proposed rezoning, the goal is to provide enough market incentive for the market itself--the private development market including developers and their financing institutions to feel that there is enough reward to justify the risks of mixed-income housing

within these emerging conditions. A range of returns tied to the different density levels between 3.0 and 7.0 FAR is depicted for these corridor conditions.

The proposed changes in zoning use and density are voluntary. An existing owner/developer may decide to retain the existing commercial designation and simply do nothing. The existing zoning would be retained if the owners of the site wished to develop the site as a full commercial project under the current zoning density and land-use regulatory structures, including its development as residential development under current zoning terms; the ownership of the site would have the full right to sell the site at whatever the market determined its value to be under the terms of the rezoning; the rezoning privileges are carried with the land.

If, however, the determination is to engage the proposed new zoning opportunity and develop for residential purposes, the owner/developer must provide for a mix of affordable and market residential units at the proportionate mix between affordable and market designated below, and for the income levels depicted. Certain further incentives may be applied along these corridors or districts to encourage or to direct specific planning goals--open space, community facilities, schools, etc.

v. The base for the increased density

The increase in density is expressed as a multiple of the existing corridor or district FAR densities. The precise multiple for each corridor can be governed by a consideration of a number of variables:

- the existing base FAR of the existing zoning: the higher the existing base FAR is, the higher the multiple that is allowed;
- the existing character and age of structures on the sites along corridor stretches: the more intensely commercial or industrial an area, the higher the multiple that is allowed;
- the width of the roadway of the corridor: the wider the corridor width, the average residential density of the adjacent blocks and neighborhoods: the higher these densities and base FARs, the higher the multiple that is permitted;
- the proximity to mass transit: the more varied the kinds of extent of existing mass transit, the higher the multiple that is permitted;
- the proximity to existing parks, potential parks or

other recreational facilities: the more of these types of amenities that are proximate to the corridor, the higher the multiple that may be permitted.

At least two approaches may be used for creating the appropriate new FAR and for providing for a corresponding mix between affordable and market residences:

Model 1: Designated development ratios:

- Designated ratios are assigned by restructured zoning resolution at density levels of between 3.0 and 7.0, with an additional designated FAR ratio for commercial space. This is the model selected in this report for further economic and physical analysis. In this model, 30 percent of the units would be required to be built as affordable units within three tiers.

~or~

Model 2: Development ratios proportionately increasing a current base:

- From an existing base FAR of between 2.0 and 3.0 (which constitutes the base FAR for many commercial sites within these corridors and districts), the new zoning allowances shall be decided upon by the owner/developer as follows:
- for a density increase ratio of 2 (as an example: twice at an FAR of 4.0, 20 percent of the new developable zoning area must be dedicated for affordable units, in the distribution pattern described below;
- for a density increase ratio of 2.75 of twice at an FAR of 5.0, 25 percent of the new developable zoning area must be dedicated for affordable units, in the distribution pattern described below;
- for a density increase ratio of 3.5 of twice at an FAR of 6.0, 30 percent of the new developable zoning area must be dedicated for affordable units, in the distribution pattern described below;
- The selection of the desired density increase shall be the choice of the developer; but the purpose of the structure is to provide for the greatest density incentive at the highest development level.

vi. Summary

The rezoning would provide powerful market incentives for the private market to act intensively, while at

the same time requiring that a sizeable amount of affordable housing be produced simultaneously with new market housing. These corridors and districts present one of the greatest sources of land reservoirs and potential land availability within the city.

Commercial corridors: Citywide

Selected commercial corridors:

1. Broadway, the Bronx
2. Webster Avenue, the Bronx
3. Third Avenue, the Bronx
4. Boston Road, the Bronx
5. Westchester Avenue, the Bronx
6. Northern Boulevard, Queens
7. Queens Boulevard, Queens
8. Atlantic Avenue, Brooklyn
9. Fourth Avenue, Brooklyn
10. McDonald Avenue, Brooklyn
11. Coney Island, Brooklyn
12. Neptune Avenue, Brooklyn
13. Port Richmond Avenue, Staten Island
14. Forest Avenue, Staten Island

Figure 5: Commercial corridors: Citywide map

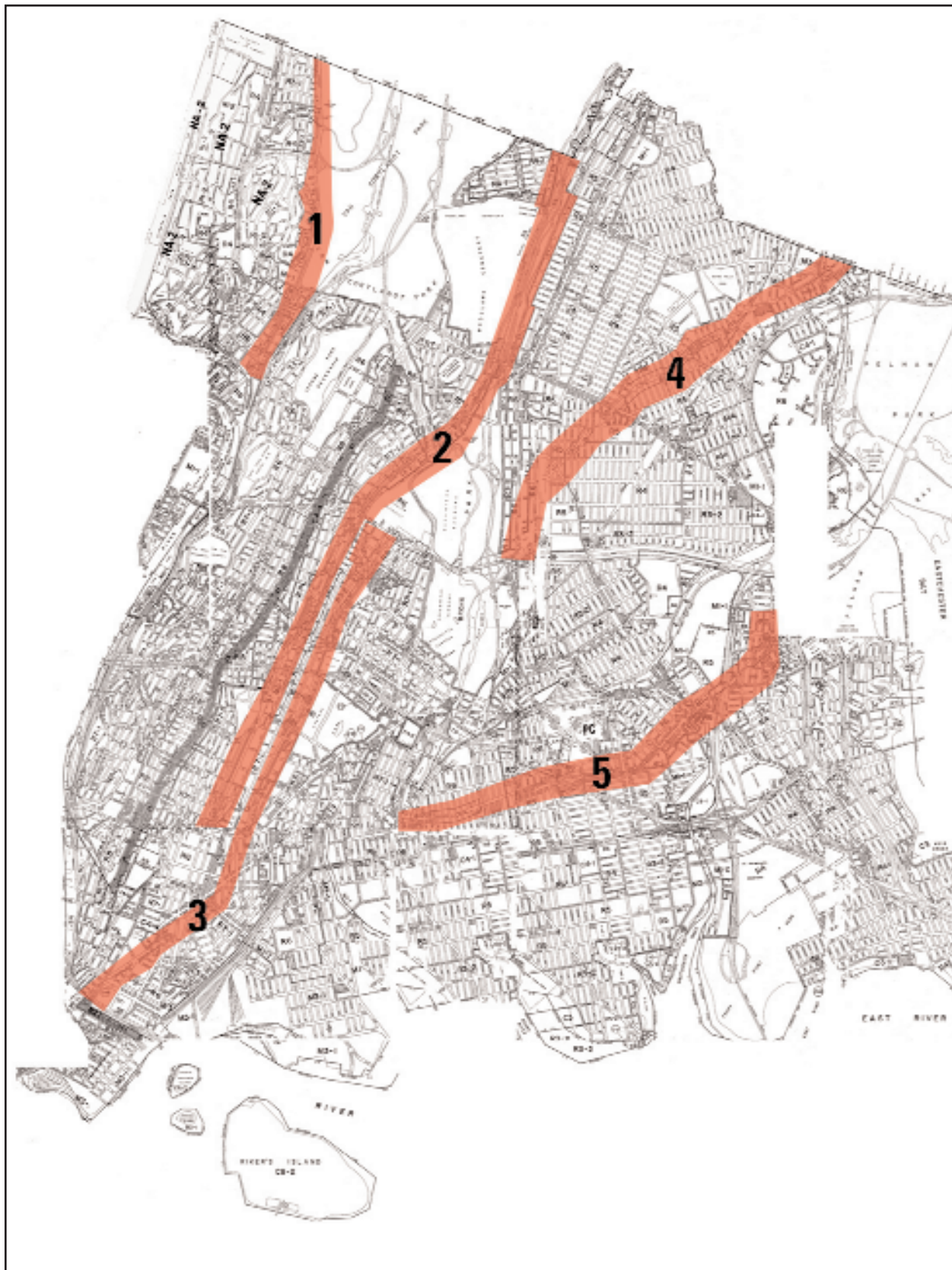


Commercial corridors: Bronx

Selected commercial corridors

1. Broadway, the Bronx
2. Webster Avenue, the Bronx
3. Third Avenue, the Bronx
4. Boston Road, the Bronx
5. Westchester Avenue, the Bronx

Figure 6: Commercial corridors: Bronx map



Commercial corridors: Queens

Selected commercial corridors

6. Northern Boulevard, Queens
7. Queens Boulevard, Queens

Figure 7: Commercial corridors: Queens map

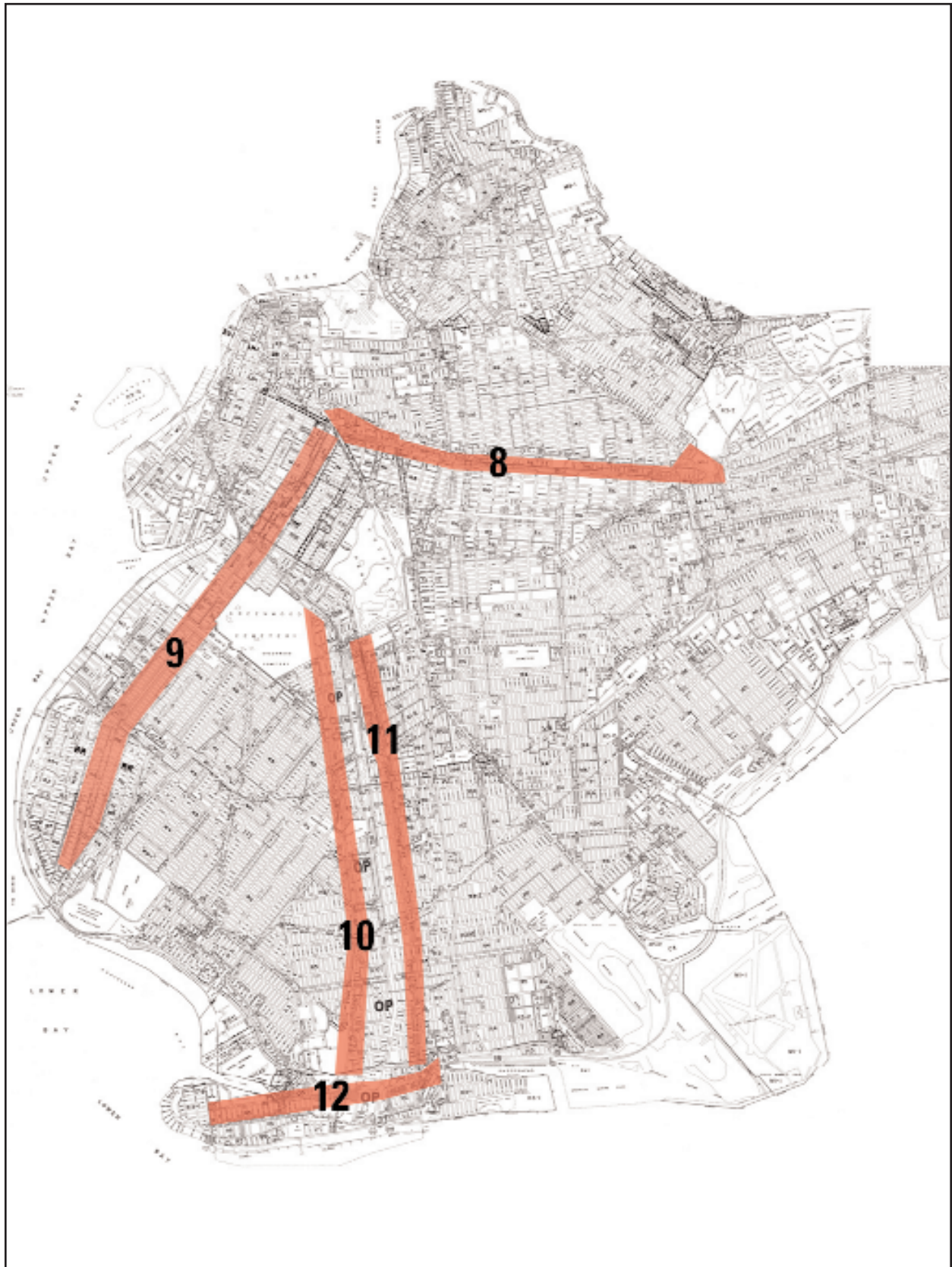


Commercial corridors: Brooklyn

Selected commercial corridors

8. Atlantic Avenue, Brooklyn
9. Fourth Avenue, Brooklyn
10. McDonald Avenue, Brooklyn
11. Coney Island, Brooklyn
12. Neptune Avenue, Brooklyn

Figure 8: Commercial corridors: Brooklyn map



Commercial corridors: Staten Island

Selected commercial corridors

13. Port Richmond Avenue, Staten Island
14. Forest Avenue, Staten Island

Figure 9: Commercial corridors: Staten Island map



Manufacturing districts: City-wide

Selected manufacturing districts:

1. Harlem River, the Bronx
2. Westchester Creek, the Bronx
3. Sunnyside Yards, Queens
4. East River, Queens
5. Flushing Bay, Queens
6. Newtown Creek, Brooklyn
7. Gowanus Bay, Brooklyn
8. Jamaica Bay, Brooklyn
9. Arthur Kill, Staten Island
10. The Narrows, Staten Island

Figure 10: Manufacturing districts: Citywide map

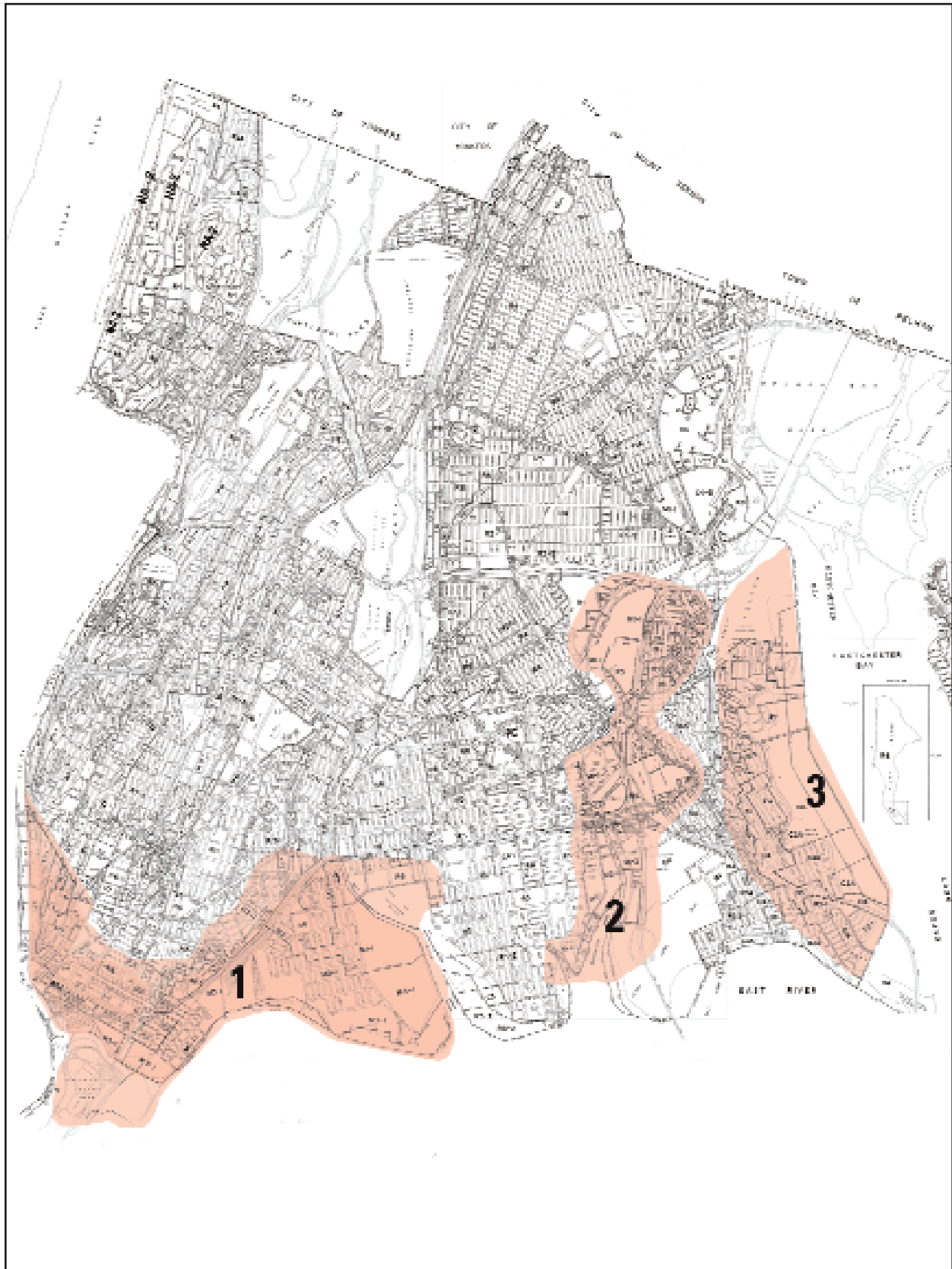


Manufacturing districts: Bronx

Selected manufacturing districts:

1. Harlem River, the Bronx
2. Westchester Creek, the Bronx

Figure 11: Manufacturing districts: Bronx map

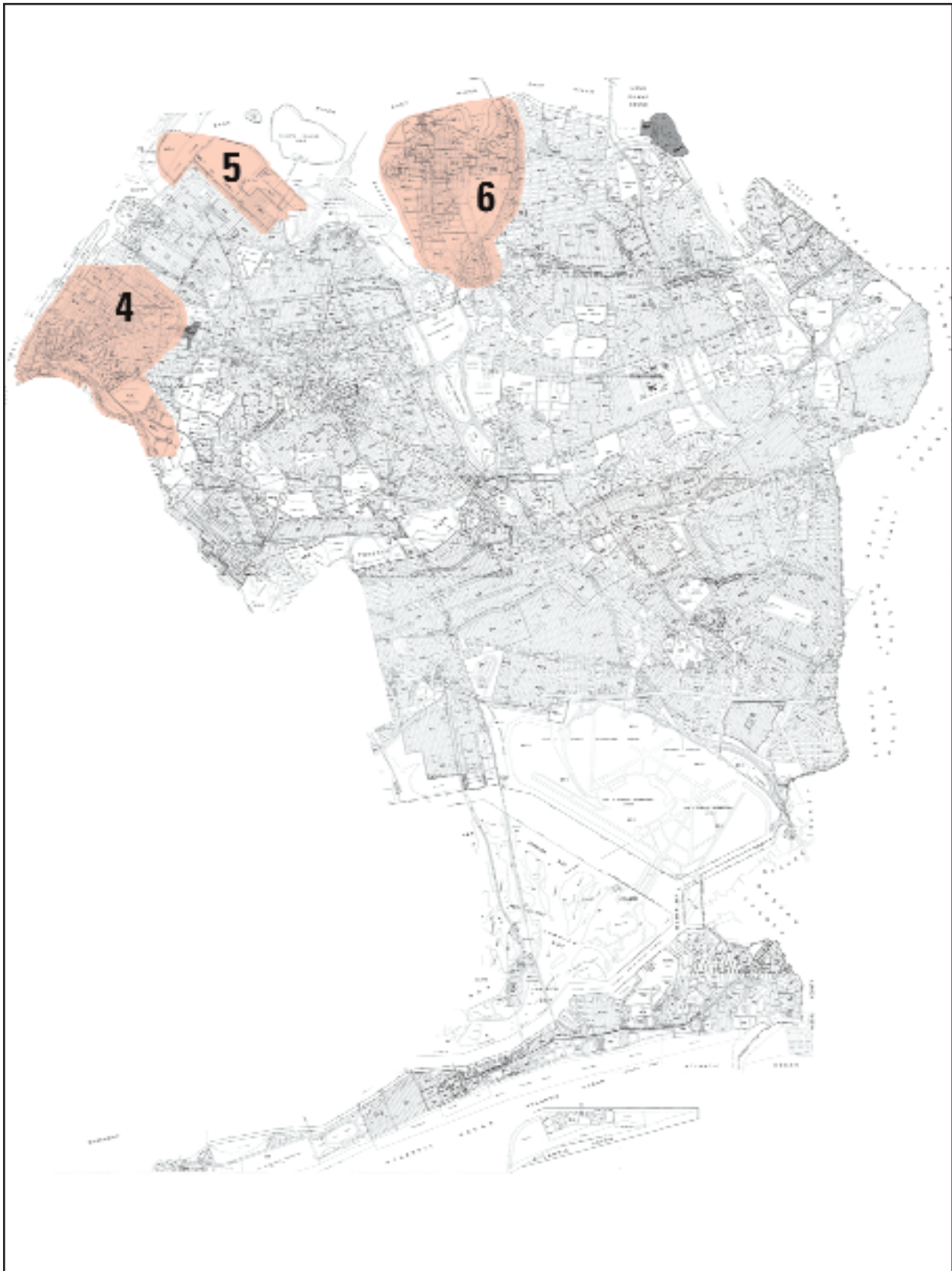


Manufacturing districts: Queens

Selected manufacturing districts:

3. Sunnyside Yards, Queens
4. East River, Queens
5. Flushing Bay, Queens

Figure 12: Manufacturing districts: Queens map

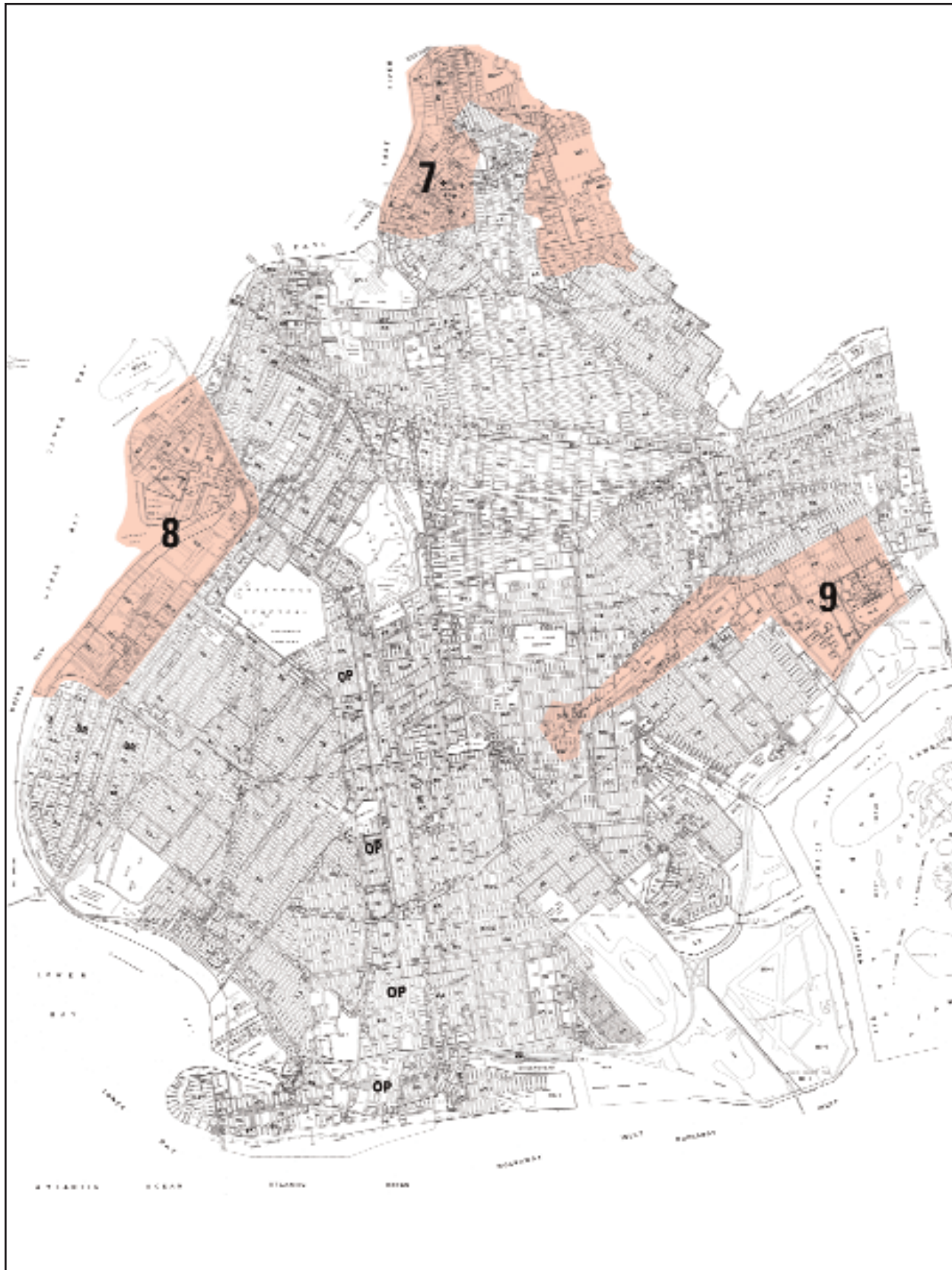


Manufacturing districts: Brooklyn

Selected manufacturing districts:

6. Newtown Creek, Brooklyn
7. Gowanus Bay, Brooklyn
8. Jamaica Bay, Brooklyn

Figure 13: Manufacturing districts: Brooklyn map

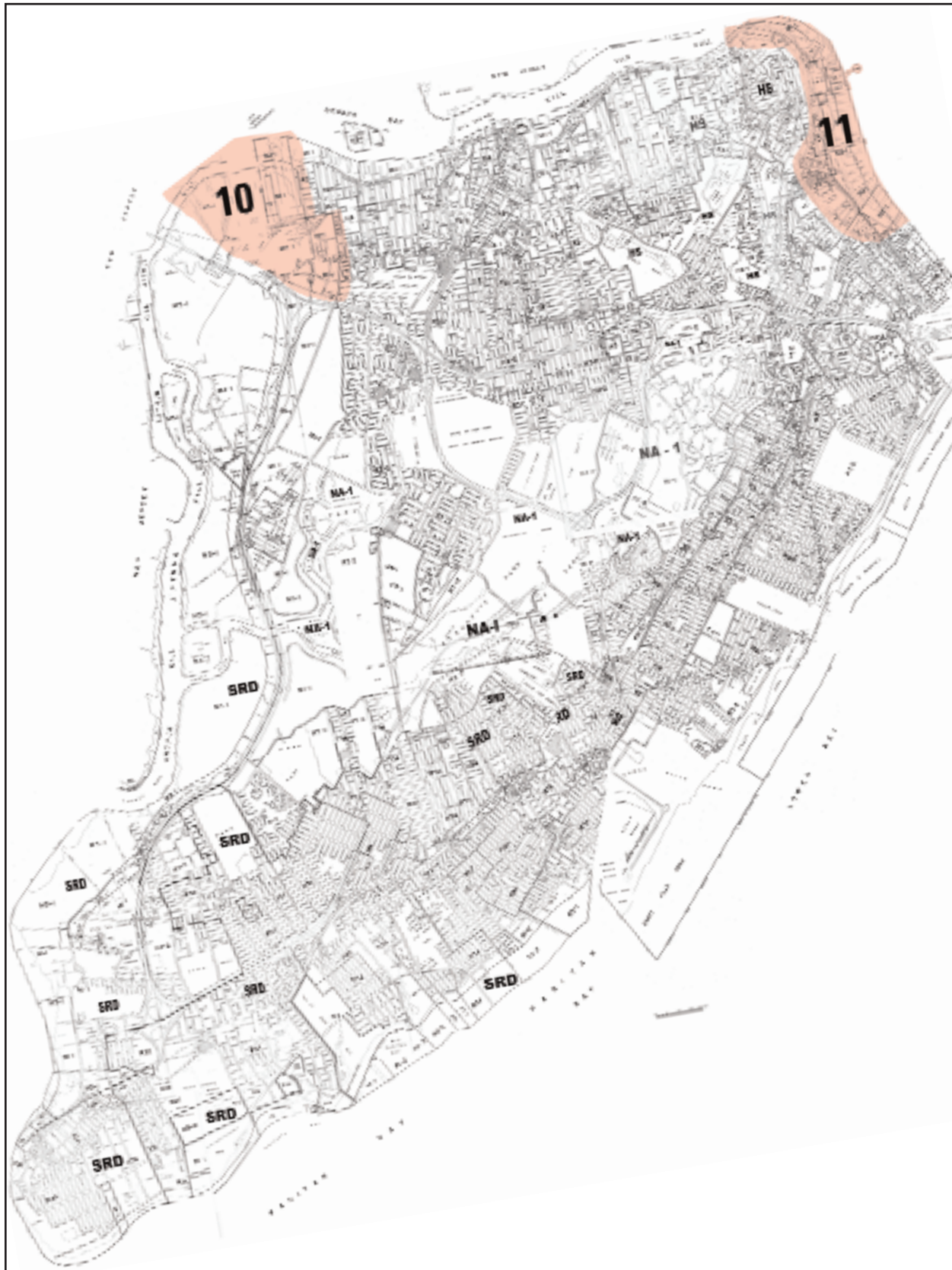


Manufacturing districts: Staten Island

Selected manufacturing districts:

9. Arthur Kill, Staten Island
10. The Narrows, Staten Island

Figure 14: Manufacturing districts: Staten Island map



F. The development model

i. The market units

Once rezoned, the market component of the site's potential development will provide a significant incentive for the developer to build beyond that which is provided by the current FAR allowances. These incentives must be sufficient to outweigh, in the developer's mind the potential marketing and price-inhibitory effects of the affordable units.

From the developer's perspective considerations must be given to the following question and issues:

- Will the market units be desirable?
- Will developers wish to build them?
- Description of the units in the model

This development model creates the following three assumptions about the market units and their favor over the affordable units:

- They will be larger and they will have better interior fixtures and finishes than the affordable units;
- They will be allowed to occupy the very best portions of the building, as for example the upper two or three floors or the front (or rear), whichever is deemed to be the best relative location in the development given the particular site and building characteristics.

ii. The affordability requirement

If the existing ownership or a new purchaser of the site desired to take advantage of the increase in allowable residential density, an affordable residential component must be provided as well: The precise mathematics of the balance between market and affordable units must be explored in much greater detail than indicated below to determine the correct percentages. The following example is presented as a way of clarifying the goals and operating triggers of the rezoning; with subsequent clarification and ensuing discussion the mathematics of the proposal can be brought closer to the desired public goals.

