



THE PREFERENTIAL RENT CRISIS IN NEW YORK CITY

BRONX BOROUGH PRESIDENT RUBEN DIAZ JR.

DECEMBER 2018





Dear Friend:

Thank you for your interest in my latest report, “The Preferential Rent Crisis in New York City.”

Our city is undoubtedly facing a continued affordable housing crisis. As elected leaders, it is our responsibility to enact smart policies that help create new affordable housing units, preserve our existing housing stock and prevent homelessness and displacement.

We are fighting displacement and gentrification through an aggressive program to build affordable housing, especially at the lowest income levels. Since 2009, The Bronx has been home to more than \$15.4 billion and 84 million square feet of total development. A tremendous portion of that development has been affordable housing units for low-income New Yorkers.

Since I was first elected borough president in 2009 we have built more than 36,000 units of new housing in The Bronx, with 58 percent of that number through government subsidies. Through my capital budget alone we have invested almost \$55 million to develop thousands of affordable units in every Bronx community. We are keeping people in our homes, and giving people the opportunity to remain in their neighborhoods.

Creating new housing units is not the only solution to this crisis, however. We must also ensure that our rent laws are strong enough to protect our tenants and prevent displacement, as well. In this report, we examine the issue of “preferential rent” and the effects that drastic actions that landlords could legally take might have on hundreds of thousands of apartments in New York City. In the new year, we must work with our leadership in Albany to close the preferential rent loophole. We must also provide landlords with appropriate compensation in exchange for these new tenant protections. As I have said in the past, we must recognize that some landlords could be described as small businesses, and are also worthy of our protections.

I look forward to your comments and feedback on this critical issue.

Sincerely,

A handwritten signature in black ink that reads "Ruben Diaz Jr." The signature is written in a cursive, slightly stylized font.

Ruben Diaz Jr.

INTRODUCTION

Preferential rents are defined as rents that have been granted by a landlord that are below the legal registered rent for a rent stabilized unit as registered by New York State Homes and Community Renewal (HCR) and regulated by the New York City Rent Guidelines Board. Such rents are granted for a variety of reasons. Typically, landlords will offer rents below the legal amount because the market will not support a higher price for the unit.

- The latest (2017) New York State Homes and Community Renewal (HCR) registration data shows 260,378 apartments in New York City with preferential rents, up from 258,105 in 2016.
- In 2016, HCR data shows preferential rents were approximately 7% of the City's housing stock.ⁱ That same year approximately 31% of all occupied rent stabilized units in the five boroughs.ⁱⁱ
- In 2017, approximately 7% of the New York City's housing stock, and 29% of the total number of citywide rent stabilized units, had preferential rents, according to data from HCR.ⁱⁱⁱ

When it comes to preferential rents, the stakes are high. Were landlords to raise preferential rents to the legal rents *en masse*, it could put hundreds of thousands of tenants at risk of eviction. Additionally, there is the widely reported problem of tenants unknowingly entering into preferential rent leases, causing them to vacate their homes when the rent is raised to the legal registered rent.

In 2017, 56 percent of New York City's renter households were rent burdened (defined as paying at least 30% of gross household income for rent and monthly utility costs)^{iv}. Such rent burdens can result in instability of the tenancy and eviction for nonpayment if an unforeseen event, such as a job loss or health issue, occurs in a household.

Many New Yorkers are already teetering on the edge of eviction and displacement because of their lack of ability to absorb a sudden increase in their rent from preferential to legal registered rent.

How can we protect tenants with preferential rents from sudden rent increases and possible displacement?

WHY SHOULD WE PROTECT PREFERENTIAL RENTS AT THIS JUNCTURE IN NEW YORK?

The increasing gap between preferential rents and maximum legal rents in rent stabilized apartments indicates the growing risk of rent burden and destabilization in our communities. The median gap between monthly preferential and legal maximum rents has increased 55 percent citywide, from \$286 in 2008 to \$444 in 2015, according to a data analysis conducted for ProPublica by the city's Independent Budget Office. In Manhattan, the difference tops \$800.^v

Under current law, a landlord can eliminate a preferential rent with the stroke of a pen. There are currently no protections to keep the lower rent on which the preferential rent tenants have come to rely at lease renewal.

Through smart policy, we can address the potential for eviction as a result of preferential rents suddenly rising to the legal limit by closing the preferential rent loophole. This would prevent evictions and displacement while also preserving affordable rent-stabilized housing units for more New Yorkers.

2017 Units and Percent of Apartments with Preferential Rent by Borough



WITHOUT PREFERENTIAL RENT PROTECTIONS, TENANTS ARE VULNERABLE

The sudden rise from a preferential rent to the maximum legal rent in a rent stabilized apartment can lead to devastating consequences for a tenant who cannot handle the shocking increase.

For example, in 2017 the Office of the Bronx Borough President handled the case of a disabled Social Security recipient living under his sister's guardianship in Community Board #4, which covers the communities of Mt. Eden, Highbridge, West Concourse, East Concourse and Concourse Village.

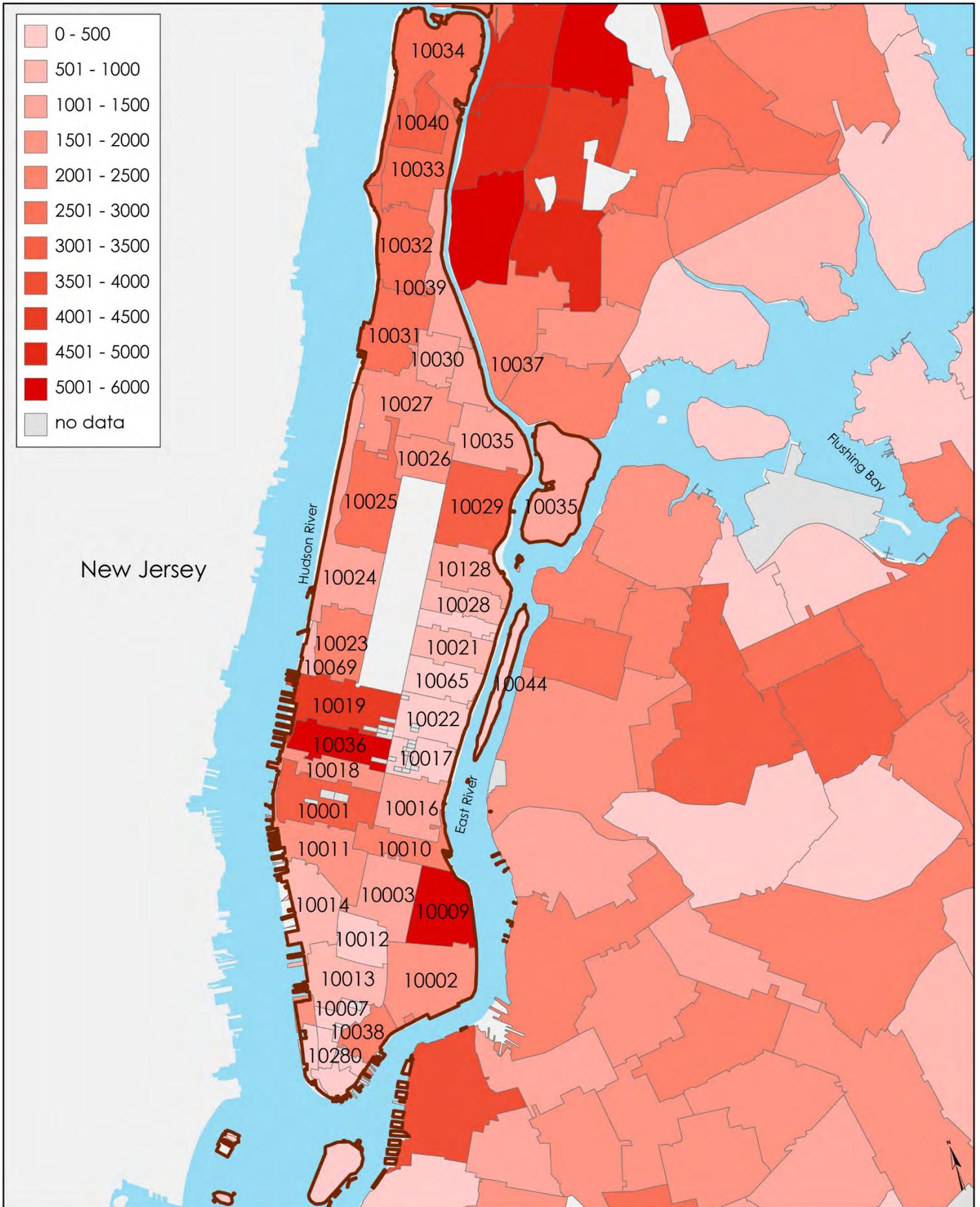
The individual was forced to move when his preferential rent was raised from a manageable \$503 to the legal maximum rent of \$1,650, a whopping 228% increase. The man was forced to relocate from his longtime home because he could no longer afford the rent. The building he moved to was reportedly turned into a homeless shelter.

This is a clear-cut example of a predatory landlord displacing a preferential rent tenant in order to increase the rent and create a vacancy to help his bottom line. Had laws been in place to protect the tenant's preferential rent, this tenant might have been able to find a way to stay in his home and avoid this unfortunate story.

The extreme difference between the preferential rent in this instance and the legal maximum rent illustrates the vulnerability of many New York City tenants who have preferential rents.

To further the discussion on the issue of preferential rents, our office has examined the issue in four neighborhoods across the city that have high levels of preferential rents. Each neighborhood, however, faces unique challenges when it comes to preserving affordability.

2017 Heat Map of Apartments with Preferential Rent by Manhattan Zip Code (by units)





WASHINGTON HEIGHTS & INWOOD

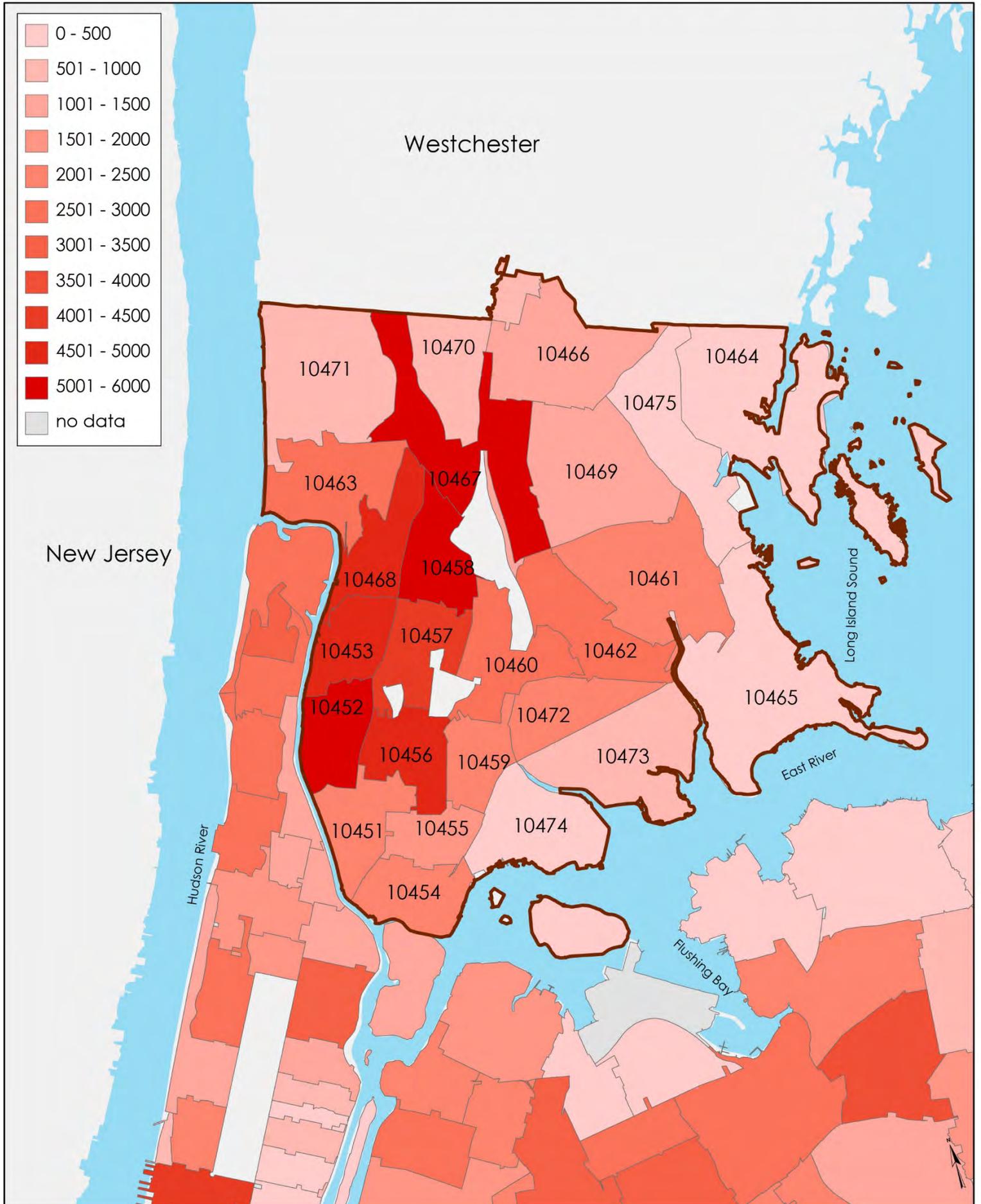
The Northern Manhattan neighborhoods of Inwood and Washington Heights have seen massive changes in recent years, and are considered to be perhaps the epicenter of the gentrification crisis in New York City, especially in Manhattan.

The tenuous nature of the community's affordable housing stock is made clear by its considerable number of apartments where tenants are getting preferential rent, which is among the highest of any Manhattan neighborhood. Zip code 10040 runs from river to river, from Dyckman Street south to roughly West 187th Street. In 2017, 19.66 percent of all apartments in this zip code had a preferential rent, down slightly from 20.35 percent in 2016.^{vi}

At the same time, the neighborhood has seen higher average incomes and higher rents to go with them. Between 2011 and 2016 the median household income rose from \$37,244 to \$45,811, an increase of 23 percent.^{vii} Rents also rose at roughly the same pace, increasing from \$1,046 to \$1,235, an 18 percent increase.^{viii} Census statistics indicate that 55.7 percent of all 10040 tenants are paying more than 30 percent of their annual income on rent and meet the definition of rent burdened.^{ix}

A 59 block rezoning for parts of 10040 and neighboring 10034 was passed by the city this past summer, and has raised concerns about increased displacement of existing tenants.^x Mayor Bill de Blasio and other city officials have countered that gentrification was already occurring in this neighborhood, and the rezoning will provide much needed affordable housing units.^{xi}

2017 Heat Map of Apartments with Preferential Rent by Bronx Zip Code (by units)





FORDHAM

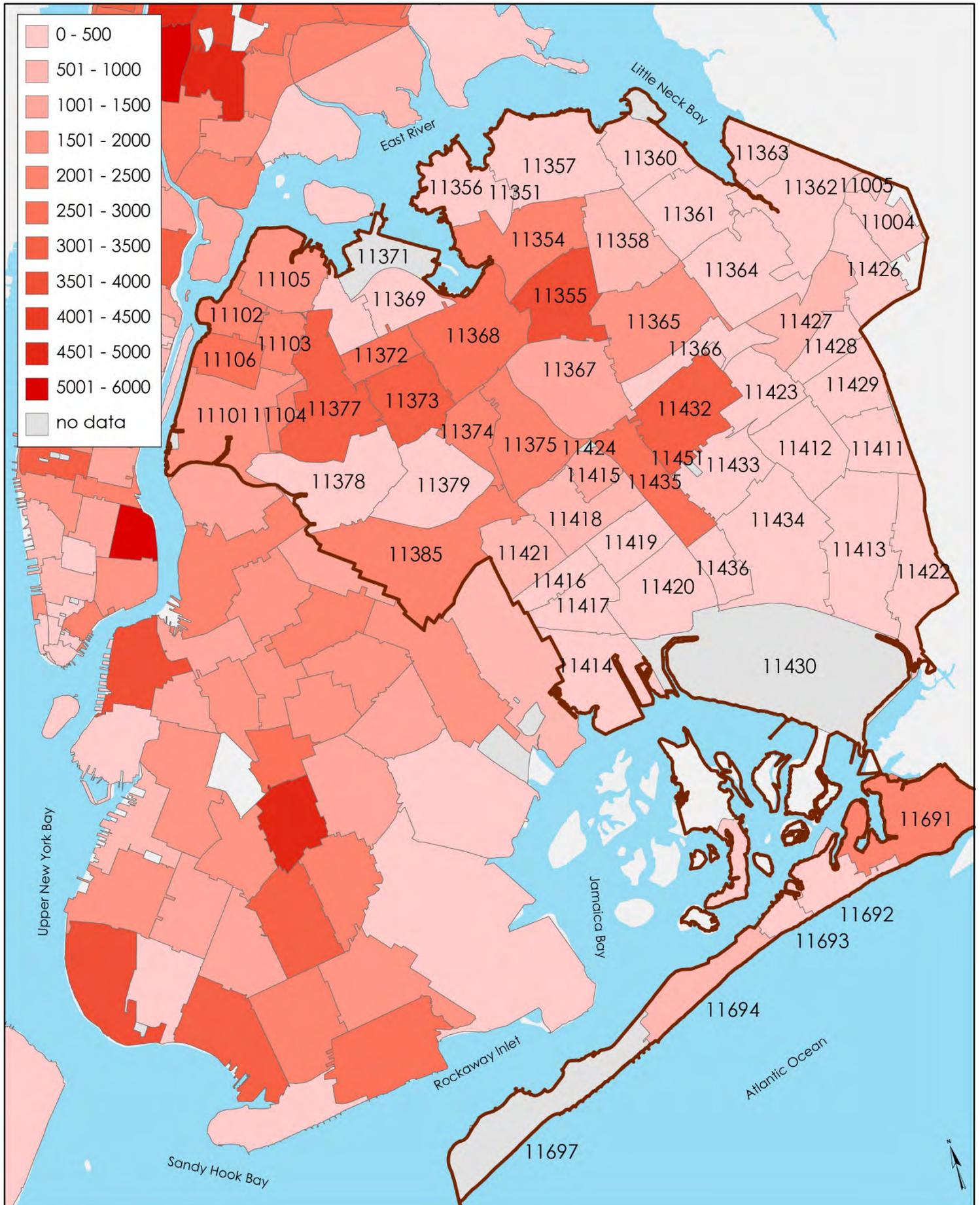
The 10458 zip code in the northwest Bronx is home to a wide variety of different institutions and communities that are representative of The Bronx. Fordham University and Arthur Avenue are core attractions, with the Bronx Zoo, New York Botanical Garden and St. Barnabas Hospital adjacent. In the north, Bedford Park and Mosholu Parkway are traditional middle class communities with some homeownership, while further south the housing stock tends to be pre-war walk-up buildings.

Preferential rent tenants hold a significant number of the area's rental units. Data indicates that 19 percent of all rental units had preferential rents in 2017, a total of 5,516 apartments.^{xii} Both numbers are slight increases over 2016 totals.^{xiii}

Median household income has risen significantly in recent years. In 2011 it stood at \$25,027, and would rise just over 21 percent to \$30,339 in 2016.^{xiv} At the same time median rents also rose, though at a much slower pace. In 2011, median rent in this zip code was \$1,011.^{xv} Five years later median rent would rise to \$1,143, an increase of about 13 percent.^{xvi}

Most residential development in the area has been low-income affordable housing between 2009 and 2017.^{xvii} Bronx Community Board's #6 and #7, which cover the 10458 zip code, saw the development of 7,774 housing units, most of which was built with government subsidies.^{xviii}

2017 Heat Map of Apartments with Preferential Rent by Queens Zip Code (by units)





JAMAICA

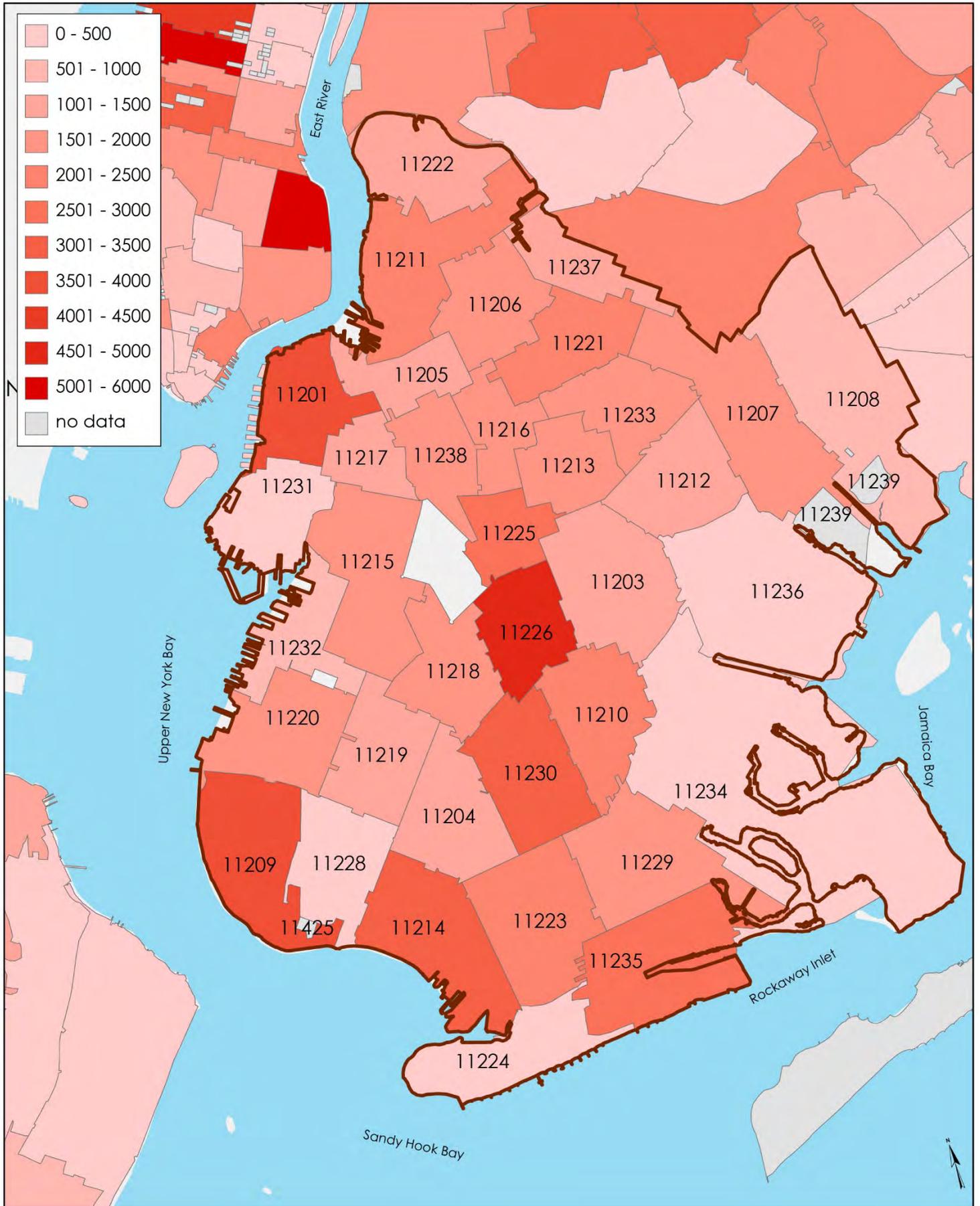
The community of Jamaica, Queens, is home to both a high number of preferential rent apartments as well as considerable new development. A closer look at the zip code 11432 highlights the potential crisis a community could face without protections for preferential rent tenants.

Just over 16 percent of all apartments in this zip code have tenants receiving preferential rent, representing 52.5 percent^{xxix} of all rent stabilized units in this community and a total of 3,219 apartments.^{xx} More than 60 percent of all tenants are rent burdened,^{xxi} and median rent has risen to \$1,356 since 2011, an overall increase of roughly 15 percent.^{xxii} At the same time, median household incomes have risen by a much slower rate, increasing just around five percent to \$52,277 since 2011.^{xxiii}

At the same time, Jamaica, Queens, is seeing significant new housing development of all types and big name investors to go with them. For example, the BRP Cos. are developing a 669-unit complex in Jamaica, Queens, in partnership with Goldman Sachs.^{xxiv} A ten-story senior development known as the Northeastern Towers Annex will create 159 apartments for low-income senior citizens ages 62 and older, and is being developed in partnership with the Fifth Avenue Committee and the Northeastern Conference of Seventh-day Adventists.^{xxv} The Archer Green Apartments will create over 380 units of 100% affordable housing, approximately 15,000 square feet of community facility space and 68,800 square feet of retail and commercial space, and has broad support from the areas elected leadership.^{xxvi}

Considerable new development could bring new interest to the neighborhood, with increased potential for displacement along with it.

2017 Heat Map of Apartments with Preferential Rent by Brooklyn Zip Code (by units)





BAY RIDGE

For a community that is traditionally viewed as an enclave of middle-class homeownership, Bay Ridge, Brooklyn, has a surprisingly high level of both rent-burdened residents and preferential rent tenants.

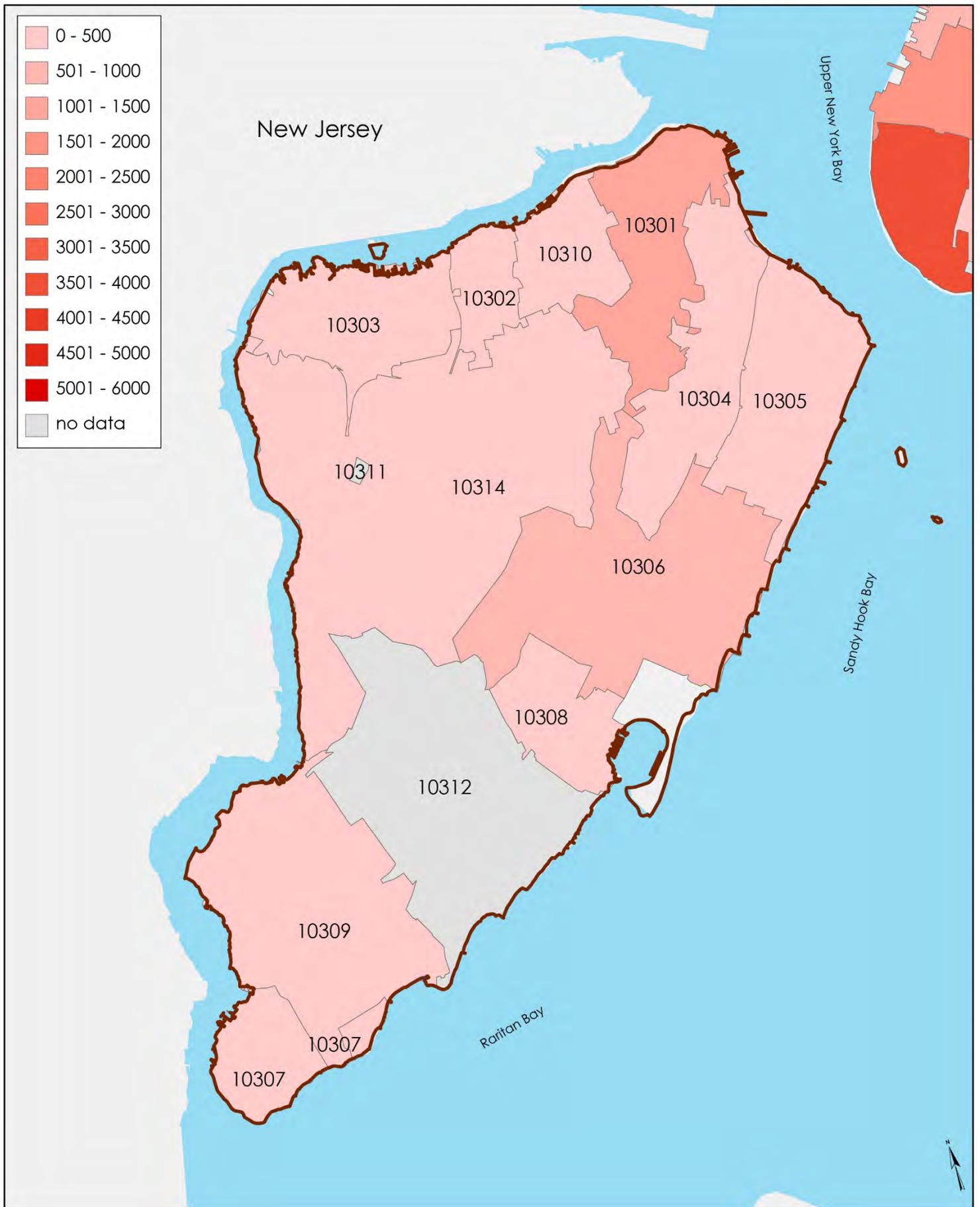
Just over 45 percent of all residents of the 11209 Bay Ridge zip code pay more than 30 percent of their annual income on rent.^{xxvii} Additionally, the zip code is home to 3,597 total apartments that receive preferential rents.^{xxviii} While this is just under 11 percent of all apartments in the zip code,^{xxix} it does represent roughly 37 percent of all rent stabilized units within that zip code.^{xxx}

Median household income has risen significantly in recent years, up 14 percent from 2011 to \$65,181.^{xxxii} Median rents have risen at roughly the same pace, rising 15 percent from \$1,218 in 2011 to 1,402 in 2016.^{xxxiii}

In 2005 the Bloomberg Administration created the 249-block Special Bay Ridge District, a rezoning that included portions of 11209 and was designed to preserve the low-rise, townhouse feel of the community.^{xxxiii} In a City Limits article in 2017 it was suggested that Bay Ridge could be upzoned as part of Mayor de Blasio's affordable housing plan, in order to ensure that new zonings do not only occur in lower-income, mostly minority neighborhoods.^{xxxiv}

It will be interesting to see in the coming years if the desire to preserve home ownership can be balanced against the need to develop more affordable units. Bay Ridge could be the battlefield for that fight.

2017 Heat Map of Apartments with Preferential Rent by Staten Island Zip Code (by units)



RECOMMENDATIONS TO BEST PROTECT PREFERENTIAL RENTS

- 1. In the coming year the New York State Legislature should pass legislation ending the preferential rent loophole, modeled after current bills A06285/S06527, which are chiefly sponsored by Assembly Member Steven Cymbrowitz and State Senator Liz Krueger, respectively. This new law would prevent a landlord from adjusting the amount of preferential rent upon the renewal of a lease, unless the apartment is vacant.**
- 2. To drive greater cooperation between stakeholders, landlords in New York City should be given a property tax break for the difference between the preferential rent and the legal registered rent in a given rent stabilized apartment as part of this legislative proposal.**
Many landlords could be categorized as small businesses, and should not lose potential income without some recompense, in this case coming in the form of tax credits. Landlords would be less likely to challenge the new law in the courts if they were being compensated for the potential loss of rental revenue in other ways.
- 3. Landlords should face increased civil penalties and compensatory damages if it is proven that they have harassed tenants with preferential rents in an effort to create a vacancy. In this way, we will create extra protections for preferential rent tenants.**

WHAT DO WE SAVE BY PRESERVING PREFERENTIAL RENTS? A FISCAL ANALYSIS

To allay any fiscal concerns about a tax break for landlords under this plan, we can demonstrate the potential savings to New York City that could occur by implementing the policies recommended in this report:

By preserving preferential rents, New York City will save money in shelter and new affordable housing costs by keeping people in their homes.

In 2017, 56% of New York City's renter households were rent burdened (paying at least 30% of gross household income for rent and monthly utility costs)^{xxxv}. We can utilize this number to, conservatively, calculate the number of preferential rent households which are rent burdened.

The latest (2017) New York State Homes and Community Renewal (HCR) registration data shows 260,378 apartments in New York City with preferential rents.

Therefore 56% of the 260,378 preferential rent households could likely become homeless if their preferential rents were raised. As demonstrated in this report, rents are rising in neighborhoods with high numbers of preferential rents, making landlords more likely to raise preferential rents.

If the rent burdened preferential rent households had their rents raised, there is therefore potential for 145,812 newly homeless households in New York City who could no longer afford their formerly-discounted rents.

The fiscal burden of that homelessness and replacing the formerly-affordable housing is upwards of \$15 billion.

Using the calculation of \$43,222 per homeless family for a shelter stay calculated in a recent New York City Bar commissioned report,^{xxxvi} New York City would be expending an additional \$6,302,286,264 in shelter costs if these families became homeless. Further, any unsheltered homeless person might cost the city \$31,000 annually in medical and law enforcement costs, according to the New York City Bar commissioned report.^{xxxvii}

Additionally, there is the cost of lost affordable housing. Each unit of affordable housing costs the New York City government itself an average of \$76,000 to

construct.^{xxxviii} Let us now assume that those homeless formerly rent burdened households would need to be placed in new affordable housing. That could cost The City \$11,081,712,00 in new construction costs for affordable housing.^{xxxix}

Therefore, there is the potential of up to \$17 billion in costs over time to New York City government of housing these households teetering on the brink of not affording rent if their preferential rents were eliminated.

Summary of potential fiscal gross savings to New York City under the proposed policy:

The savings in shelter and new affordable housing costs to the city could be nearly \$17 billion under this plan. The proposed policies in this report make fiscal as well as ethical sense.

Calculating the Net Savings:

In order to estimate the net savings of the proposed policy, we must look at the costs of the gap between the preferential rents tenants are paying and the rental cost legally allowed in a rent regulated apartment. This gap is also called the preferential rent discount. The New York City Independent Budget Office (IBO)'s recent study examined the preferential rent discounts for all of the regulated apartment units registered with the New York State Division of Housing and Community Renewal.^{xi} The analysis conducted by the IBO showed that the median of these preferential rent discounts for each borough were \$307 for the Bronx, \$303 for Brooklyn, \$453 for Manhattan, \$354 for Queens, and \$423 for Staten Island.^{xii}

This amount also represents the maximum potential loss in property tax revenue under this proposal. Assuming that the median is relatively representative of the mean for this data^{xiii}, and that the median preferential rent discount has not changed tremendously since the IBO's 2015 analysis^{xiii}, we arrive at an estimated \$93.5 million in tax dollars potentially foregone under this plan.^{xiv} Any way you slice it, and even if this number were greatly magnified, this potential tax revenue loss is a mere drop in the bucket compared to the significant savings the proposal allows for, given that the potential projected cost savings is potentially in the realm of \$17 billion.

CONCLUSION

With smart policies that preserve preferential rents while compensating landlords for their loss of rental income, we can keep tenants at all income levels in their homes, prevent displacement and encourage the widest possible amount of stakeholder cooperation to protect affordable housing.

FOOTNOTES

- ⁱ HCR spreadsheets provided upon request by HCR to The Office of The Bronx Borough President
- ⁱⁱ <https://www.documentcloud.org/documents/3872406-DHCR-Data-Memo-June-2017.html> (Last accessed November 5, 2018)
- ⁱⁱⁱ HCR Spreadsheets provided upon request by HCR to the Office of The Bronx Borough President.
- ^{iv} <https://cbcny.org/research/think-your-rent-high> (Last accessed November 5, 2018)
- ^v <https://www.propublica.org/article/new-york-landlords-exploit-loophole-to-hike-rents-despite-freeze> (Last accessed November 5, 2018)
- ^{vi} HCR spreadsheets provided upon request by HCR to The Office of The Bronx Borough President
- ^{vii} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 10040; see table “2016 American Community Survey: Selected Economic Characteristics”; Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{viii} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 10040; see table “2016 American Community Survey: Selected Housing Characteristics”; Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{ix} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 10040; see table “2016 American Community Survey: Financial Characteristics” for year 2016) (Last accessed November 5, 2018)
- ^x <https://www.nytimes.com/2018/08/07/nyregion/inwood-rezoning-nyc-manhattan.html> (Last accessed November 5, 2018)
- ^{xi} Ibid.
- ^{xii} HCR spreadsheets provided upon request by HCR to The Office of The Bronx Borough President
- ^{xiii} Ibid.
- ^{xiv} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 10458; see table “2016 American Community Survey: Selected Economic Characteristics”; Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{xv} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 10458; see table “2016 American Community Survey: Selected Housing Characteristics” for year 2011) (Last accessed November 5, 2018)
- ^{xvi} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 10458; see table “2016 American Community Survey: Selected Housing Characteristics” for year 2016) (Last accessed November 5, 2018)
- ^{xvii} <http://bronxboropres.nyc.gov/wp-content/uploads/2018/05/bronx-bp-2017-annual-development-report.pdf> (Last accessed November 5, 2018)
- ^{xviii} Ibid.

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- ^{xix} <https://projects.propublica.org/graphics/preferential-rents> (Last accessed November 5, 2018)
- ^{xx} HCR spreadsheets provided upon request by HCR to The Office of The Bronx Borough President
- ^{xxi} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 11432; see table “2016 American Community Survey: Financial Characteristics” for year 2016) (Last accessed November 5, 2018)
- ^{xxii} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 11432; see table “2016 American Community Survey: Selected Housing Characteristics” Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{xxiii} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 11432; see table “2016 American Community Survey: Selected Economic Characteristics”; Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{xxiv} <https://www1.nyc.gov/site/hpd/about/press-releases/2017/04/04-25-17.page> (Last accessed November 5, 2018)
- ^{xxv} <https://www1.nyc.gov/site/hpd/about/press-releases/2018/10/officials-celebrate-groundbreaking-ceremony-in-jamaica-queens.page> (Last accessed November 5, 2018)
- ^{xxvi} <https://www.nycedc.com/press-release/nycedc-hdc-hpd-and-local-elected-officials-break-ground-100-affordable-housing-mixed> (Last accessed November 5, 2018)
- ^{xxvii} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 11209; see table “2016 American Community Survey: Financial Characteristics” for year 2016) (Last accessed November 5, 2018)
- ^{xxviii} HCR spreadsheets provided upon request by HCR to The Office of The Bronx Borough President
- ^{xxix} Ibid.
- ^{xxx} <https://projects.propublica.org/graphics/preferential-rents> (Last accessed November 5, 2018)
- ^{xxxi} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 11209; see table “2016 American Community Survey: Selected Economic Characteristics”; Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{xxxii} https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml (Community: Zip Code 11209; see table “2016 American Community Survey: Selected Housing Characteristics”; Comparison of years 2011 and 2016) (Last accessed November 5, 2018)
- ^{xxxiii} https://www1.nyc.gov/assets/planning/download/pdf/plans/bay-ridge/bay_ridge.pdf (Last accessed November 5, 2018)
- ^{xxxiv} <https://citylimits.org/2017/05/10/the-high-income-neighborhoods-the-city-could-look-to-rezone/> (Last accessed November 5, 2018)
- ^{xxxv} <https://cbcny.org/research/think-your-rent-high>
- ^{xxxvi} https://www2.nycbar.org/pdf/report/uploads/SRR_Report_Financial_Cost_and_Benefits_of_Establishing_a_Right_to_Counsel_in_Eviction_Proceedings.pdf
- ^{xxxvii} Ibid.
- ^{xxxviii} Ibid.
- ^{xxxix} This calculation does not even require the assumption that the formerly-preferential-rent units would leave rent stabilization due to vacancy increases, though they could with the high

permissible vacancy increases following a preferential rent tenancy. See:

<http://www.nyshcr.org/Rent/FactSheets/orafac40.pdf>

^{xi} <https://ibo.nyc.ny.us/cgi-park2/2015/09/how-many-rent-regulated-units-are-rented-at-preferential-rates-and-where-are-they-located/>

^{xli} Ibid.

^{xlii} Both median and mean are measures of central tendency of data, showing a “typical value from a population or sample” - <https://docs.python.org/3/library/statistics.html>

^{xliii} <https://ibo.nyc.ny.us/cgi-park2/2015/09/how-many-rent-regulated-units-are-rented-at-preferential-rates-and-where-are-they-located/>

^{xliiv} To calculate this number, this report took the median price for each borough referenced in the IBO’s report (*supra*) and multiplied it by the number of units with preferential rent in the corresponding boroughs. We then added each borough’s total to come up with a total for the entire city. The number of units with preferential rent came from data sent to The Office of The Bronx Borough President by the HCR.

CREDITS

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