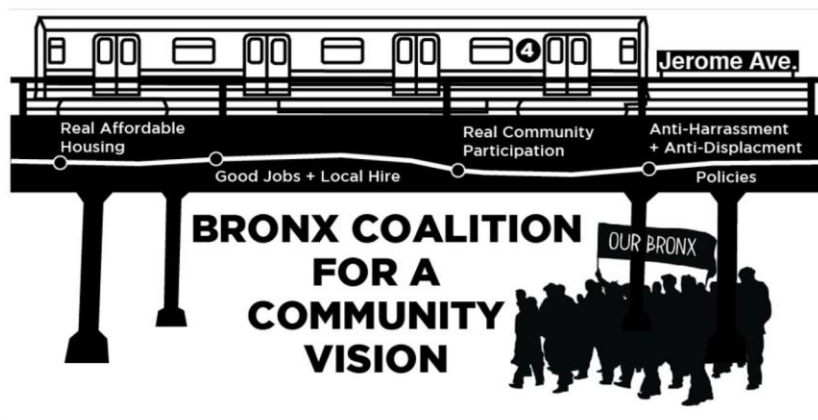


Comments on the Draft Environmental Impact Statement for the Jerome Avenue Rezoning



Submitted December 11, 2017

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I. Introduction

The Bronx Coalition for a Community Vision is grounded in the belief that community members are the experts on the issues that most affect their lives. The Coalition formed in late 2014 and beginning in March 2015, the Coalition has hosted dozens of meetings to educate community members about the City's plans, engage residents in conversations about current needs and challenges the community faces, develop policy solutions based in our shared experiences, and prioritize and advocate for these proposals. We have engaged thousands of community members through forums, visioning sessions, campaign meetings, phone calls, surveys, and more.

When we began our process of engaging in the rezoning, we were cautiously optimistic that the rezoning could create new opportunities for longtime Bronx residents and catalyze investments in our neighborhoods that have been missing for too long. We believed - and still do - that a rezoning, done right, could create the deeply affordable housing and career-track jobs our neighborhoods so desperately need, while lifting up existing residents and the businesses, culture, and community they have forged in the face of decades of official neglect. We engaged with the de Blasio administration and City agencies at every step in the formal process, including by participating in the Department of City Planning's initial neighborhood study forums, sending policy ideas and proposed modes of analysis for DCP to incorporate into its plans, providing detailed feedback on the City's Draft Scope of Work for this proposed rezoning, and mobilizing hundreds of community members to testify about the rezoning at every opportunity. We had hoped that our good-faith efforts might yield a rezoning plan that would reflect - perhaps for the first time - the needs of the community where the rezoning was taking place, while also advancing the broader citywide needs for deeply affordable housing and decent, meaningful work.

After almost three years of advocacy around the rezoning, we were devastated to see that the plan presented in the Draft Environmental Impact Statement in no way reflects the community's plans or goals. If anything, the City has moved yet further from the community's priorities by developing an Alternative that would further imperil the neighborhood's auto industry, while bringing in almost 1000 additional units of housing that would not be affordable to most current residents. The City's disregard for the ideas we have presented throughout this process is so complete that many of us are now forced to conclude that the City's professed desire for community participation is both cynical and hollow.

Below, we provide more detailed responses to the portions of the DEIS that are of the greatest concern to our community - those addressing new housing construction, residential displacement, and business displacement. Our primary concerns are that:

- **The City's analysis significantly underestimates the amount of development the Proposed Actions are likely to bring, improperly limits the analyses of direct and indirect displacement risk, and leads the City to suggest strategies that are completely inadequate to mitigate those risks.** Among other exclusions, the City removes all multi-family buildings of 6 or more units from its direct displacement analysis, turns a blind eye to illegal displacement tactics, and improperly concludes that tenants who are rent-stabilized, recipients of Section 8 vouchers or other rent subsidies, and occupants of buildings that are subsidized today are immune to the risk of indirect displacement. Because the City fails to consider the realities of tenants in such situations, it wrongly concludes that the rezoning will have a

minimal impact - when past rezonings of low-income communities of color have fundamentally altered these communities.

- **The proposed housing does not meet the neighborhood need for deeply affordable housing, and the City's decision to proceed with a rezoning of this scale is irresponsible.** This is especially so in light of the City's failure to craft a term sheet that meets the need for deeply affordable housing, and the tremendous uncertainty surrounding both developers' future willingness to accept subsidy and the amount of federal housing funding that will be available to support subsidized projects.
- **The proposed rezoning will worsen rather than alleviate existing displacement pressures.** Among other concerns, we believe that the City has adopted a flawed and legally inadequate environmental review process that significantly underestimates the risk of displacement, and that the City's suggestion that new housing can mitigate the displacement of existing residents is flat wrong.
- **The proposed rezoning and, to an even worse degree, the City's proposed Alternative will destroy the thriving auto industry in the community.** We have long suggested that the City can create space for additional affordable housing in the community, *without* destroying the long-standing businesses on which so many residents rely. The City has not listened.

We urge the Commissioners to vote NO on the proposed rezoning. Although the City has promised that the rezoning will generate low-income housing in our neighborhood, the truth is that the City's recent efforts to create deeply affordable housing in our area have been successful *without* the rezoning, and a plan that invites speculation will only undermine the City's steady progress here. While certain elected officials have claimed that the rezoning is necessary to create housing that will retrain and attract middle- and upper-income residents, the truth is that such families can already afford to live in our community now, and the neighborhood will not remain income-diverse unless extraordinary measures are taken to create housing for the people most vulnerable to displacement today. Where the DEIS touts the "targeted public realm investments and service provisions that [will] improve overall quality of life for residents" and "will be the direct result of the Jerome Avenue Neighborhood Plan,"¹ **we ask: why should a community that has experienced decades of divestment accept displacement as a condition of the receipt of resources it has long been owed?** The City could, and should invest in this neighborhood and its people without conditioning this investment on a risky rezoning plan that ignores the community's needs.

Taken together, the City's plans operate much like the Trump tax scheme: a vast transfer of wealth from the lowest-income New Yorkers to already-rich developers and landlords who need the City's assistance the least. If our words seem harsh, it is because the City has left us with no other means of describing a plan that fails the community so completely. If our opposition seems extreme, it is only because the City's actions make clear that it has no interest in advancing the community's goals - goals that have been consistently expressed by hundreds of residents, and just as consistently ignored.

The Coalition is proud of all that it has achieved over the last three years - securing a historic Right to Counsel for tenants in housing court, passing a new Certificate of No Harassment policy that will help deter landlords in hot markets from harassing out tenants, and advocating to secure improvements to the City's subsidy term sheets to ensure that a greater share of apartments in projects subsidized by the City go toward the lowest-income families who need them most. Each of these victories would not have happened without thousands of tenants coming together, creating a vision, and advocating for policies they knew from their own experiences could make a powerful difference. But both the Right to Counsel and Certificate of No Harassment policies are defensive strategies that acknowledge the reality of tenant harassment and abuse at the hands of landlords. They are not, in that sense, positive visions for the future of our community; they are necessary protective measures that recognize the harsh world tenants face today. If the City

¹ Page 1 - 23

passes the rezoning in its current state, we are concerned that neither of these policies will prove sufficient to counter the relentless pressure landlords will exert on our most vulnerable community members in the newly “hot” market of the southwest Bronx. Similarly, though the new term sheets we helped negotiate are an improvement, they still do not create enough housing for people making \$30,000, \$25,000, \$18,000 a year and less - and if the local housing market heats up significantly, developers will refuse the chance to partner with the City to build subsidized units at all.

We are not, and have never been opposed to development as such. We are opposed to this rezoning, in this moment, in its proposed form because today, the City does not have the tools it needs to undertake a rezoning of this scale in a community like ours responsibly. For this reason, **we ask the Commissioners to vote No. If you will not heed this request, we urge you to support us in our demand that the City halve the scale of the rezoning** such that it introduces only half the number of new apartments the City has up to this point proposed. Even a rezoning of that size - 2000 new apartments, or a net increase of about 1200 units over the number the City imagines would be built without any rezoning - would represent a significant change in our community. But we believe that a smaller-scale rezoning would make it possible for the City to create fewer units of housing, with a greater share at the deep affordability levels our community needs. Just as important, a more modest increase would reduce the likelihood of the rapid, speculative development of our neighborhood - giving us a chance to work with the City to create the further tools that are needed to support the creation of deeply affordable housing and prevent displacement in our community.

II. Land Use, Zoning and Public Policy

The rezoning runs counter to the goals of Housing New York and the Industrial Action Plan by threatening to make this neighborhood less diverse and less affordable, while increasing the displacement of current residents and killing critical, blue collar jobs for people who face barriers to employment.

A. Inconsistency with Goals of Housing New York

The DEIS states that “The Jerome Avenue Neighborhood Planning Study is a part of Housing New York” and forwards its goal of creating and preserving affordable housing, specifically through the policies and principles of, “fostering diverse, livable neighborhoods; preserving the affordability and quality of the existing housing stock;” and “building new affordable housing for all New Yorkers.”² Yet the rezoning as it’s currently proposed has the potential to have the opposite effect on this neighborhood: making it less diverse and less affordable while increasing the displacement of current residents. It will do this by bringing in housing - both market-rate and affordable - that does not fit the neighborhood’s need, creating an influx of higher-income tenants and increased land values and the displacement effects that come with them.

In our comments on the Draft Scope of Work (DSOW), the Bronx Coalition explained that the proposed Jerome Avenue rezoning had the potential to undermine both Housing New York’s construction goals,

² 2-23

and its preservation goals.³ The intervening year and disclosure of further details about the plan for Jerome Avenue have only strengthened this view. By creating significant amounts of housing that are out of reach of current residents, the Jerome Avenue rezoning will both fail to meet their needs, and increase their risk of displacement through facilitating a changing housing market. Worse still, the rezoning would represent a shift away from strategies that the City has already been using in our community to build housing for those that need it most.

1. This area is income-diverse already; additional market-rate housing is not needed to achieve income diversity

In the DEIS, the City states that, “The range of new housing opportunities created by the Proposed Actions is expected to ameliorate an existing need for affordable housing, and appeal to residents in the area that might otherwise leave the neighborhood for better housing and amenities.”⁴ The City further concedes that, “the average income of the project-generated population could be higher than the average household income of the existing population in the study area ...”⁵ Taken together, the City’s framing - including its championing of the Mandatory Inclusionary Housing program as a tool to create “neighborhood economic diversity” in low-income communities such as ours - suggests that it views attracting higher-income residents through housing targeted specifically toward them as a key strategy for our neighborhood’s success.

This is simply not the case. First, securing the future of our community requires creating meaningful opportunities for economic advancement for residents who live here today - not simply importing richer residents to take our place. Second, while the creation of “better housing and amenities” could help to retain residents, “better” need not mean higher-income, and the development of better amenities does not need to be tied to a rezoning that will displace us; the City could make much-needed investments in our community without gambling with our future with this rezoning. Third, and most critical in this context, our community is *already* income-diverse today. While Community Districts 4 & 5 have some of the lowest median household incomes in the City – around \$25,000 – 25% of households in the districts make over \$50,000 a year, and 14% of households make over \$75,000 a year.⁶ Households at the higher end of the income spectrum can already afford asking rents in the neighborhood, which the City cites in the DEIS as ranging between roughly \$1,300 and \$2,100 depending on unit size.⁷ The City does not need to adopt strategies to further increase “income diversity” at our expense; higher-income residents are fully capable of moving to the community today, and they will continue to move to the Bronx with or without the City’s express encouragement via this rezoning.

³ See “Comments on the Draft Scope of Work for the Jerome Avenue Rezoning,” Bronx Coalition for a Community Vision (Nov. 7, 2016) [hereinafter “Bronx Coalition DSOW Comments”] at 8-15. Online at <http://bit.ly/BxCoalitiononDSOW>.

⁴ See “Jerome Avenue - Draft Environmental Impact Statement” [hereinafter “Jerome DEIS”], 3-4.

⁵ Jerome DEIS 3-37.

⁶ U.S. Census Bureau; American Community Survey 1-Year Estimates, 2015

⁷ Jerome DEIS, Table 3-11, p. 3-35

2. In order to *maintain* that diversity, the City needs to prioritize building housing for the people whose housing is most at risk - the lowest-income community members. The City has been doing this with success in recent years, creating housing that reflects the neighborhood need.

What is particularly troubling about this rezoning is that it jeopardizes the success the City has achieved in subsidizing the construction of deeply affordable units that match our neighborhood's need. Currently the City is supporting the creation of new affordable units in CDs 4 and 5 at much deeper affordability levels than it's achieving city-wide. Of the 1,297 affordable units created in the CDs through Housing NY between 2014-2016, 40% of them were set aside for Extremely Low Income (ELI) households making up to 30% AMI, or about \$25,000 for a family of three, a significantly higher percentage than the 15% of ELI units being created city-wide.⁸ 53% of these units in CDs 4 & 5 were for households making below 50% AMI, while a full 94% of units were for households making below 80% AMI.⁹ These are numbers that actually come close to matching the income breakdown of the community and they are numbers that the City must ensure they can continue. Our community currently has real income diversity because it is currently a neighborhood that is accessible to *all* income types, including, most crucially, the lowest. But maintaining this income diversity moving forward must mean ensuring that these lowest-income households can stay by, in part, continuing to subsidize the affordable units within their reach, not putting them at risk by prioritizing an influx of higher income tenants.

3. If the City moves forward with the rezoning, the housing that comes to the community will be further from what the community needs.

If this rezoning moves forward the most likely outcome will be a housing market that moves further away from the needs of our community. Though the market right now is such that developers are likely to use subsidies to build, things could change quickly after the rezoning. As this happens the ability of the City to facilitate the creation of deeply affordable housing for our community will be severely constrained. This is a fact the City seems to tacitly acknowledge in its estimates for what type of units this rezoning will bring, stating that, "The Proposed Actions are intended to create the capacity for the construction of new residential development that would provide new housing options at a greater diversity of price points."¹⁰ But what will this "diversity" look like in terms of affordability? Will subsidized construction continue to reach the deeply affordable levels they are providing today? And what about the projects that happen down the road, after the market has changed, where the only guaranteed affordable housing provided would be Mandatory Inclusionary Housing units.

(i) Mandatory Inclusionary Housing serves higher-income households well, but leaves behind the majority of this community.

In our comments on the DSOW, we cautioned that the only *guaranteed* below-market housing this rezoning will bring is Mandatory Inclusionary Housing (MIH) units - and that no Option in the MIH program reflects the neighborhood's needs. We noted that "the best Option leaves out the 78% of neighborhood residents who make less than \$50,000 a year. None of the MIH options require any developers, anywhere to build more than 10% of new apartments at or below 40% AMI - even though almost two thirds of

⁸ Housing New York Units by Building, NYC Open Data

⁹ *ibid*

¹⁰ 3-65

families in Community Boards 4 and 5 earn less than \$35,000 a year. MIH also does not require developers to build any housing at all for households who make less than 30% AMI, or \$25,000 a year – even though almost half of families in Community Boards 4 and 5 are at these low income levels.”¹¹

These flaws remain as true today as they were a year ago. Families making between roughly \$35,000 and \$75,000 a year would be served by MIH under the rezoning, with MIH Option 1 serving families on the lower end of this range (\$35,000 to \$50,000) and Option 2 serving families on the higher end (closer to \$75,000) – while new market rate housing created by the rezoning will serve those households that make more. But in our community, Mandatory Inclusionary Housing does not advance the Housing New York goal of “building new affordable housing for *all* New Yorkers,” because too many of our lower-income community members are left out.

(ii) As the market changes post-rezoning the City will be unable to use subsidies to create sufficient housing at the deep levels of affordability needed in this community.

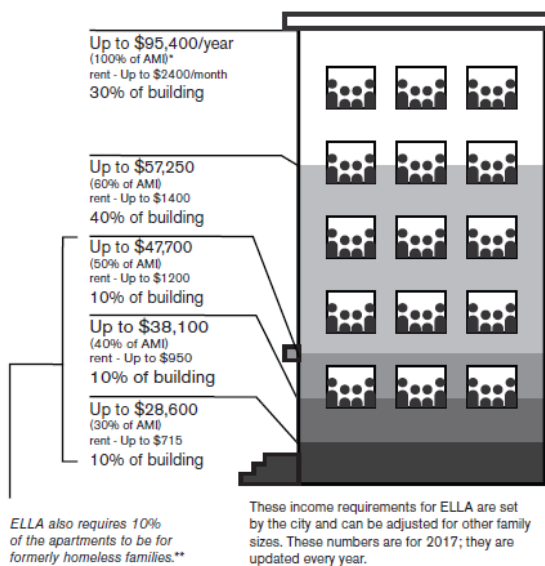
Currently the City is subsidizing new affordable housing in our community at much deeper affordability levels than it is achieving city-wide. But this is unlikely to continue after the rezoning, a fact the City seems to itself acknowledge throughout the DEIS. In public presentations and meetings with our coalition the City has touted the Department of Housing and Preservation (HPD)’s ELLA term sheet as a tool to secure affordable housing in our community. But in our DSOW comments, the Coalition already raised serious concerns about ELLA’s ability to achieve the kind of affordability our community needs.¹² Since then, HPD has made revisions to both the ELLA and Mix-and-Match term sheets, increasing the share of units to families making below 30% AMI for ELLA by mandating an additional 10% of units go to formerly homeless households. Although the revised ELLA and Mix-and-Match term sheets are an improvement over HPD’s previous subsidy options, they still do not reach the need for deep affordability that exists in our community. The revised ELLA term sheet still only provides 40% of units for families below 60% AMI, and only 20% of units for families below 30% AMI. These are significantly lower percentages than the City is currently achieving in our community.

¹¹ Bronx Coalition DSOW Comments at 8.

¹² Bronx Coalition DSOW Comments at 8-11.

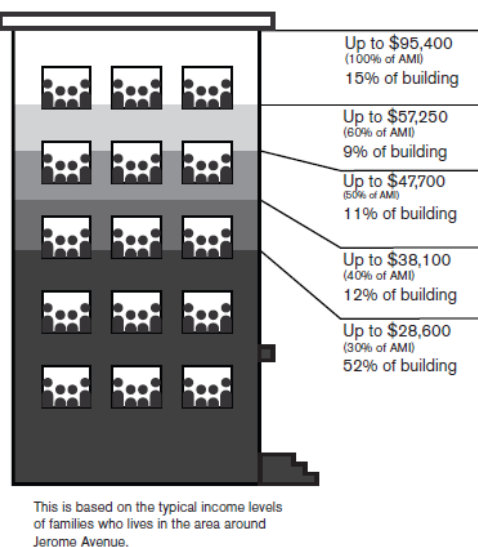
Who is ELLA building housing for?

In exchange for funding for their development, ELLA requires developers to rent the apartments at set income levels so they are "affordable" for a family of four. Like this:



Who actually lives around Jerome?

What if developers had to build their building according to who actually lives near Jerome Avenue? Then it would look like this:



Furthermore, there are troubling indications that the City does not even intend to use ELLA as their best affordability option. In his recommendations for the Jerome Avenue rezoning the Bronx Borough President cited a commitment from HPD, "to guarantee that at least 10% of units will be set-aside for families earning less than 30% of the Area Median Income (AMI), and an additional 10% will be set-aside for families earning between 30 - 50% AMI in HPD-financed new construction developments..."¹³ This is a commitment that Councilmember Gibson further touted in her comments at the City Planning Commission public hearing on 11/29/17. This is incredibly troubling. These "committed" numbers are in fact *lower* than that provided by ELLA, and significantly lower than what is currently being created in our community. **Currently, 40% of new affordable units in our Community Districts are going to households making below 30% AMI; the City is asking us to accept a plan that would provide just one-quarter of that amount.**

The City doesn't know how many developers will want to work with them, and developers will be less and less likely to want to take subsidy as the housing market heats up.

Whatever term sheet the City uses - whether the current term sheets, or a future option that better meets the need for deep affordability in communities such as ours - the City cannot produce affordable housing using subsidies unless developers choose to partner with them in this way. This rezoning represents a marked change in land use – from primarily manufacturing to high density residential districts - opening up the possibility of a massive amount of new residential housing where it's currently not allowed. This type of wholesale changing of land use has the potential to significantly increase land value and with it the housing market around Jerome Avenue. Building deeply affordable units, such as the City is supporting today, is contingent on private developers taking City subsidy; as the market changes post-

¹³ Bronx Borough President's Recommendation ULURP Application No: C180051ZMX Jerome Avenue Rezoning; <http://bronxboropres.nyc.gov/wp-content/uploads/2017/11/jerome-avenue.pdf>

rezoning there is no guarantee that developers will continue to do this. Again, this is an outcome the City seems to continually hint at throughout the DEIS. The City acknowledges that, "Current market conditions do not support the construction of new housing without subsidy."¹⁴ Yet they go on to say, "It is therefore expected that the *first* projects constructed pursuant to the Proposed Actions would necessitate government subsidy and likely be 100 percent affordable,"¹⁵ a tacit admission by the City that future projects are less likely to take subsidy moving forward. This is a trend that has been observed in recent decades in gentrifying neighborhoods as local housing markets have changed. In its report on the location of subsidized affordable housing in New York City, the Furman Center notes that, "as the neighborhoods closer to downtown Manhattan have become more expensive in recent years, subsidized housing development has become less common in the higher cost areas in the city center. Since 2000, just six percent of new subsidized affordable rental units have been located in Manhattan below 96th Street compared to 17 percent of subsidized rental units built in the 1970s."¹⁶ As a neighborhood's rental market starts to heat up, the calculus for landlords considering entering long-term subsidy agreements with the City begins to change; rather than making a decades-long commitment to affordability, many will decide that they are better off building market-rate.

The federal government may also cut the City's housing budget, rendering it less able to work with developers to create more deeply affordable housing even where it has willing partners.

In addition to our above concerns, the threats to affordable housing development coming out of Washington and the Trump administration are very real and must be addressed. Federal funds account for 86% of HPD's 2018 budget.¹⁷ Almost *all* of HPD's preservation programs are paid for by federal funds - both for basics like code enforcement and money for rehabilitation - as well as funding for supportive housing and down payment assistance. These funds come primarily through the Community Development Block Grant and HOME program; the Trump administration's executive budget calls for the elimination of both these programs entirely. In the words of HPD Commissioner Maria Torres-Springer, these cuts would, "severely undermine our ability to enforce housing quality....undermining our ability to protect tenants from being harassed out of their homes and neighborhoods."¹⁸

These programs are not the only ones at risk. Just as crucially, other vital funding sources for affordable housing development are threatened by the GOP's proposed tax plan. Under the plan currently being considered both the Low-Income Housing Tax Credit and Private Activity Bonds could be severely jeopardized. The LIHTC 9% Program - one of the most widely-used tool for affordable housing construction in New York City and the country - would be greatly diminished if corporate taxes are cut, while the LIHTC 4% Program and Private Activity Bonds are both at risk of being eliminated entirely. In

¹⁴ Jerome DEIS, p. 3-64

¹⁵ *ibid*

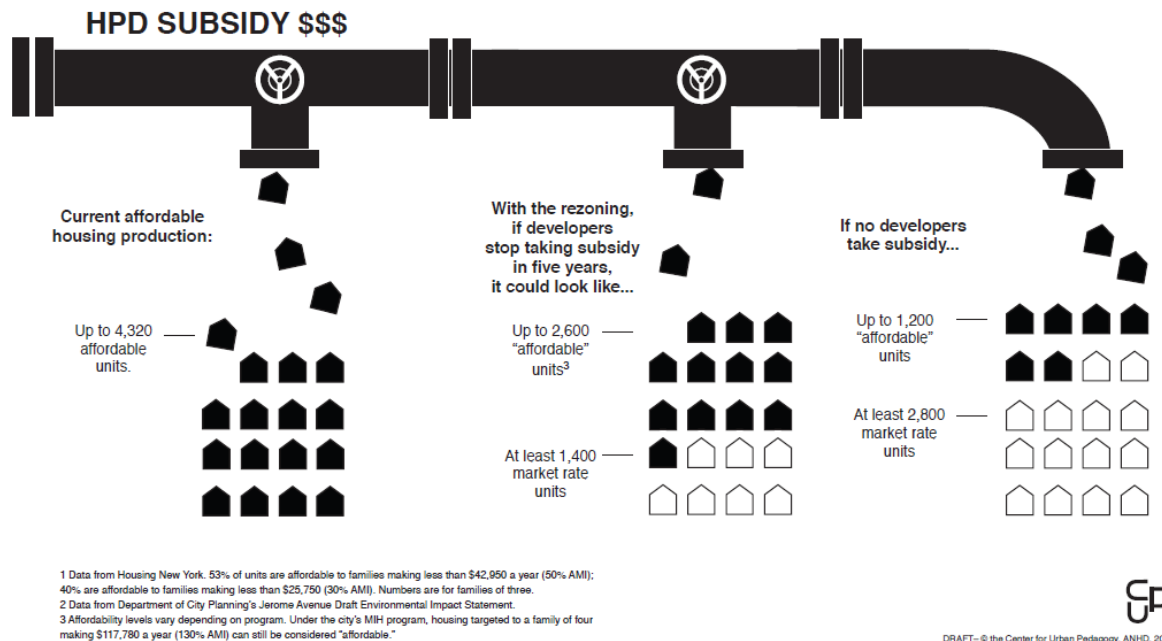
¹⁶ "Housing, Neighborhoods and Opportunity: The Location of New York City's Subsidized Affordable Housing," NYU Furman Center, January 2015, p. 3, http://furmancenter.org/files/NYUFurmanCenter_HousingNeighborhoodsOpp_Jan2015.pdf

¹⁷ Transcript: Mayor de Blasio Holds a Press Conference on the Federal Budget and City Hall Investigations, March 17, 2017; <http://www1.nyc.gov/office-of-the-mayor/news/158-17/transcript-mayor-de-blasio-holds-press-conference-the-federal-budget-city-hall>

¹⁸ *ibid*

NYC alone this would mean the loss of \$2.6 billion in affordable housing funding per year - meaning 9,700 fewer affordable units created annually.¹⁹

The City expects that the use of subsidy will continue in our community for some time even after the rezoning - but what happens if the funding for this subsidy is gone? This is especially concerning given that there may not even be funding for something as basic as code enforcement, forcing the City to prioritize where it places its limited resources. For the City to move forward with this rezoning without a realistic understanding as to what it can actually afford to subsidize in our community would be reckless and irresponsible.



(iii) The introduction of significant amounts of market-rate and other housing targeted toward families with incomes higher than those prevalent in the community today risks increasing displacement risks, undermining the Housing New York preservation goals.

Because the City cannot guarantee - either through Mandatory Inclusionary Housing, or through subsidies - that a meaningful share of the housing the rezoning will bring will be affordable to current residents, we are concerned that the greater the rezoning, the greater the potential for the whole-scale gentrification of our neighborhood and the displacement of its residents. In recent years, the City has been subsidizing deeply affordable housing around Jerome Avenue that actually meets the needs of our community. But the proposed rezoning - in converting primarily M and C8 zoned land to high density residential districts - runs the risk of changing this. In opening up new residential density on land where it's currently not allowed, the City is increasing the likelihood that our local housing market will change. As it does, fewer developers will be interested in taking subsidy - decreasing the production of deeply affordable units. At the same time, new market-rate developments will be built that are out of reach for

¹⁹ "What Would the Trump Tax Bill Mean for NYC Affordable Housing?", Association for Neighborhood and Housing Development, <https://anhd.org/what-would-the-trump-tax-bill-mean-for-nyc-affordable-housing/>

current neighborhood residents; while these developments will include MIH units, those units will not serve at least half of our community - the very half that needs affordable housing the most. The influx of new, higher-priced units and higher-income tenants will generate increased secondary displacement pressures for low-income tenants in our community.

Though it is true that “many existing residents are not able to afford rents in the study area and are currently experiencing displacement pressures,”²⁰ asking rents in the proposed rezoning area are still some of the lowest in the City; the impacted community districts have the 51st and 52nd lowest rents of all CDs in the City.²¹ Although rents are rising, they are rising at a slower rate in our community than they are citywide.²² Because rents here are low today, and current rate of acceleration of rent is low, the rezoning of our community in a manner that invites massive amounts of market-rate housing brings a particularly significant risk of accelerating rent increases beyond what current residents can bear. In these ways, the Proposed Actions undermine, rather than advance, the affordable housing preservation goals of Housing New York.

4. Based on local housing needs, the community would be better off with *no rezoning* than this one.

When all our concerns are considered together it is clear that our community would be better off with no rezoning compared to what is currently being proposed by the City. We care deeply about the creation and preservation of deeply affordable housing in our neighborhood. But with this rezoning, the numbers and the tradeoff simply don’t match up. We would get fewer deeply affordable units than if the City continued its current strategies, and far more units that are out of reach of current residents. With this would come an influx of new higher income tenants, increased land values, and the risk of displacement.

Under what the City has presented as its best-case scenario for the rezoning, about half of the 4008 projected new units created would be market-rate, and half would be affordable - this means, at most, around 2004 below-market units coming to our community. But **of these, only 200 would be for families making below 30% AMI, even though almost half of the families in our community make below that amount.** Meanwhile over 2000 new units of market rate housing would be brought into our community. In contrast, if there was no rezoning the City estimates that there will be 719 new units produced around Jerome Avenue. **If the City kept subsidizing this housing at its current pace and using its current strategies, about 300 of these units would be built for families at or below 30% AMI - almost half of the total units built - with no accompanying increase in market rate units.**

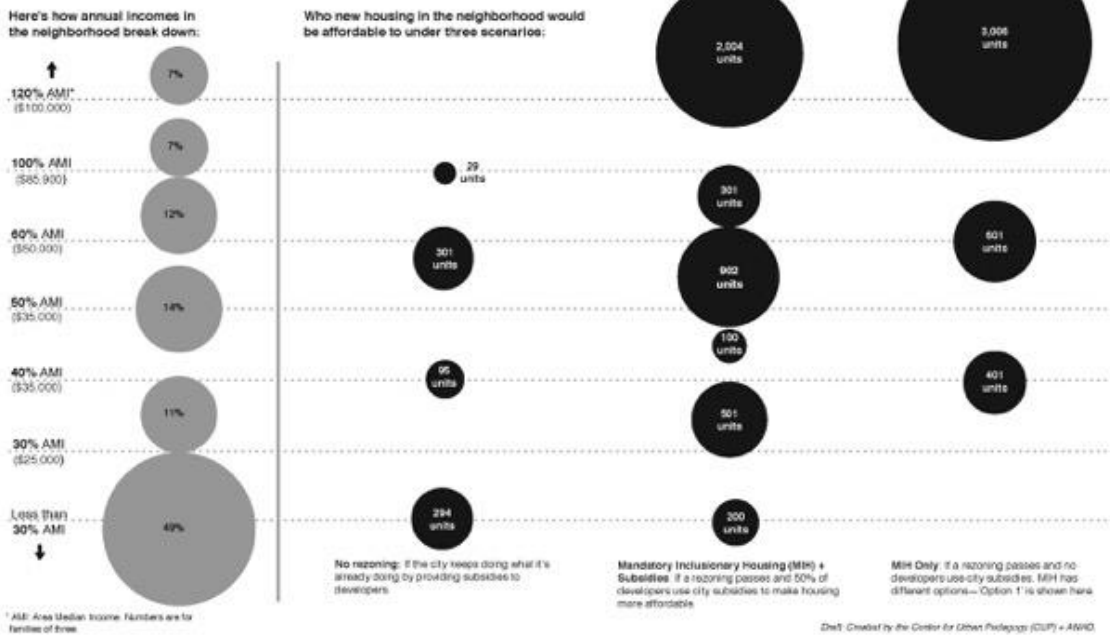
²⁰ 3-34.

²¹ NYU Furman Center, *State of New York City’s Housing and Neighborhoods in 2016*

²² DEIS p. 3-35, Table 3-10: Median Gross Rent in the Secondary Study Area, the Bronx, and New York City - 1999 and 2011 - 2015

How much housing are we talking about—and who is it for?

Take a look at how a rezoning could impact housing on Jerome Ave.—and who could afford it.



All of this begs the question: *why rezone Jerome Avenue?* Why does the City want to risk changing the local housing market to one that is less likely to create affordable housing and more likely to create market rate housing that is out of our reach and increases the chance of displacement?

These questions are especially important given the de Blasio administration's expanded goals for its Housing New York program. In October the administration announced that it would increase its affordable housing goals from 200,000 to 300,000 newly constructed or preserved units. The administration has increased their goal based on their current pace of new affordable construction - yet, notably, this pace has been reached without counting any units from neighborhood rezonings. This fact was made explicitly clear by Deputy Mayor Alicia Glen at the October press conference, when she stated, "[O]ur production to-date has far surpassed our original projections and none of those units are attributable to the rezoning that we've already completed, so I think we feel extremely optimistic."²³ de Blasio himself continued this theme by suggesting that no one rezoning was central to Housing New York's plan.²⁴ Given these statements, and the pace and depth at which affordable housing is currently being created in our Community Districts, it is unclear that this rezoning is even needed for the de Blasio administration to reach their affordable housing targets under Housing New York.

B. The proposed rezoning is inconsistent with the goals of the City's Industrial Action Plan.

²³ <https://citylimits.org/2017/10/26/breaking-down-de-blasios-expanded-housing-plan/>

²⁴ Ibid

According to the City of New York, the industrial and manufacturing sectors provide 15% of the city's total private sector employment (more than half a million jobs) and is "a cornerstone of the New York City economy."²⁵ In 2015, the mayor unveiled an Industrial Action Plan composed of 10 points that were supposed to be geared to strengthening the sector, as well as preparing it for technological changes. In particular, the Action Plan makes reference to the importance of core industrial areas and getting ahead of trends that will dramatically impact workers and the skill sets they may need.

In our comments on the Draft Scope of Work, the Coalition flagged the need for the City to analyze the goals and impacts of the proposed rezoning with reference to the Industrial Action Plan (IAP). We believed this task to be urgent because the proposed Jerome Avenue rezoning area contains a significant number of businesses within the industrial/manufacturing sector, in particular a large number of auto-related businesses. However, in the DEIS, the City failed to undertake an analysis of the Proposed Actions with reference to the IAP - an oversight that leaves out policy considerations impacting one of the most important sectors in the study area.

Conservative data estimates find there are more than 10,000 people employed in the auto repair sector citywide, while survey-based planning studies of the sector find that number could easily approach two times that amount.²⁶ These jobs are clearly a significant source of employment for the very population that the action plan is geared to support; according to a mayoral press release, jobs held by people of color, immigrants, and that pay decent wages to a people with limited educational attainment are especially valuable and should be supported.²⁷ That is the stated purpose of the Action Plan.

Yet in a corridor that is home to hundreds of these very type of jobs, actions are being proposed that will have a devastating effect, wiping them out entirely, and the DEIS both fails to acknowledge this or propose any meaningful type of mitigation. It also fails to consider the impact that increasing the hostility of the city to the auto repair industry may have for other industries that are auto and truck dependent. More than 20% of the customers of the Jerome auto businesses are other businesses and government.²⁸

The importance of auto repair jobs both to the people living in the surrounding community and to the economic activity in the area is not accounted for in the DEIS. Auto repair jobs are quality jobs for the same people that live in the neighborhoods of the Bronx that are affected by the proposed actions – 64% are immigrant, 68% have a high school diploma or less, and 75% are people of color throughout the city.

²⁹

The Jerome Avenue Business Needs Study conducted by WHEDCo, and funded through the Department of Small Business Services, illustrates the interconnectedness of the economic ecosystem on Jerome, with the overwhelming majority of surveyed businesses indicating that they rely on other

²⁵ Website of New York City Economic Development Corporation accessed at <https://www.nycedc.com/industry/industrial> on December 9, 2017.

²⁶ Willets Point Land Use Study, Tom Angotti.

²⁷ "Mayor de Blasio and Speaker Mark-Viverito Unveil Action Plan to Grow 21st Century Industrial and Manufacturing Jobs in NYC," press release November 3, 2015, accessed at <http://www1.nyc.gov/office-of-the-mayor/news/780-15/mayor-de-blasio-speaker-mark-viverito-action-plan-grow-21st-century-industrial-and#0>

²⁸ Jerome Avenue Business Needs Survey: A REPORT PREPARED FOR THE WOMEN'S HOUSING & ECONOMIC DEVELOPMENT CORPORATION by Barretto Bay Strategies SEPTEMBER 25, 2017 , page 9.

²⁹ Pratt Center for Community Development, Under the Hood: A Look into New York City's Auto Repair Industry, February 2017, page 3.

businesses in the area for both goods and services, and this was found to be equally true for auto and non-auto (industrial, wholesale, and retail) businesses.³⁰ More than half of the auto business surveyed had been operating in the area for more than 6 years³¹, a finding that is consistent with NETS data for the entire corridor that Pratt Center for Community pulled.

Auto businesses in the area reported the number one reason that they located in the area was to be close to customers, and this was followed by stating the importance of being connected to an active auto cluster.³² 64% of the customers of the auto businesses are coming either from the immediate neighborhood or elsewhere in the Bronx. Similar proportions are also reflected in the non-auto business customer base in Jerome ³³.

Businesses also recognize the importance of their clustering. 41% of the auto businesses recognize that customers are also going to other auto shops in the area³⁴ and across all businesses, 45% benefit from direct buying from other businesses in the area, while 39% receive referrals from other businesses in the area.³⁵

These findings underscore what community members and the Bronx Coalition for a Community Vision have been stating throughout – that the businesses in the area, auto or not, are well-integrated into the community – they employ local residents, and serve local people, and their success is deeply intertwined with their co-dependence. Actions that will significantly disrupt location and interdependence, cannot be considered separately from considerations about what it means to meet the needs of community residents. **We demand that the FEIS address the conformity of the Proposed Actions with the Industrial Action Plan, and the impacts on the auto sector specifically.**

³⁰ Jerome Avenue Business Needs Survey: A REPORT PREPARED FOR THE WOMEN'S HOUSING & ECONOMIC DEVELOPMENT CORPORATION by Barretto Bay Strategies
SEPTEMBER 25, 2017, page 7

³¹ Ibid p.6

³² Ibid p. 7

³³ Ibid p.9

³⁴ Ibid p.10

³⁵ Ibid p. 13

C. To better meet the goals of both Housing New York and the Industrial Action Plan, the City should stop this rezoning - or, at minimum, drastically reduce the amount of housing it will permit with this rezoning. This will curb displacement pressures; preserve the opportunity to create fewer, more deeply affordable apartments; and preserve more local businesses.

Because the City cannot guarantee that a meaningful share of the apartments that would be generated by the Proposed Actions would be affordable to current residents, and because an influx of housing that is not affordable to us will worsen rather than alleviate displacement pressures, the Coalition believes that the Proposed Actions would fail to advance the affordable housing creation and preservation goals of Housing New York. At the same time, the conversion of primarily M and C8 zoned land to high density residential districts will drive thriving auto businesses from our community, undermining the goals of the City's Industrial Action Plan. The City could better meet the goals of both Housing New York, and the Industrial Action Plan through a radical shift in its plans for the neighborhood: *not passing any rezoning at all.*

If the City refuses to change course entirely, the Coalition calls for a significantly smaller rezoning - one that shrinks the rezoning boundaries, lowers the zoning designations, leaves a certain number of C-8 or M sites with their current zoning designations, or all three - in a manner that reduces the number of projected housing units by half. Our aim is to ensure that any new residential density the City will be creating through this rezoning goes only towards the creation of deeply affordable housing. By reducing the rezoning to half the number of projected units, the City can better match this goal - using its limited resources to subsidize new housing in the rezoning boundaries right now and in the near future at levels that match our community, while decreasing the chance that significant amounts of market-rate housing will be built later on down the road, after subsidies have run out or the local housing market has shifted to the point where developers are no longer interested in building subsidized projects. The City must ensure that its land use actions can match its ability to produce deeply affordable housing in and around Jerome Avenue. It must not gift new residential density to for-profit developers whose decisions the City cannot control or fully anticipate. By giving the City a more controlled environment in which to continue to foster affordable housing development, a more modest rezoning would better meet the affordable housing preservation and creation goals of Housing New York. At the same time, leaving untouched more C-8 and M sites, in combination with other strategies outlined in these comments, would help to preserve the auto industry in the community, better meeting the goals of the Industrial Action Plan.

III. Socioeconomic Conditions

A. The City improperly limits its analysis of “projected development sites” - a fundamental flaw that distorts the City’s entire analysis of displacement.

The City underestimates the risk of displacement of residents and businesses, both direct and indirect. This underestimation is based on one significant error: the City’s improper limitations in what it deems to be “projected” development sites.

In the DEIS, the City grossly underestimates the amount of projected development that will occur. The Reasonable Worst Case Development Scenario (RWCDs) repeats a standard set of errors that dramatically skews the amount of development that becomes projected, and calls into question the validity of all the analyses that are based on those findings.

The DEIS identifies 143 development sites. By applying criteria, more than two-thirds of the sites are taken out of consideration for causing direct displacement of any type, because they are classified only as “potential,” not “projected,” development sites. But as we have noted previously, those criteria are inappropriate and not based in the reality of real estate development in New York City, especially when an area undergoes a major increase in land value such what gets triggered by a rezoning from M/C8 zoning to residential.

In our comments on the Draft Scope of Work, the Coalition cautioned that the City’s definition of sites where development is “projected” - in the City’s view, likely to happen - was far too narrow, and that a DEIS based only on these “projected” sites risked significantly undercounting the impact of the rezoning. We wrote: “the proposed analysis for projected development will lead to an incorrect undercount of impacts ... [P]rojected development is underestimated and ... the methodology described in the draft Scope incorrectly categorizes projected sites as potential ones, because of flaws in the criteria and failure to take into account site by site conditions.”³⁶ In particular, we called attention to the City’s exclusion of sites smaller than 5000 square feet, sites that include multi-family buildings, and sites with successful ground-floor retail establishments.

In the DEIS, the City has chosen to disregard the Coalition’s concerns, excluding almost all lots of less than 5,000 square feet from its initial list of development sites,³⁷ and further reducing the pool by deeming “very unlikely to be redeveloped” several other types of lots that otherwise meet the development site criteria, including lots containing multi-family residential buildings.³⁸ After this initial - and deeply flawed - winnowing of development sites to be considered in the DEIS, the City then utilizes 7 further criteria to separate out “potential” and “projected” development sites, removing yet more sites from the City’s projections under the RWCDs. Ultimately, the City states that, “The 101 potential development sites are less likely to be redeveloped by 2026. Therefore, the RWCDs With-Action scenario assumptions for these

³⁶ Bronx Coalition DSOW Comments at 6-7.

³⁷ Jerome DEIS at 1-38.

³⁸ Jerome DEIS at 1-39.

101 potential development sites is not included in the assessment of the 2026 With-Action Conditions and this chapter only considers the 45 projected development sites.”³⁹

However, the City’s path to a pool of just 45 projected development sites is deeply flawed. First, as we noted in our comments on the DSOW, the City’s exclusion of sites smaller than 5,000 feet, based on a generalized assumption (rather than site-specific analysis), is improper.⁴⁰ Even the *CEQR Technical Manual* provides that, “A small lot is often defined for this purpose as 5,000 square feet or less, but *the lot size criteria is dependent on neighborhood specific trends*, and common development sizes in the study area should be examined prior to establishing this criteria”⁴¹ (emphasis added). The City provides no indication that it has conducted any analysis of neighborhood-specific trends, in the absence of which, this size criteria is inappropriate.

Second, noted in our comments on the DSOW⁴² and as discussed more fully in the portion of these comments that analyzes residential displacement, the wholesale exclusion of sites that meet the soft-site criteria, but include multi-family residential buildings is improper. As the Municipal Arts Society wrote in its testimony in response to the DSOW:

Many multi-family residential buildings in the study area are underbuilt. There are almost 50 buildings in the study area and more than 300 in the secondary study area (¼-mile radius) that have at least 2.5 FAR available for development ... [T]here are 30 underbuilt properties ... in the rezoning area that are likely to have rent-stabilized residential units ... that may be targeted for redevelopment and deregulated after the rezoning.⁴³

By removing multi-family buildings from the equation, the City can produce an unrealistically depressed number of projected development sites - thereby masking the true impacts of the rezoning.

Third, of the 7 additional criteria the City uses to distinguish “potential” versus “projected” development sites from this remaining pool, at least 4 are highly questionable in general, and others are particularly questionable in the Jerome context. We take the problematic criteria in turn.

First: the City excludes “lots upon which the majority of floor area is occupied by active businesses (3 or more).”⁴⁴ There is no rationale for this as a blanket exclusion, especially when the existing businesses are currently operating in zoning that does not allow residential uses. It presumes that the combined rent from commercial activity taking place in a one-two story building is so lucrative as to outweigh the profit motive of developing a multi-story residential building. That is not based in any financial analysis and runs counter to what is widely understood about land values.

³⁹ Jerome DEIS at 3-11.

⁴⁰ Bronx Coalition DSOW Comments at 6-7.

⁴¹ *CEQR Technical Manual* (March 2014) Sec. 410.

⁴² Bronx Coalition DSOW Comments at 6-7.

⁴³ “MAS Comments Regarding the Draft Scope of Work for the Jerome Avenue Rezoning and Related Actions,” The Municipal Art Society of New York (October 2016). Online at <https://www.mas.org/wp-content/uploads/2016/10/testimony-2016-10-10-dcp.pdf>.

⁴⁴ Jerome DEIS at 1-39.

Second: Lots with slightly irregular shapes, topographies, or encumbrances are also excluded.⁴⁵ This criterion lumps together vastly different issues. A physical encumbrance is not the same as a topographical challenge, and both are quite distinct as challenges from simply irregularly shaped lots which are frequently developed in New York. Excluding irregular lots eliminates almost all of EL Grant Highway from being considered for potential development, for example. Yet a long time-desire to see and promote development on EL Grant Highway has often been cited as the initial motivation for a potential rezoning of the area (going back before the de Blasio administration). With DCP's methodology, no rezoning action would ever result in projecting development in that area, or any area with a similarly curved/diagonal configuration. That makes no sense. This thinking has been rigorously challenged in the context of the rezoning conversation in Bushwick when considering development potential on Myrtle Avenue, and with some design changes, DCP has come to include irregularly shaped sites in its development projections for that area. In Jerome, the false limitation also applies to the sites on Inwood Avenue behind the New Settlement Apartments' community center. This is a major source of the underestimation of development potential in the RWCDs.

A third criterion that is not appropriate in this area is the removal of structured parking garages from potential development⁴⁶. As has been repeatedly reported on,⁴⁷ the area surrounding Yankee Stadium, which is on the edge of the proposed rezoning area, has a glut of structured parking garages that are financially untenable. This is not the central business district of Manhattan where density, tourism, and demand for parking from higher income individuals drives the price of parking. This point is furthered by the Cromwell Avenue-Jerome Avenue Transportation Study, prepared by the DCP in August 2016, which identifies that "there is substantial excess capacity of off- street parking spaces in the 1/4-mile secondary study area, especially in the area to the south of the Cross Bronx Expressway, which includes Mount Eden and Highbridge, where capacity is higher."⁴⁸ The financial gains from a structured parking lot in an area oversaturated with structured parking should be not automatically assumed to be so great as to preclude the likelihood of the redevelopment of sites for residential development.

Fourth: the City excludes from its calculations lots that contain businesses that provide valuable and/or unique services to the community. Sadly, businesses that are valuable to the community and unique may still be unable to deliver a greater profit to a property owner than residential development in a transit-rich corridor close to Manhattan. This ill-defined criterion doesn't take into account profit-motive.

Finally, a fifth criterion, the City's exclusion of "lots that would produce less than 60 units of housing"⁴⁹ may be appropriate in certain cases, but the complication versus benefit of housing development calculation will be different for different property owners. Less-sophisticated owners, or those who are not experienced in housing development, may simply opt to sell to larger owners who can more easily

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ See e.g. Ken Belson, "Unfilled Lots put Parking Company in Peril," *New York Times* (October 2012), accessible at <http://www.nytimes.com/2012/10/22/nyregion/unfilled-lots-by-yankee-stadium-put-bronx-parking-company-in-peril.html>; Juan Gonzalez, "Yankee Stadium parking garages operator has more debts than assets," *NY Daily News* (July 2015), accessible at <http://www.nydailynews.com/new-york/yankee-stadium-parking-garages-operator-drowning-debt-article-1.2297401>; and Ben Kabak, "New Bronx Parking Lots Proving Too Unpopular," *River Avenue Blues* (September 2010), accessible at <https://riveraveblues.com/2010/09/new-parking-lots-proving-too-unpopular-at-yankee-stadium-35163/>.

⁴⁸ DEIS 3-28

⁴⁹ Jerome DEIS at 1-39

develop, and obviously there is the potential to combine these lots in ways that makes development on them worthwhile.

Taken in sum, these errors in methodology substantially skew the soft-site analysis that is the basis of the RWCDs. In our comments on the DSOW, we cautioned the City that, “With incorrect projections for development, the analysis for direct displacement of residents, businesses, and workers will be incorrect, as will the analyses for indirect displacement. An under-projection can also prevent the thresholds for more detailed analyses from being met.”⁵⁰ But the City did not heed our concerns. By excluding these sites from the analysis, the City under-counts the projected population increase in the community that is likely to result from the rezoning; the likely displacement impacts on existing residents, resulting from both direct and indirect displacement; and the likely displacement impacts on existing businesses in the community, many of which are thriving today but will not be able to remain in place if land values in the community shift drastically. As described in greater detail in subsequent sections of this response, the flaws in the City’s estimate of the projected population are the root of the City’s inadequate analyses of displacement.

For these reasons, we urge the City in the FEIS to amend its methodology to broaden the scope of “projected” development sites, as described both in this section and in our comments on the DSOW. Without such information, it is impossible for either the City, or the community to perform the detailed analyses that are appropriate to understand the scope of its actions, to understand the full impacts of the rezoning, or to fulfill its legal obligations under CEQR and SEQRA to develop appropriate mitigations for these impacts.

B. The City underestimates the risk of residential displacement.

The proposed rezoning has the potential to increase displacement pressures for rent stabilized tenants, tenants receiving vouchers, and tenants who currently reside in subsidized buildings subject to affordability requirements. As new development targeted at a different population with a different income level increases, the gap between the amount landlords are currently getting in rent-stabilized apartments and the amount the local market would bring them – or the amount they *believe* the local market would bring them – increases. Similarly, as rents in the neighborhood increase, landlords have less and less incentive to accept subsidies from the City to keep housing affordable, or to accept individual tenants who receive vouchers and rent subsidies. As a result of market changes, displacement tactics are likely to proliferate. But the City’s analysis significantly underplays the risk of displacement by ignoring the numerous displacement pressures rent-stabilized tenants, tenants in buildings that currently receive subsidy, and tenants with individual vouchers or subsidies will face in a newly “hot” market. The City both ignores a wide range of legal tactics landlords may employ to dislodge such tenants, and completely disregards illegal displacement tactics - a methodology that follows the *CEQR Technical Manual’s* categorical exclusion of the consideration of illegal displacement tactics, while failing to meet the City’s obligation under the State Environmental Quality Review Act to assess and develop appropriate mitigations for the full range of impacts that will foreseeably result from its actions.

⁵⁰ Bronx DSOW Comments at 6-7.

1. The City errs in failing to conduct a detailed analysis of direct displacement.

The *CEQR Technical Manual* directs that a detailed assessment of direct residential displacement should be conducted if a preliminary analysis shows that more than 500 residents would be directly displaced; the displaced residents represent more than 5 percent of the primary study area population; and the average income of the directly displaced population is markedly lower than the average income of the rest of the study area population.⁵¹

As noted in the preceding section, in the DEIS, the City identifies just 45 projected development sites in the study area, four of which currently contain residential uses. The City concludes that, “Not all of the 106 dwelling units on projected development sites would be directly displaced as a result of the Proposed Actions”⁵² and ultimately finds that “the Proposed Actions have the potential to directly displace approximately six dwelling units on two projected development sites,” resulting in the potential direct displacement of just 18 residents.⁵³ Citing the *Manual’s* threshold of 500 residents, the City concludes that, “the Proposed Actions would not result in a significant adverse direct residential impact and no further analysis is warranted.”⁵⁴

However, this conclusion is based on several flawed assumptions. First, the City discounts the potential displacement of tenants from 60 existing housing units on Projected Development Site 45, finding that the owner of this site plans to redevelop it with or without the rezoning and that because the existing units are rent-stabilized, “any redevelopment of this site would require that the owner present a plan to the New York State Homes and Community Renewal (NYSHCR) for relocation of tenants.”⁵⁵ As described more fully in our response to the portions of the DEIS that address indirect residential displacement, the fact that landlords are legally required to plan for relocation of rent-stabilized tenants in no way guarantees that they will do so in reality. In addition, though the owner of this lot has indicated plans to redevelop the site with or without the rezoning, the rezoning will significantly increase both the feasibility and economic incentive for such a redevelopment. As such, it is improper for the City to exclude these 60 tenants from its analysis of the potential direct displacement impacts of the rezoning.

Second, as discussed more fully in an earlier section of these comments, the City wrongly excludes from its analysis of projected development sites numerous potential soft sites in the community. Pursuant to the *CEQR Technical Manual*, sites that meet the soft site criteria may nevertheless be excluded from development scenarios if the City deems that they are unlikely to be redeveloped.⁵⁶ In the DEIS, the City includes in this group “Lots containing multi-family (6 or more dwelling unit) residential buildings; due to required relocation of tenants in rent-stabilized units.”⁵⁷ Again, given the numerous tactics - both legal and illegal - available to landlords with a financial incentive to dislodge rent-stabilized tenants, the categorical exclusion of rent-stabilized buildings from the analysis is improper. As the Municipal Art Society noted in its comments on the DSOW, because many sites containing rent-stabilized residential units are either underbuilt today, or will be construed as such under the new proposed zoning, “There

⁵¹ *CEQR Technical Manual* (March 2014) Sec. 321.1.

⁵² Jerome DEIS at 3-16.

⁵³ Jerome DEIS at 3-17.

⁵⁴ Jerome DEIS at 3-18.

⁵⁵ Jerome DEIS at 3-17.

⁵⁶ *CEQR Technical Manual* (March 2014) Sec. 410.

⁵⁷ Jerome DEIS at 1-39.

may be thousands of rent stabilized units in the rezoning area that may be targeted for redevelopment and deregulated after the rezoning (the exact number is uncertain as registering dwelling units with the DHCR is voluntary).⁵⁸ In addition, the DEIS improperly excludes from the soft site analysis *all* “lots containing multi-family (6 or more dwelling unit) residential buildings,”⁵⁹ and not - as the *CEQR Technical Manual* requires - “Residential buildings with six (6) or more units *constructed before 1974*”⁶⁰ (emphasis added). The *Manual* directs the exclusion only of buildings constructed prior to 1974 on the basis that “These buildings are likely to be rent-stabilized and difficult to legally demolish due to tenant re-location requirements,”⁶¹ but in the DEIS, the City improperly excludes *all* buildings of 6 or more units from the analysis - even those constructed after 1974, which were never subject to rent-stabilization. Finally, even had the City followed the *Manual*’s direction to exclude only multi-family buildings built prior to 1974 from its soft site analysis, even this standard is improper and overbroad. Many multi-family buildings built prior to 1974 contain apartments that exited rent stabilization long ago; tenants in such apartments do not have relocation rights and face direct displacement risks indistinguishable from those faced by occupants of buildings that were never stabilized to begin with. Absent more specific information about the rent stabilization status of all apartments in multi-family buildings, the wholesale exclusion of such buildings improperly overstates potential barriers to developing such buildings - and contributes to the City’s underestimation of direct displacement in the DEIS.

Once the City revises, in the FEIS, its estimation of “projected development sites” to include sites containing multi-family buildings that are or will be underbuilt, certain sites of smaller than 5,000 square feet, and other sites that have been improperly deemed “potential” development sites based on the City’s flawed criteria, it must also revise its analysis of direct residential displacement. This process may well yield a directly displaced number of greater than 500, automatically triggering a detailed analysis of direct displacement. Even if this threshold is not met, the Coalition requests that the City exercise its discretion to perform such a detailed analysis, as the “thresholds provided ... provide guidance and serve as a general rule; however, the lead agency may determine that lower or higher thresholds are appropriate under certain circumstances.”⁶²

2. The City errs in failing to conduct a detailed analysis of indirect displacement in the study area as a whole.

Pursuant to the process outlined in the *CEQR Technical Manual*, the City must follow a multi-step process for its preliminary assessment of indirect displacement. First, the City must “determine if the proposed project would add new population with higher average incomes compared to the average incomes of the existing populations and any new population expected to reside in the study area without the project.”⁶³ In the DEIS, the City discloses its analysis and finds that, “The 2011-2015 median household income in the overall ¼-mile secondary study area was an estimated \$25,490, approximately 26 percent lower than the median household income for the Bronx (\$34,709) and more than 52 percent lower than

⁵⁸ “MAS Comments Regarding the Draft Scope of Work for the Jerome Avenue Rezoning and Related Actions,” The Municipal Art Society of New York (October 2016). Online at <https://www.mas.org/wp-content/uploads/2016/10/testimony-2016-10-10-dcp.pdf>.

⁵⁹ Jerome DEIS at 1-39.

⁶⁰ *CEQR Technical Manual* (March 2014) Sec. 410.

⁶¹ *CEQR Technical Manual* (March 2014) Sec. 410.

⁶² *Id.*

⁶³ *CEQR Technical Manual* (March 2014), Sec. 322.1.

the median household income for New York City (\$54,011).⁶⁴ The City concludes that “the average household income of the project-generated population could be higher than the average household income of the existing population in the study area,”⁶⁵ and proceeds to the next step of the analysis.

It is at this stage that the City reneges on its duty to conduct a detailed analysis of indirect displacement in the secondary study area as a whole. In the DEIS, the City finds that “By adding an estimated 9573 residents, the Proposed Actions and associated RWCDs would increase population of the ¼-mile secondary study area by approximately 4.6 percent,”⁶⁶ and that, within the Mount Eden subarea, the population would increase by more than 18% as compared to the No-Action condition.⁶⁷ Following the *Manual’s* guideline that “If the population increase is less than 5 percent within the study area, or identified sub-areas, further analysis is not necessary as this change would not be expected to affect real estate market conditions,”⁶⁸ and its rule that a Detailed Analysis is warranted “[i]f the population increase is greater than 10 percent in the study areas as a whole or within any defined subarea,”⁶⁹ **the City concludes that “a detailed assessment is warranted for the Mount Eden neighborhood subarea”⁷⁰ - and that subarea alone.**

The City’s decision not to conduct a detailed analysis of secondary displacement in the entire study area, based on its conclusion that the population of the area is likely to increase by 4.6% as opposed to 5%, is deeply flawed for several reasons. First, the City’s projected population increase is improperly skewed downward by its wholesale exclusion of 101 “potential” development sites the City deems unlikely to be developed by 2026 - a determination based on erroneous assumptions discussed in our comments on the Draft Scope of Work and earlier in this document. Had the City included even some of these “potential” sites in its analysis, the projected population increase would almost certainly have exceeded the *CEQR Technical Manual’s* 5% population increase threshold warranting a Detailed Assessment. Second, the City’s decision not to pursue a Detailed Assessment of indirect displacement in the full study area based on a shortfall of less than one half of one percent - a population increase of 4.6% as opposed to 5% - underscores the extent to which the *CEQR Technical Manual* draws arbitrary boundaries on environmental analyses, in a manner that renders it impossible for the City to craft an environmental impact statement that, consistent with the requirements of state law, “deal[s] with the specific significant environmental impacts which can be reasonably anticipated.”⁷¹ The City must fulfill its obligation under state law and regulations⁷² to assess “the impacts that may be reasonably expected to result from the proposed action”⁷³ in order “to determine whether a proposed ... action may have a significant adverse impact on the environment.”⁷⁴ Under state law, “all draft EISs must include ... a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of

⁶⁴ Jerome DEIS at 3-33.

⁶⁵ Jerome DEIS at 3-37.

⁶⁶ Jerome DEIS at 3-39.

⁶⁷ Jerome DEIS at 3-40.

⁶⁸ *CEQR Technical Manual* (March 2014) Sec. 322.1.

⁶⁹ *Id.*

⁷⁰ Jerome DEIS at 3-40.

⁷¹ N.Y. Env’tl. Conserv. Law § 8-0109.

⁷² As explained in the *CEQR Technical Manual*, “The New York State Department of Environmental Conservation (NYSDEC) has promulgated regulations, last amended in 2000, that guide the process of review (SEQR). These are published as Part 617 of Title 6 of New York Codes, Rules and Regulations (6 NYCRR 617).” *CEQR Technical Manual* (March 2014) Sec. 200.

⁷³ N.Y. Comp. Codes R. & Regs. tit. 6, § 617.7.

⁷⁴ *Id.*

the impacts and the reasonable likelihood of their occurrence.”⁷⁵ Both the City’s systematic and unjustified undercounting of projected development, and its maintenance of a *CEQR Technical Manual* that encourages a limited analysis of secondary displacement based on an arbitrary percentage threshold and regardless of neighborhood-specific conditions that may warrant a more detailed examination, result in a DEIS that fails to meet SEQRA’s requirement of an assessment that reflects the true significance of the impacts.

The Coalition requests that the City perform a detailed assessment of indirect residential displacement from the *entire study area* in the FEIS, and examine and adopt mitigations as appropriate.

3. The City’s detailed assessment of secondary displacement in the Mount Eden subarea is flawed and legally insufficient.

Based on a projected population increase of over 18% in the Mount Eden subarea as compared with the No-Action condition, the City undertakes a detailed assessment of indirect displacement in that subarea. Despite finding that “Mount Eden household income levels are generally low, and poverty rates are high” and that “[t]he neighborhood also has a large share of households that are severely rent-burdened,”⁷⁶ the City concludes that, “the Proposed Actions are not expected to result in a significant adverse indirect residential displacement impact ...”⁷⁷ This conclusion is based on several erroneous assumptions that defy the standards of the *CEQR Technical Manual*, the mandates of state environmental law, and the lived experiences of residents of the southwest Bronx.

Per the *CEQR Technical Manual*, “Indirect displacement (also known as secondary displacement) is the involuntary displacement of residents, businesses, or employees that results from a change in socioeconomic conditions created by the proposed project. Examples include lower-income residents forced out due to rising rents caused by a new concentration of higher-income housing introduced by a proposed project; a similar turnover of industrial to higher-paying commercial tenants spurred by the introduction of a successful office project in the area or the introduction of a new use, such as residential; or increased retail vacancy resulting from business closure when a new large retailer saturates the market for particular categories of goods.”⁷⁸ Importantly, the *Manual* makes clear that these examples are non-exhaustive. Despite this, the City fails in the DEIS to consider a wide range of displacement tactics, both legal and illegal, that will foreseeably result from the change in market conditions the proposed rezoning will trigger.

The ensuing sections address flaws in the City’s detailed assessment of indirect displacement in the Mount Eden subarea in particular. The Coalition requests that the City both amend the detailed assessment for this subarea for the FEIS as we have described, and use these same amended analysis methods in conducting its detailed analysis of indirect residential displacement of the study area as a whole.

⁷⁵ N.Y. Comp. Codes R. & Regs. tit. 6, § 617.9.

⁷⁶ Jerome DEIS at 3-64.

⁷⁷ Jerome DEIS at 3-64.

⁷⁸ *CEQR Technical Manual* (March 2014), Sec.110, p.5-1.

(i) The City improperly excludes rent-stabilized tenants from its analysis, even though such tenants are at significant risk of displacement resulting from both legal and illegal displacement tactics.

Pursuant to the *CEQR Technical Manual*, the objective of a detailed analysis of indirect residential displacement is to “determine whether the proposed project ... may potentially displace a population of renters living in units not protected by rent stabilization, rent control, or other government regulations restricting rents.”⁷⁹ Following the *Manual*, the City’s analysis of indirect displacement within the Mount Eden subarea focuses only on “a low-income population now living in rent-protected units.”⁸⁰

But the City is wrong to assume that residents of rent-stabilized housing are at no risk of displacement because such tenants are “protected from steep and rapid rent increases.”⁸¹ As we emphasized repeatedly in our comments on the DSOW, while it may be true in theory that rent stabilized tenants are protected from displacement, *in reality* this is simply not the case. **We request that in the FEIS the City analyze and disclose the indirect displacement risks to rent-stabilized tenants, and develop mitigations sufficient to address these risks.**

First, there are many legal ways that landlords can raise rents on apartments subject to rent stabilization. Although annual rent increases are governed by the Rent Guidelines Board, landlords can achieve rent increases on the basis of performance (or claimed performance) of Major Capital Improvements (MCIs) and Individual Apartment Improvements (IAs). As a local housing market begins to heat up, landlords have greater incentive to claim MCIs and IAs, often using the performance of work that is long overdue in long-neglected buildings to raise rents and prepare for higher-income tenants. Landlords can also achieve more drastic rent increases by ceasing to offer preferential rents. A preferential rent is one that is not as high as the legal limit for a particular unit, and is offered voluntarily by a landlord. While seeming like a benefit to the tenant, in reality a preferential rent directly undercuts the protection and stability rent stabilization is intended to provide, leaving tenants vulnerable to large rent increases at every lease renewal, regardless of the rates permitted by the Rent Guidelines Board. In the two zip codes that are roughly coterminous with CDs 4 & 5, an estimated 8,794 households are currently paying a preferential rent.⁸² This means 8,794 families are not subject to the limits on a rent increase that rent-stabilized tenants depend on. As land values and rents increase following the rezoning, there is nothing to stop a landlord from raising the rent to a level that might force a tenant out.

Second, landlords in neighborhoods experiencing rapid gentrification are likely to engage in a wide range of illegal tactics to displace rent-stabilized tenants. In our comments on the DSOW, the Bronx Coalition stressed that, “DCP must not assume that rent regulated tenants are secure in their homes, nor that those units will remain affordable simply thanks to the existing laws and regulations that govern them. Any method of study that accounts only for legal methods of displacement ignores the reality of tenant harassment as a pervasive problem, and dismisses the very real threat of displacement to the rent stabilized tenants of the Bronx.”⁸³ Yet the City chose to disregard this, and conducted a detailed analysis of secondary displacement for the DEIS that does not examine the illegal displacement tactics that are likely to plague rent-regulated households.

⁷⁹ *CEQR Technical Manual* (March 2014), Sec. 332.1.

⁸⁰ Jerome DEIS 3-46.

⁸¹ Jerome DEIS 3-64.

⁸² Preferential Rents in NYC; <https://projects.propublica.org/graphics/preferential-rents>; data is drawn from zip codes 10452 & 10453

⁸³ Bronx Coalition DSOW Comments, p. 21

As rents in the community rise, tenants become victims of a perverse incentive structure that tells landlords harassing tenants pays off. Knowing that they will be able to charge higher rents if rent stabilized tenants are removed, landlords will increasingly deploy a wide range of harassment tactics - from a lack of vital services like heat and hot water, to dangerous construction practices, incessant buy-out offers, and the use or threats of legal action - specifically designed to drive rent-stabilized tenants out of their homes. (New Settlement Apartment's Community Action for Safe Apartments (CASA) details these and many other harassment tactics in a rent white paper, "Resisting Displacement in the Southwest Bronx: Lessons from CASA's Tenant Organizing" (May 2017), which we have attached to these comments as Appendix A.) Taking advantage of legal loopholes in the rent laws and insufficient enforcement practices, landlords will take every vacancy as an opportunity to raise rents and ultimately deregulate apartments. Many landlords already have long-term business plans that rely on such displacement - as has been incredibly well documented by grassroots campaigns against predatory equity. The newly hot market spurred by the rezoning is likely to accelerate these trends.

Rent-stabilized housing in the community is already at risk. In addition to the numerous testimonies provided by community members experiencing harassment, there is some quantitative evidence that this pressure is being felt around Jerome, especially in the years since the rezoning was first proposed. According to the public data available there are an estimated 57,793 rent stabilized units in CDs 4 & 5 combined.⁸⁴ Between 2007-2016 there was a net loss of 2,750 rent stabilized units in the CDs, representing close to 5% of the total rent stabilized stock. The bulk of these losses - over 2,500 units - occurred between 2014-2016, after the Jerome rezoning was proposed. These numbers are higher for those rent stabilized buildings within or intersecting the boundaries of the proposed rezoning itself. There are currently an estimated 7,501 rent stabilized units within these buildings in the rezoning area. Between 2007-2016 there was a net loss of 707 rent stabilized units, representing over 9% of the total rent stabilized stock. As with the larger CDs, the bulk of these losses - over 500 units - occurred between 2014-2016.

In other contexts, the Mayor, HPD commissioner, and other City officials have recognized that rent-stabilized tenants face harassment; the City's multi-million dollar investment in anti-harassment legal services in neighborhoods slated for rezonings effectively admits the harsh realities low-income rent-stabilized tenants are likely to face after a rezoning. Yet the DEIS authors fail to acknowledge the vulnerability of such tenants in assessing indirect displacement risks. By turning a blind eye to this issue, the City fails to measure or disclose the true impacts of its actions, precluding discussion of mitigations appropriate to address these impacts.

Although policies like the Right to Counsel and a Certificate of No Harassment program are critical tools to help protect tenants' rights and keep them in their homes, they are not sufficient to counteract the displacement pressures the rezoning will create for thousands of tenants. By excluding rent-stabilized tenants from its displacement analysis, the City ignores the lived experiences of low-income renters in this City and dramatically understates the number of households around Jerome that are at risk of displacement.

⁸⁴ based on Department of Finance property tax data pulled by John Krauss; <https://github.com/talos/nyc-stabilization-unit-counts>; this DOF data is self-reporting by landlords and should be taken as an estimate as to how many units are rent stabilized or have exited rent stabilization between 2007-2016; the data presented here includes those rent stabilized units in buildings built before 1974 with 6 or more units

(ii) The City improperly excludes recipients of Section 8 vouchers and other rent-based subsidies from its analysis.

In the DEIS, the City states that, “This analysis of indirect residential displacement ... does not take into account households that are low-income or below poverty level and hold Section 8 vouchers or other rent-based subsidies and thus have a higher rent-paying capacity than their documented income suggests, as a result of subsidies received. This population might still be at risk of rent increases, but to a lesser extent than those without a subsidy.”⁸⁵ The categorical exclusion from the City’s analysis of recipients of Section 8, Living in Communities (LINC), Supplemental Security Income (SSI), HIV/AIDS Services Administration (HASA), Family Eviction Prevention Subsidy (FEPS), Special Exit and Prevention Supplement (SEPS), Advantage program vouchers, and other rent-based subsidies is improper for several reasons.

Today, such vouchers represent a crucial tool that protects affordability in the community. For instance, in 2016, 12.7% of privately owned rental units in Community District 4, and 18.9% of such units in Community District 5, were occupied by tenants using Housing Choice Vouchers.⁸⁶ However, because these vouchers are income-restricted and have mandated limits as to how much financial assistance they can provide, voucher holders may - as the City itself acknowledges - be priced out of the community if market rents rise beyond what they can afford to pay based on their income and voucher payments. In addition, recipients of rent-based subsidies may also face increased source of income discrimination as the neighborhood becomes more attractive to renters without such subsidies.

The FEIS must disclose HPD and NYCHA data about the number of Section 8 voucher holders within the primary and secondary areas – information that is readily available to HPD and NYCHA, but not to the general public – and analyze and disclose the potential displacement of Section 8 voucher holders and other recipients of rent-based subsidies. The City should also analyze and disclose additional mitigation strategies to combat such displacement of voucher holders, including the possible expansion of vouchers – both in terms of the number of vouchers available, and the amount of rent each voucher pays.

(iii) The City improperly excludes displacement of tenants in buildings that will ultimately exit affordability programs.

In excluding rent-regulated households from its analysis the City fails to take into account the rezoning’s impact on tenants in subsidized buildings that may ultimately exit their affordability programs as the Jerome housing market begins to change. As the local market heats up post-rezoning, there will be a strong incentive for landlords of subsidized housing - especially for-profit landlords - to opt-out when their affordability requirements expire. As the Furman Center states, “if the market-rate rents in the neighborhood are substantially higher than the rent levels mandated by a subsidy program, a for-profit owner is likely to sell their property or convert it to market rate to realize those potential profits.”⁸⁷ This is of special concern for our neighborhood, where so many developments are subsidized. Though these changes may not come to pass immediately, it is reasonable to anticipate such shifts within the analysis period contemplated in the DEIS. As a result, the categorical exclusion from consideration of the potential displacement risks to tenants in buildings that are subsidized today is improper.

⁸⁵ Jerome DEIS 3-54.

⁸⁶ NYU Furman Center, *State of New York City’s Housing and Neighborhoods* (2016). Online at <http://furmancenter.org/research/sonychan>.

⁸⁷ Housing, Neighborhoods and Opportunity” NYU Furman Center, p. 5

The FEIS must disclose data about the number of currently-subsidized buildings within the primary and secondary areas - including unit counts and the AMI levels they serve, ownership and for-profit vs. non-profit status, and when the affordability requirements expire. The City should also analyze and disclose additional mitigation strategies to combat the displacement of tenants in these buildings, including what measures the City can take to ensure these developments remain affordable despite the enticement of a changing market.

(iv) The City also fails to consider the range of *illegal* tactics that are likely to result in displacement of tenants.

The *CEQR Technical Manual* directs EIS preparers to address involuntary displacement resulting from a change in socioeconomic conditions. Within this, the *Manual* sets one major limitation: "In keeping with general CEQR practice, the assessment of indirect displacement assumes that the mechanisms for such displacement are legal."⁸⁸ The Coalition believes that the categorical exclusion of consideration of illegal tactics of displacement, including harassment of rent-stabilized tenants and source of income discrimination against recipients of rent subsidies, violates the mandates of state law and regulations that require that the City consider *all* impacts that "may be reasonably expected to result from the proposed action."⁸⁹ It is entirely reasonable to expect both legal and illegal displacement tactics to proliferate as a result of actions that so fundamentally alter the local housing market; removing illegal displacement mechanisms from consideration impermissibly distorts the City's projections of likely displacement impacts. **We request that the City amend its analysis of secondary displacement to encompass the impacts of illegal mechanisms for displacement.**

(v) The City wrongly asserts that new housing will off-set displacement of existing residents, even though the City cannot project how much housing will be subsidized, the Mandatory Inclusionary Housing program produces "affordable" housing most residents cannot afford, and current residents will be long gone by the time the housing is built.

Because Mount Eden contains a large inventory of income-restricted, supportive, and rent-regulated housing, the City concludes that the risk of indirect displacement is minor. The City further offers that the creation of new subsidized housing, implementation of the Mandatory Inclusionary Housing program, and a decrease in rent pressure resulting from the increased supply of housing in the community will help to offset any displacement pressures the rezoning might generate.

The City errs in relying on these measures to counteract the risk of secondary displacement. First, as discussed more fully in earlier sections of our response, the City cannot know how much housing it will be able to subsidize in this community. In stating that, "[i]t is ... expected that the first projects constructed pursuant to the Proposed Actions would necessitate government subsidy and likely be 100 percent affordable,"⁹⁰ the City acknowledges that projects after "the first" may very well *not* be subsidized, but may instead be market-rate, helping to drive up rents in the community. Second, absent the creation of a new term sheet that better addresses families making \$30,000 and below, any housing the City does subsidize will fail to meet the neighborhood need for deeply affordable housing - and below-market housing created under Mandatory Inclusionary Housing will fall yet further outside the neighborhood need. Simply put, subsidized and MIH apartments cannot in any way be construed as counteracting

⁸⁸ *CEQR Technical Manual* (March 2014), Sec.110, p. 5-2.

⁸⁹ N.Y. Comp. Codes R. & Regs. tit. 6, § 617.7.

⁹⁰ Jerome DEIS at 3-64.

displacement of residents who cannot afford to live in those apartments. Third, the statement that “[t]he projected increase in housing units overall is expected to decrease rent pressures”⁹¹ is purely speculative. The City plans, through this rezoning, to add over 4000 apartments to the community, almost half of which will not be affordable by any measure and virtually all of which will be unaffordable to most residents. Given this fact, it is difficult to imagine how - much less definitively conclude that - the mere increase in the number of housing units will in any way address the needs of Mount Eden residents at risk of displacement. Finally, even the small number of units that may be created at rent levels current residents can afford will arrive too late to offset those residents’ displacement; today’s residents may be long gone by the time tomorrow’s promised apartments arrive. As the Coalition for Community Advancement: Progress for East New York/Cypress Hills argued in its comments on the Draft Environmental Impact Statement for the East New York rezoning, “low-income residents are not interchangeable, and unless current residents are guaranteed to be first in line for all new affordable units – which is not possible both because current residents will be given preferred status for, at most, half of the new units – new units will not serve to mitigate displacement.”⁹²

For these reasons, the Coalition requests that the City revisit its analysis of indirect displacement and disclose, analyze, and adopt additional mitigation strategies to offset the significant impacts we believe will occur as a result of the Proposed Actions. As described more fully in the Alternatives section, we also urge the City to develop, analyze, and consider the adoption of an Alternative that would halve the total amount of housing the rezoning would bring to the community, a move that would limit the speculative impact of the rezoning and allow the City to continue its steady progress in creating more deeply affordable housing via subsidy.

4. The City’s underestimate of displacement renders the City unable to meet its obligation to develop mitigations sufficient to counteract displacement.

Detailed assessments of direct and indirect residential displacement are required not merely to disclose the full impacts of the rezoning, but to “allow the lead agency to understand the potential for, and extent of, a significant adverse impact *to a level that allows appropriate mitigation to be considered*”⁹³ (emphasis added). Having stopped short of conducting detailed analyses of either direct or indirect residential displacement of the study area as a whole, the City finds no significant adverse impact in either category - and therefore, no duty to mitigate that impact.

Had detailed assessment of direct displacement, or indirect displacement for the study area as a whole, been performed, and had the City found that more than 5 percent of the study area population was potentially subject to direct or indirect displacement, that finding of a potential significant adverse impact⁹⁴ would have triggered consideration of mitigation tactics. Such mitigation would consist of “relocation of the displaced residents within the neighborhood”⁹⁵ for directly displaced residents, or

⁹¹ Jerome DEIS at 3-65.

⁹² “Response to Draft Environmental Impact Statement - East New York Rezoning Proposal, CEQR No. 15DCP102K,” Coalition for Community Advancement: Progress for East New York/Cypress Hills (December 2015), at 23.

⁹³ CEQR Technical Manual (March 2014), Sec.330.

⁹⁴ CEQR Technical Manual, Sec. 332.1.

⁹⁵ CEQR Technical Manual, Sec. 511.

"creating housing within the study area with specific opportunities for residents identified as potentially vulnerable to indirect displacement ... [such as] preservation of existing rent-stabilized units, or the development of new publicly assisted units within the study area."⁹⁶ The finding of a significant adverse impact would also have required the City to consider "alternatives that avoid indirect residential displacement ... [with] a different housing mix as part of the project - for example, including more affordable units that replace those to be affected in the study area."⁹⁷

The Coalition would have welcomed - and would still welcome - any of these strategies as potential ways to mitigate the impact of the rezoning. Later in this document, we also propose a wide range of mitigation tactics designed to protect and uplift residents and businesses in this community, and an Alternative we believe would better advance the community's goals. But because the City has improperly limited its analysis of both direct and indirect displacement, it has - as a formal matter - deemed that any such mitigation is unnecessary.

Had the City included even a fraction of the low-income, rent-stabilized tenants, voucher holders, rent subsidy recipients, or residents of subsidized buildings who are at risk of displacement in its calculation of indirect displacement - as we believe the City must in the FEIS - the threshold for triggering a required disclosure of mitigation tactics (approximately 10, 447 residents) would easily have been met or surpassed. We demand that the City perform these detailed analyses, be transparent in disclosing the significant adverse impacts of the proposed rezoning, and adopt a broad range of mitigation strategies to combat displacement, including those the Coalition has proposed.

5. The City's flawed analysis violates state law.

The State Environmental Quality Review Act (SEQR) requires a City agency considering a Proposed Action to issue an environmental impact statement on any action they propose or approve which may have a significant effect on the environment prior to approval.⁹⁸ The environment includes "the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character."⁹⁹ The Court of Appeals of New York has made it clear: "The existing patterns of population concentration, distribution or growth and existing community or neighborhood character are physical conditions" that must be considered "in determining whether a proposed project may have a significant effect on the environment."¹⁰⁰

Throughout these comments, we have frequently made reference to the standards in the *CEQR Technical Manual* - both to identify areas where the City fails to follow the guidelines set forth in the *Manual*, and to pinpoint instances where the City follows processes outlined in the *Manual* that we believe are fundamentally flawed. However, it is important to note that, as explained in the *Manual*, "'CEQR' is New York City's process for implementing the State Environmental Quality Review Act (SEQR), by which agencies of the City of New York review proposed discretionary actions to identify and disclose the potential effects those actions may have on the environment."¹⁰¹ Further, "SEQR permits a local

⁹⁶ *CEQR Technical Manual*, Sec. 521.

⁹⁷ *CEQR Technical Manual*, Sec. 621.

⁹⁸ NY. Env. Cons. L. § 8-0109.

⁹⁹ NY. Env. Cons. L. § 8-0105(6).

¹⁰⁰ *Chinese Staff and Workers Ass'n v. City of New York*, 68 N.Y.2d 359, 368 (1986).

¹⁰¹ *CEQR Technical Manual* at 1-1.

government to promulgate its own procedures *provided they are no less protective of the environment, public participation, and judicial review than provided for by the state rules*"¹⁰² (emphasis added), "although procedures more protective of the environment can be adopted (*see*, ECL 8-0113[3][a]). Thus, the propriety of ... [a] determination [regarding the environmental impact of an action] must be judged not only according to the requirements of SEQRA but also according to the regulations promulgated by the City of New York in CEQR *to the extent those regulations are more protective of the environment*"¹⁰³ (emphasis added).

Put another way, in conducting the required review of the impact of proposed discretionary actions on the environment, the City must follow *both* SEQR *and* CEQR, and errs in following CEQR processes that are *less* protective of the environment than SEQR requires. This is so because **the *Manual* represents the City of New York's promulgation of rules intended to meet the requirements of the SEQR law, but not the law itself.** As a consequence, the *Manual's* guidelines "do not necessarily lead to what is appropriate for every community situation or to what is legally required in those situations by New York State law ... that governs the EIS process ... [and the *Manual*] is not the governing standard for EIS."¹⁰⁴

DCP cannot rely on the flawed methodology memorialized in the *Manual* when that methodology does not capture the actual impact of the proposed project on the environment. State law is not satisfied by regulations that do not actually require an applicant to capture the impacts SEQR requires be captured; omissions and limitations in the *Manual* are not sufficient cover for agencies to hide from the State law requirement that impacts on the environment must be carefully considered before an action like this proposed rezoning can be taken.

Throughout our comments, we have identified several ways in which the procedures set forth in the *CEQR Technical Manual*, as implemented by the City in preparation of the Jerome DEIS, create arbitrary standards that improperly limit consideration of the full range of impacts likely to be caused by the rezoning. Most critical among these limitations are the categorical exclusion of multi-family buildings of 6 or more units from the direct displacement analysis, categorical exclusion from consideration of illegal displacement tactics, and categorical exclusion of rent-stabilized tenants, recipients of vouchers and rent subsidies, and occupants of currently-subsidized buildings from the analysis of secondary displacement. We believe that the wholesale exclusion of such tenants from the document describing the environmental impacts of the proposed action violates state law, makes it impossible for the City to assess the true environmental impacts of this rezoning on our neighborhood, and precludes the development of mitigations sufficient to counteract the significant adverse impacts we believe the proposed rezoning will cause. **We urge the City to correct these deficiencies in the FEIS to ensure that the City's environmental review process fully comports with the requirements of state law.**

6. The City also fails to meet its obligations under the Fair Housing Act.

¹⁰² *CEQR Technical Manual*, Sec. 300 (citing 6 NYCRR 617.14(b)).

¹⁰³ *Chinese Staff & Workers Ass'n v. City of New York*, 68 N.Y.2d 359, 364, 502 N.E.2d 176, 179 (1986).

¹⁰⁴ "Comments on the Inwood Rezoning EIS Draft Statement of Work (DSOW) CEQR No. 17DME007M," Unified Inwood (September 29, 2017). Online at http://www.rtmteam.net/files/02Oct2017_Unified_Inwood_DSOW_Comnts4Distribution.pdf.

The City fails to analyze whether or not the rezoning will advance the City's obligations under the Fair Housing Act (the "FHA") and fails to examine the effects the Proposed Actions will have on people of color, families and other groups protected under the FHA.

(i) The City Failed to Analyze Whether the Proposed Actions Affirmatively Further Fair Housing

The FHA prohibits discrimination in the housing market based on race, color, religion, sex, national origin, familial status, or disability.¹⁰⁵ The FHA mandates that HUD administer programs and activities relating to housing and urban development in a manner that affirmatively furthers the policies of the FHA.¹⁰⁶ Under HUD regulations, this affirmative obligation to further fair housing is also imposed upon state and local government actors that receive federal housing funds.¹⁰⁷

As a recipient of federal housing funds, the City has an obligation under the FHA to affirmatively further fair housing ("AFFH") when rezoning or developing housing.¹⁰⁸ To affirmatively further fair housing is to take "meaningful actions, in addition to combating discrimination, that ... foster inclusive communities free from barriers that restrict access to opportunity" based on FHA-protected characteristics.¹⁰⁹ The City of New York must not only prevent implementing a rezoning plan that has a disparate impact on FHA-protected groups, but also affirmatively further fair housing ("AFFH" mandate).¹¹⁰ The City must conduct an assessment of fair housing (AFH) that adequately assesses the elements and factors that cause, increase, contribute to, maintain, or perpetuate segregation, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, and disproportionate housing needs.¹¹¹ Here, the City has failed to consider the impact of the Proposed Actions on segregation, disproportionate housing needs, and significant disparities in access to opportunities. It would be a violation of the City's AFFH obligations to fail to consider these impacts of the proposed action upon protected groups. We strongly urge the City to fulfill its AFFH duty and adequately address the fair housing issues surrounding this rezoning in the FEIS and discuss mitigations that would affirmatively further fair housing.

Finally, HUD regulations require the City to contemplate "meaningful public participation" in the conduct of required fair housing analyses.¹¹² Therefore, it would be a violation of the City's AFFH obligations to fail to adequately address fair housing issues raised by the Coalition that show how this rezoning does not affirmatively further fair housing by creating barriers that restrict access to affordable housing for New York City's most vulnerable populations. To do so prohibits meaningful public discourse prior to the rezoning being approved and violates the FHA and AFFH mandate.

(ii) The City Has Failed to Analyze the Potential Discriminatory Effect on People of Color That Could Result from the Proposed Actions.

¹⁰⁵ 42 U.S.C. § 3601.

¹⁰⁶ 42 U.S.C. § 3608(d), (e)(5).

¹⁰⁷ 24 C.F.R. § 5.150.

¹⁰⁸ 42 U.S.C. § 3608(e)(5).

¹⁰⁹ *Id.*

¹¹⁰ 24 C.F.R. § 5.152; <https://www.nhlp.org/wp-content/uploads/2017/09/AFFH-Rule-Guidebook-2015.pdf> (pp 6); 42 U.S.C. § 3608(d).

¹¹¹ 24 C.F.R. § 5.154.

¹¹² 4 C.F.R. § 5.158.

The Jerome DEIS fails to examine the impact of the Proposed Actions on the people of color and other groups identified as protected classes under the FHA. The City is silent about the potential impact of the rezoning and displacement on these residents and people of color in the community. The Coalition believes that this is a major failing of the City's analysis under the DEIS – a blind spot that violates the City's duties under the FHA.

Under the FHA, it is unlawful “to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, *or otherwise make unavailable or deny*, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”¹¹³ The phrase “otherwise make unavailable” has been interpreted to address a wide variety of discriminatory housing practices, including discriminatory zoning practices and housing development plans.¹¹⁴ A rezoning violates the FHA if it has a significant disparate impact on an FHA-protected group, compared to others, or if the rezoning is created with the intent to discriminate against an FHA-protected group.¹¹⁵

Race-neutral policies violate the Fair Housing Act if racial segregation is perpetuated or if a minority group or groups are disproportionately adversely impacted. To prove a prima facie case under the Fair Housing Act, a plaintiff need demonstrate only that the challenged actions had a discriminatory effect; showing intent is not required.¹¹⁶ A prima facie case of discriminatory effect is made by showing that the defendant's actions either (1) perpetuate segregation, harming the community in general, or (2) disproportionately impact a minority group.¹¹⁷ If the plaintiff makes a prima facie showing, the burden shifts to the defendant to prove that its actions furthered a “legitimate, bona fide government interest and that no alternative would serve that interest with less discriminatory effect.”¹¹⁸

The City of New York has refused to assess the risk of primary and secondary displacement and the disparate impact it will have on low-income people of color residing around the proposed rezoning, even though the Coalition requested in its Draft Scope of Work comments that the City specifically examine the potential impacts of the rezoning on people of color. As described in detail in the portion of these comments responsive to the City's analysis of residential displacement, the City has severely underestimated the impacts of displacement on the most vulnerable populations in the study area. We are particularly concerned about the impact of the rezoning on Black and Latino residents of our community given that such residents constitute a substantial majority of the neighborhood today - and past rezonings of neighborhoods such as Williamsburg (rezoned in 2005) and Harlem (rezoned in 2008) resulted in swift and substantial decreases in populations of color.

¹¹³ *Id.*

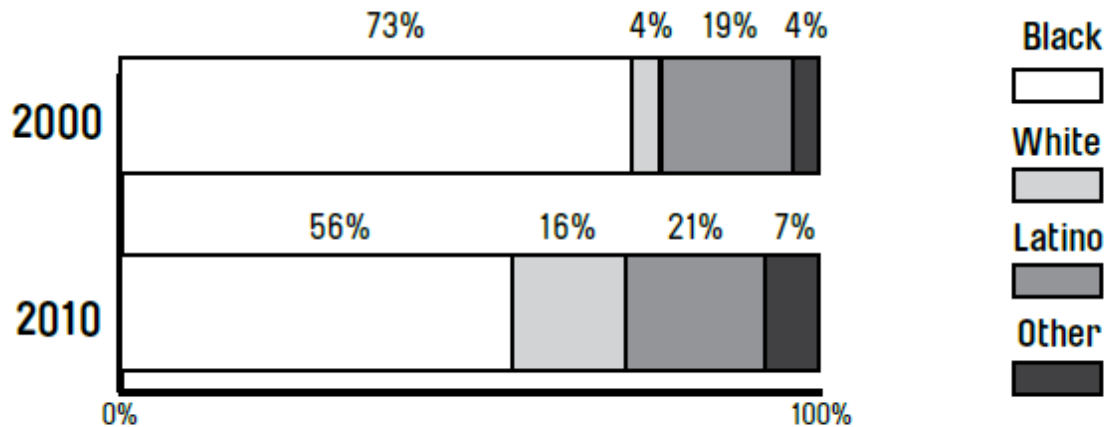
¹¹⁴ See *Broadway Triangle Community Coalition v. Bloomberg*, 2010 N.Y. Misc. LEXIS 2321 (N.Y. Sup. Ct., May 20, 2010), citing *LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412 (2d Cir. 1995).

¹¹⁵ *Broadway Triangle*, 2010 N.Y. Misc. LEXIS 2321 (N.Y. Sup. Ct., May 20, 2010).

¹¹⁶ See *Williamsburg Fair Hous. Comm. v. New York City Housing Auth.*, 493 F.Supp. 1225 (S.D.N.Y. 1980); see also *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988) (“A disparate impact analysis examines a facially-neutral policy or practice, such as a hiring test or zoning law, for its differential impact or effect on a particular group.”), *aff'd*, 488 U.S. 15, 109 S.Ct 276 (1988).

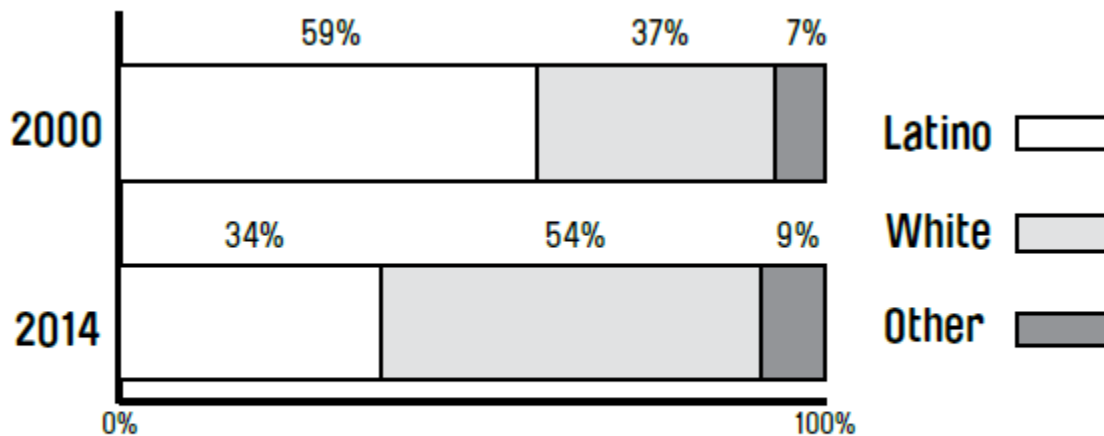
¹¹⁷ See *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988), *supra*.

¹¹⁸ *Inclusive Cmty's.*, 135 S. Ct. 2507 (2015).



Race/Ethnicity in Harlem

As we noted in our comments on the DSOW, “Research into rezonings under Bloomberg shows that ‘upzonings occurred in areas with higher proportions of black and Hispanic inhabitants and significantly lower proportions of whites than citywide or in other types of rezoning.’¹¹⁹ In these areas, white populations increased significantly - in marked contrast to an overall citywide decrease in the white population¹²⁰ - and median incomes and the number of higher-income earners increased substantially.¹²¹ Importantly, ‘figures make it fairly clear that in most cases, increases in neighborhood income were driven by newly arrived white households rather than upwardly mobile non-whites.’^{122”123}



Race/Ethnicity in South Williamsburg

¹¹⁹ Leo Goldberg, “Game of Zones: Neighborhood Rezoning and Uneven Urban Growth in Bloomberg’s New York City,” Massachusetts Institute of Technology (June 2015) at 71. Online at <https://dspace.mit.edu/handle/1721.1/98935>.

¹²⁰ Id. at 66.

¹²¹ Id. at 67.

¹²² Id. at 68.

¹²³ Bronx Coalition for a Community Vision, Comments on the Draft Scope of Work.

This oversight runs the risk of violating the FHA especially where alternative rezoning plans with less discriminatory impact on low-income people of color and families have been formally proposed by the Bronx Coalition throughout the ULURP process.¹²⁴ This analysis of the proposed rezoning under the FHA falls squarely within the scope of the EIS under the CEQR Technical Manual, is required by federal regulations, and should be included in the Final Environmental Impact Statement.

(iii) The City Has Failed to Analyze the Potentially Discriminatory Effects of Construction of HPD-Subsidized Units on Low-income Families Seeking Affordable Housing within the Rezoning Area.

The Fair Housing Amendments Act of 1988 added “familial status” as a prohibited category of discrimination, “based in part on two HUD-sponsored studies that found policies prohibiting children were used as a pretext to discriminate on the basis of race.”¹²⁵ Familial status is defined as a household of one or more people under the age of eighteen years old living with a parent or guardian.¹²⁶ The protections afforded against discrimination on the basis of familial status applies to any person who is pregnant or is in the process of securing legal custody of someone under the age of eighteen.¹²⁷

These comments have already established that the “affordable” housing created under Mandatory Inclusionary Housing will not meet the needs of a substantial portion of existing residents. However, housing built with HPD subsidies may also be insufficient and may have a disparate impact on low-income families seeking affordable housing in the rezoning area, due to the City’s practice of constructing predominantly studio and one-bedroom HPD-subsidized units. Though the average homeless family in New York City is a single mother with two children, about 80% of all newly constructed HPD-subsidized units under Mayor de Blasio’s *Housing New York* Plan being built for the extremely low-income households are studios and one-bedrooms.¹²⁸ Newly constructed studio and one-bedroom units can only be occupied by single persons or two-person families, which excludes families with three or more people such as the average homeless family in NYC and many families currently living in the area of the proposed rezoning.

The City has failed to adequately assess the risk of disparate impact the HPD-subsidized units’ sizes may have on low-income families residing in the rezoning study area. Because subsidized units form a core part of the City’s justification for this rezoning and its plans for construction in the neighborhood should the rezoning be passed, the City must examine the fair housing implications of disproportionate construction of subsidized units targeted toward smaller households.

¹²⁴ See 24 C.F.R. § 100.500(c)(1) (2013); *Inclusive Cmty.*, 135 S. Ct. 2507 (2015). If the defendant satisfies the burden of showing that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the defendant, a plaintiff may still prevail by proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

¹²⁵ *R.I. Comm’n for Human Rights v. Grail*, 120 F. Supp. 3d 110 (2015) citing Tim Iglesias, *Moving Beyond Two-Person-Per-Bedroom: Revitalizing Application of the Federal Fair Housing Act to Private Residential Occupancy Standards*, 28 Ga. St. U. L. Rev. 619, 628 (2012).

¹²⁶ 42 U.S.C. § 3602(k).

¹²⁷ *Id.*

¹²⁸ Housing New York Extremely Low-Income AMI New Construction Unit Starts by Bedroom (HPD).

To comply with mandatory FHA provisions, the City must, in the FEIS, conduct the required AFH, analyze and disclose potentially disparate impacts of the Proposed Actions based on race, family status, and other protected characteristics, propose alternative plans with less discriminatory impact on low-income people of color and families, and develop strategies to affirmatively further fair housing.

7. Recommendations for the Final Environmental Impact Statement

The Coalition requests that the City correct the significant errors found in the DEIS in preparation of the FEIS, providing more accurate projections of displacement, disclosing the significant adverse impacts we believe the rezoning will have on the community, and adopting mitigation strategies or an alternative plan as needed. These corrections must be made both in revising the City's detailed assessment of indirect displacement in the Mount Eden subarea, and preparing the new detailed analyses of both direct displacement, and indirect displacement in the study area as a whole that we believe are warranted. Once these analyses have been performed, we are confident that the decision makers in this process will share the view that the community has been expressing consistently throughout this process: that the rezoning as proposed will do more harm than good, and must either be significantly amended, or stopped altogether.

B. The City underestimates the risk of business displacement.

1. The City underestimates the risk of direct business displacement.

The DEIS acknowledges that 77 businesses representing 584 jobs, on 31 of the 45 projected sites will be displaced by the proposed actions. This represents 36 auto establishments and 41 other businesses, employing 16% of the workers in the primary study area.¹²⁹ Of businesses the DEIS expects to be directly displaced, auto businesses represents largest share of potentially displaced businesses - over 47% of total businesses directly displaced!¹³⁰

Of the 14 projected development sites that are not included in that estimate, 1 is a business that will expand and return, 3 are currently vacant, and 1 is a residence. The other 9 will experience changes, but because the DEIS expects that would happen otherwise as-of-right, they change in uses there are not considered direct displacement under CEQR's narrow definition. To the workers and businesses on those sites, however, it's quite certain that what they will experience is displacement!

Even with this gross underestimate, the number of directly displaced jobs tops 500. It is worth noting that with residential direct displacement, the standard for a more detailed analysis is triggered when 500 people will be displaced. Unfortunately, the CEQR manual values employment less seriously, and does not require a commensurate review, even though the impact is on the same scale.

¹²⁹ Jerome DEIS 3-23

¹³⁰ Ibid 3-24

Because the overwhelming majority (36/45 or 80%) of projected development sites experience actual direct displacement of businesses, it is reasonable to assume that a similar percentage of the locations where the City has mis-classified development as “potential” (for previously mentioned reasons – false assumptions about site shape impeding development, etc) instead of “projected” will also experience direct displacement. This mis-calculation alone could mask the potential direct displacement of a significant number of businesses.

Beyond the impacts of site’s projected development on a business, the changes that are brought on by a rezoning can cause other types of direct displacement. In an environment where there is an increased residential population and the land values overall have increased, property owners will start to make new decisions about the rent that they will charge and the types of establishments to which they will seek to provide space. Lower value businesses such as auto repair and manufacturing uses, who already offer a market value per square foot that is just a fraction of (17-25%) what is possible from a fast food restaurant or retail establishment in the area¹³¹ and the majority of whom lease their space, will see their disadvantage dramatically increase. The City should not, as it does in the DEIS, assume that lease terms will protect businesses. Many of the auto businesses in the area are operating in sites that do not have a proper Certificate of Occupancy (due to landlord error, not tenant) and this makes them more vulnerable to displacement, as well as impacts their ability to obtain necessary permits for compliance.¹³² These factors can affect the terms of the lease, and legal and illegal landlord harassment can occur. Direct displacement will occur as a result of changes in land value, even before residential development occurs on a site, and those financial incentives are ignored and unaccounted for in the DEIS.

Per the *CEQR Technical Manual*, a detailed assessment of direct business displacement is appropriate under certain specific circumstances, including where it is “possible” that “the businesses to be displaced provide products or services essential to the local economy that would no longer be available in its ‘trade area’ to local residents or businesses due to the difficulty of either relocating the businesses or establishing new, comparable businesses.” The importance of clustering to the economic vitality of auto businesses has been widely reported. However, despite requests from the Bronx Coalition for a Community Vision dating back to early 2015, the City has produced no information that examines how much clustering is necessary, and how far apart businesses can be located and still function as a cluster. Despite this lack of information, by failing to do a detailed assessment of direct business displacement, the DEIS summarily dismisses how clustering may impact the notion of a trade area and the effect that disrupting clusters may have on availability of auto products and services to businesses. The near impossibility of low-margin, low-market value businesses re-locating to other areas is also not acknowledged by the City’s decision to skip this analysis.

Another circumstance in which the *CEQR Technical Manual* deems it necessary to conduct a more detailed analysis is when there is a category of businesses “subject of regulations or plans to preserve, enhance, or otherwise protect it.” And indeed, the auto industry is subject to no such plan. In fact, it is subject to no plan or initiative from the City whatsoever, despite calls from the Bronx Coalition to do just that. The October 2015 Coalition document called on the City to develop a citywide policy approach that adopts best practices to support the auto sector as a whole. As part of this, we asked the City to:

- 1) “Conduct a study of the auto sector corridors throughout the five boroughs that assesses the real needs of workers and owners and the unique challenges that they face.

¹³¹ Pratt Center for Community Development, *Under the Hood: A Look into New York City’s Auto Repair Industry*, February 2017, p. 8

¹³² *Ibid* p. 9

..and fairly value the contributions of the sector to the city as a whole, including the necessary service it provides, the entrepreneurship and employment pathways it creates, and economic contribution.

2) Develop a coherent policy that addresses the sector's current needs, plans for and equips workers and businesses for industry changes, and makes recommendations for citywide land-use policies that address those realities."¹³³

The City's failure to gather basic information about the industry or develop specific policy that takes it into account should not preclude a closer look now. The City should conduct such as assessment for the FEIS, consistent with its obligations under the *CEQR Technical Manual* and underlying law.

Beyond the deeper analysis, the City should adjust its proposed actions to better mitigate against the destruction of working class immigrant jobs and the businesses that provide them. Detailed recommendations are contained in the Appendix in "Out of Gas: How to do better for Jerome's Auto Workers" the August 2017 report by the Bronx Coalition for a Community Vision. In summary, that report outlines 4 major strategies: 1) creating an area designated for auto businesses that has special protections for them and limits competition; 2) expand the proposed retention areas to an additional 4 sites that would do a better job of protecting 64% of the auto businesses in the area; 3) support auto businesses with new publicly funded programs; and 4) establish a guaranteed relocation program for Jerome businesses that is in place before a rezoning is finalized.

On the second recommendation, the expanded retention areas would be located:

- An area between 175th and Clifford Place on the eastern side of Jerome Avenue
- Tremont and (almost) Mount Hope on both sides of Jerome Avenue
- Triangular blocks south of the M1-2 district near 167th Street
- 172nd Street to Mt. Eden Avenue on both sides of Jerome Avenue

Relocation measures are especially important as a mitigation for auto businesses, which, with Retail, fall in the category of sectors that will be most impacted by direct business displacement¹³⁴. But relocation measures should be considered for all of the businesses that will be displaced by the proposed actions.

2. The City underestimates the risk of indirect business displacement.

As explained in the *CEQR Technical Manual*, "The objective of the indirect business displacement analysis is to determine whether the proposed project may introduce trends that make it difficult for ... businesses ... to remain in the area. The purpose of the preliminary assessment is to determine whether a proposed project has potential to introduce such a trend. If this is the case, a more detailed assessment may be necessary ... In most cases, indirect displacement of businesses occurs when a project would markedly increase property values and rents throughout the study area, making it difficult for some categories of businesses to remain in the area. An example would be industrial businesses in an area where land use change is occurring, and the introduction of a new population would result in new commercial or retail services that would increase demand for services and cause rents to rise.

¹³³ Bronx Coalition for a Community Vision Policy Platform October 2015, p. 15.

¹³⁴ DEIS Table 3-23

Additionally, indirect displacement of businesses may occur if a project directly displaces any type of use that either directly supports businesses in the area or brings a customer base to the area for local businesses, or if it directly or indirectly displaces residents or workers who form the customer base of existing businesses in the area.”

The City reviews three questions that provide guidance for evaluating indirect business displacement in the *CEQR Technical Manual* and finds no impact and no need to do a more detailed analysis. Below we describe false assumptions in the ways that those questions were analyzed as well as describe ways that indirect business displacement will occur that the *Manual* does not take into account.

The DEIS asks the question of whether an action will add to a concentration of a particular sector of the local economy enough to significantly alter or accelerate existing economic patterns. The DEIS does not include in its definition of “sector of the local economy” residential real estate development. That is a significant new activity that is anticipated, and that will dramatically alter the conditions for doing business in the corridor. The increased land values that will result, as noted elsewhere, are particularly threatening to majority-tenant, low-margin auto businesses. As changes in the area result from the increase of retail that is expected and encouraged by the expansion of commercial overlays, these businesses compete for space and introduce conflicts into the operations of auto businesses that are trying to stay.

The DEIS also claims that there will not be displacement of businesses that provide critical support to businesses in the Study Area, or that bring people into the area that form a substantial portion of the customer base for local businesses. This is wrong on both counts and this conclusion relies on an overly narrow definition of “critical support” and a lack of information about the way clustering in the auto sector works. As was stated earlier in the document, data from DSBS’s commissioned study on business patterns and needs in the area strongly affirms that auto businesses are highly reliant on other auto businesses in the corridor for good, services, and referrals of a customer base. The direct displacement of auto businesses (and other businesses, as the Business Needs Survey found the same patterns in other businesses) that are interdependent can reasonably be assumed to trigger a “domino effect” of indirect displacement, and that in turn will further accelerate indirect displacement in the corridor.

The DEIS does not look at how changes in the corridor – both in terms of the rent levels of residents and the incomes of new workers— will affect businesses, other than to claim that more people with more money will automatically improve business for all businesses (regardless of the target customers or regardless of the type of businesses). It is hard to imagine how an influx of new office and retail workers would improve the livelihood of an existing muffler repair operation, and not simply generate new conflicts that make it harder for the muffler repair shop to remain, especially given all of the other challenges that are happening simultaneously: higher rents, insecure tenure, C of O complications, etc. The DEIS does not look at how any of these factors combine. This gap in methodology obscures the indirect displacement that will occur. The City should conduct a detailed assessment of indirect business displacement in the FEIS, consistent with its obligations under CEQR and underlying law.

3. The City underestimates adverse effects on a specific industry: the auto industry.

The City’s rationale for dismissing effects on a specific industry (auto) takes place in the context of having gathered no information about the nature of and needs for that industry. Beyond that, the City dismisses

any hardship that the businesses in the Jerome area will experience from direct and indirect displacement by claiming that the businesses can relocate elsewhere.

This assertion ignores several critical factors. First, it fails to take into account the rapidly diminishing stock of available land in which to operate. Between 2009-2015, 108 million square feet of M and C8 land has been lost to rezoning actions, and C8 zoning now comprises less than 1% of NYC's land.¹³⁵ How can businesses relocate when there is less and less available land for them, and each *single* land use action fails to take into account the cumulative effect of the previous ones?

Second, assuming that an individual business can relocate and maintain the same amount of economic viability that it previously enjoyed as part of an auto cluster belies the importance of the cluster, which has been extensively documented¹³⁶

Third, making the assumption about an easy relocation does not consider the challenges that a small business faces in attempting to relocate, including the difficulty of finding space with an eligible Certificate of Occupancy, the costs and skills required to move, the compliance issues that may interfere, and the level of educational background, English language access, and other types of resources that the owner must possess in order to make a relocation possible. Even with dedicated funding from the Willets Point settlement, issues with a private site interfered with the success of the relocation of the Sunshine Cooperative. If that proved challenging, it is not difficult to see how much more challenging it would be for an unfunded, displaced, individual auto business to find a new location that mimics the advantages of the previous site. Yet the DEIS makes no mention of any of these issues and concludes there will be no impact on the sector because businesses can just relocate.

4. In the FEIS, the City must conduct a detailed analysis of business displacement and adopt mitigation strategies to address the risk of business displacement.

Because of the extensive indirect impacts that are anticipated and outlined in *Under the Hood and Out of Gas*, the City should undertake extensive mitigation measures, in the short and long term. In addition to the aforementioned strategies of limiting non-auto uses in areas that are designed to truly protect those businesses and expanding the retention areas, business and worker support should be provided. This should include:

- **Supporting auto businesses with new publicly funded programs**
 - Establishing Amnesty Program for Certificate of Occupancy so businesses can obtain necessary permits and licenses, and provide support for ongoing compliance
 - Forming an auto business "clinic" to assist companies with business management and administration
 - Provide training programs for auto business employees and local residents in auto sector

¹³⁵ Pratt Center for Community Development, *Under the Hood: A Look into New York City's Auto Repair Industry*, February 2017, p. 9.

¹³⁶ Willets Point Land Use Study, *Under the Hood*.

- Creating an advertising campaign to promote Jerome Avenue auto businesses, and
- **Establishing a Guaranteed Relocation Program for Jerome Auto Businesses**
 - Assist displaced companies to relocate within the Jerome Avenue retention areas
 - For companies that cannot stay on Jerome Avenue, develop a site that can house a large group of auto businesses *BEFORE* the rezoning action is completed

It is important to note that “Relocation can be a strategy that works ONLY if and when: (i) there is enough funding for the project before businesses have to move; (ii) the timing is right – new facilities must be completed and ready to be occupied before businesses are forced to close.

IV. Alternatives

A. In its comments on the Draft Scope of Work, the Coalition requested that the City develop a range of Alternatives to explore different strategies to address the City’s stated goals. The City’s failure to craft any such Alternatives makes it impossible to engage in discussion about the full range of ideas.

In our comments on the DSOW we requested that DCP “analyze multiple alternatives that have the potential to better accomplish the [City’s] stated goals ... To ensure a fair and genuine discussion, [a variety of] alternatives ... should be analyzed.”¹³⁷ Specifically, we requested that the City develop Alternatives to explore the possibility of:

- Including any proposed retention areas inside the Jerome Avenue special district to enable heightened protection mechanisms, such as a restriction of allowable use groups to minimize competition for industrial and auto related businesses.
- Expanding the area(s) intended for retention to be continuous so as to promote consistent clusters of business activity without introducing conflicting residential uses and heightened market forces.
- Creating additional retention areas where significant numbers of auto businesses would be protected.
- Including more innovative land use proposals designed to strengthen the capacity of the area to generate quality blue collar jobs.
- Rezoning a smaller area / fewer lots, but permitting a greater residential upzoning on those lots. This alternative could potentially achieve the same number of new construction residential units (approximately 4000) without creating as much displacement pressure on existing automotive and residential uses.

¹³⁷ Bronx Coalition DSOW Comments, p. 58

- Reducing the total amount of residential upzoning to match the amount of affordable housing the City believes can realistically be created in the area within the next 5-10 years given the limits of the City's capacity to move projects through the subsidy pipeline and likely disinterest of developers in accepting such subsidies after the local housing market has strengthened.

Despite these requests, the City failed to develop any Alternatives addressing the Coalition's goals. The City made this choice despite a specific obligation in the *CEQR Technical Manual* to consider and review a range of alternatives. The *CEQR Technical Manual* provides that "[t]he EIS should consider a range of reasonable alternatives to the project that have the potential to reduce or eliminate a proposed project's impacts and that are feasible, considering the objectives and capabilities of the project sponsor. If the EIS identifies a feasible alternative that eliminates or reduces significant adverse impacts, the lead agency may consider adopting that alternative as the proposed project."¹³⁸ Although "[t]he only alternative required to be considered is the No-Action alternative ...the lead agency should exercise its discretion in selecting the remaining alternatives to be considered."¹³⁹ In this instance, DCP should have exercised its discretion to select an Alternative more reflective of the community's goals.

Even if the City ultimately declined to select such an Alternative in lieu of the Proposed Actions, the City's failure to even identify and evaluate an Alternative more closely aligned with the community's goals forecloses the possibility of any meaningful discussion about the feasibility and consequences of the community's ideas. Instead of including an Alternative based on the Coalition's comments within the realm of possibilities, the City discloses several Alternatives that fail to respond to our comments - the No-Action, Lower Density, and No Unmitigated Significant Adverse Impacts Alternatives - and concludes that none would sufficiently advance the Proposed Actions' goals.¹⁴⁰ We are disappointed at the City's failure to develop Alternatives addressing the community's goals, which casts into doubt the legitimacy of the entire environmental review process. **For the FEIS, we demand that the City develop an Alternative that addresses the Coalition's goals as outlined in these comments.** This is the only way that decision-makers in this process will be able to fully evaluate the City's Proposed Actions as compared to the Coalition's suggested strategies.

B. The City's Expanded Rezoning Area Alternative moves even further from the community's goals by eliminating auto-retention areas and bringing 1,000 more apartments to the neighborhood, most of which won't be affordable to current residents.¹⁴¹

¹³⁸ CEQR Technical Manual, Ch. 23: Alternatives, 23-1.

¹³⁹ CEQR Technical Manual, Ch. 23: Alternatives, 23-1.

¹⁴⁰ DEIS p. 20.2

¹⁴¹ We are choosing here to just evaluate the impacts of the Expanded Rezoning Area Alternative as the City has not provided enough information about the A-Application for us to understand what its impacts might be.

While the City disregarded our request to consider alternatives matching the goals of the community they instead chose to include an Expanded Rezoning Area as an alternative, citing an interest from Community Boards 4 and 5 and “other interested property owners.”

Where the alternatives the Coalition requested all suggested a reduction of the rezoning boundaries or a reduction in the proposed zoning designations as a measure to retain auto businesses and limit the impact of new market-rate housing, the City’s Expanding Rezoning Area Alternative suggests just the opposite, increasing the amount of new housing that could be built at the expense of the auto retention areas. This expanded alternative was never mentioned in the Draft Scope of Work; it was mentioned in one sentence of the Final Scope of Work¹⁴², a document that itself came out just 3 days before the ULURP process started.

This Expanding Rezoning Area Alternative is projected to increase new development over the original proposal by more than 1,000 units - a more than 25% increase in new housing. In terms of its scope this is essentially a brand new rezoning the City is proposing for Jerome Avenue, but with much less detailed analysis of its impacts. In the Alternatives chapter, the City conducts what amounts to a shortened EIS for the Expanded Rezoning Alternative - but the truncated nature of this analysis, and its location in the 20th chapter of what is already an incredibly long document, raise questions as to the City’s transparency and honesty with the community.

To further complicate the issue, the City subsequently put out a Technical Memorandum, or “A-Application Alternative” that represents a smaller expanded rezoning, seemingly incorporating select geographies from the larger Expanded Rezoning Alternative.¹⁴³ Unlike the Expanded Rezoning Alternative, this A-Application does not provide a projected unit count or even attempt to analyze the potential impacts that the expanded boundaries might bring. This leaves community residents in the dark as to *what specific rezoning proposal the City is even considering*, let alone the impacts it will have upon our neighborhood.

1. Housing

The City’s original rezoning proposal projected that it would bring 4,008 new apartments to our neighborhood, 3,230 more than would occur with no rezoning. These numbers grow significantly under the Expanded Rezoning Alternative, which the City projects would bring 5,055 new apartments. That means 1,047 additional new apartments that would be coming to Jerome if these expanded boundaries were adopted, a 26% increase in projected units.

As we have detailed throughout our comments, both here and in response to the DSOW, our Coalition is already incredibly concerned about the number of market-rate apartments the Proposed Actions are likely to bring into the community - particularly since we believe that the City’s improper determinations regarding “projected development sites” have the effect of underplaying the likely impact of the Proposed Actions. This Expanded Alternative only increases this concern. **The more the City increases the possibility for new residential density and with it new housing, the greater the possibility that our local housing market will change, causing the production of fewer subsidized housing units and an increase in new market-rate units that will be out of our reach.**

¹⁴² Final Scope of Work, p. 61

¹⁴³ See “Technical Memorandum 001, Jerome Avenue Rezoning,”

2. Auto Businesses

The increase in projected units this Expanded Rezoning Area Alternative will bring come almost entirely at the expense of the M and C8 zoned retention areas included in the original rezoning proposal. The expanded rezoning would eliminate the 4 auto retention areas from the original proposal and replace them with R8A residential districts. This would lead to a total decrease of 155,116 square feet of auto-uses - 57,114 square feet less than the original proposal.

One of the stated goals of the original proposal was to, "Maintain zoning for heavy commercial and light industrial uses in targeted areas to support mixed uses and jobs."¹⁴⁴ Yet the Expanded Rezoning Area Alternative does away with this goal entirely. It is unclear to us, in light of this, how the City can arrive at the conclusion that this expanded rezoning still meets the goals of the original proposal.

C. The Coalition proposes that the City significantly reduce the scale of the rezoning - or vote it down altogether.

The Bronx Coalition for a Community Vision would sooner have no rezoning at all than the Proposed Actions or the larger-scale Alternatives that are currently being considered - each of which would invite a huge influx of luxury housing that would fail to meet the community's needs, while creating significant displacement risks for current residents. At the same time, we believe that it might yet be possible for the City to develop an Alternative that invites the creation of more affordable housing than the No-Action Alternative *without* an accompanying surge in unregulated housing, thereby mitigating the risks of secondary displacement.

Once the City performs revised displacement analyses that take into account the full extent of displacement risks, the Coalition believes that the City will find significant adverse impacts related to displacement and be required to develop both mitigations and alternatives that seek to mitigate these adverse impacts. **We call on the City to develop an Alternative in the FEIS that significantly reduces the scale of the rezoning in such a fashion as to reduce the number of projected units by half** - a strategy we believe could mitigate the (true) risk of displacement, while still generating a substantial number of units of affordable housing in our community.

While it is ultimately up to the City how it achieves this smaller-scale rezoning, we suggest that the City could shrink the boundaries of the proposed rezoning area, lower the zoning designations on certain sites, and/or leave a certain number of C-8 or M sites with their current zoning designations in order to scale back the magnitude of the rezoning. In crafting this new Alternative, there are several reference points the City can refer to to start:

- The Bronx Coalition's *Out of Gas* report, attached as Appendix B, identifies 55 lots¹⁴⁵ that could be removed from the rezoning with the goal of preventing displacement of a greater number of

¹⁴⁴ DEIS p. 1-27

¹⁴⁵ Out of gas: maps page 8

Expanded retention zones:

The southernmost zone includes an additional 11 lots

The West Side of Jerome south the Cross Bronx includes: 22 lots

auto-businesses, 93 in total. In addition to retaining auto businesses - a vital source of good-paying jobs for our community - removing these sites from the rezoning would reduce the projected number of units by 486.

- The City's own Lower Density Alternative in the Alternatives chapter of the DEIS considers a rezoning with some lower proposed zoning designations. In this alternative the City considers reducing three proposed R8A areas to R7A, while reducing an R7D district to R7A.¹⁴⁶ Lowering the zoning designations in this fashion, the City claims, would produce 858 fewer units as compared to the proposed rezoning.¹⁴⁷ While this is still insufficient to reduce the rezoning at the scale the Coalition has requested, there are still further zoning designations that DCP could reduce - mostly notably the proposed R9A and C4-4D districts. The R9A district, in particular, would represent some of the highest residential FAR currently allowed anywhere in the Bronx - and a massive increase considering the majority of this area has a current residential FAR of 0.

The reduction the Coalition is asking the City to examine is not unreasonable, and in fact follows a precedent set by recent rezonings elsewhere in the city. For instance, in the recently-approved East Harlem rezoning, the City Council made several modifications to reduce the scale and density of the rezoning, in some instances lowering the proposed zoning designations and in others the maximum permitted residential FAR. These reductions in the scale of the rezoning comprised:

- Changing an M1-6/R10 district to an M1-6/R9, reducing the max FAR from 12 to 8.5
- Changing an R9 district to an R7D, reducing the max FAR from 8.5 to 5.6
- Changing an R9A district to an R8A, reducing the max FAR from 8.5 to 7.2
- Changing an R10 district to a modified R9, reducing the max FAR from 12 to 9
- Using the East Harlem Corridor Special District to reduce maximum FARs in M1-6/R10, R10, C6-4 and C4-6 districts from 12 to 10, 9 or 8.5 depending on the designation and geography

In some cases the FAR was lowered through the use of Special District text, a tool the City could also use for this rezoning as part of the Special Jerome Avenue District. Ultimately, the changes implemented in the final stages of the ULURP process for the East Harlem rezoning reduced the projected number of units the rezoning would bring by 806 units - a 23% decrease in anticipated new development.

The Coalition asks that within the FEIS, the City create and consider the adoption of an Alternative that uses similar strategies to achieve a significantly smaller rezoning - a reduction to a total of 2000 new apartments instead of the roughly 4000 that would be generated under the Proposed Actions. We believe that an Alternative could be crafted that would trigger the permanent affordability requirements of the Mandatory Inclusionary Housing program to the greatest extent possible, encourage the continuation of the City's successful strategies of building subsidized housing in our community, limit the risk of secondary displacement triggered by an influx of thousands of market-rate apartments, and preserve more of the auto businesses in our community - thereby mitigating many of the risks we have emphasized throughout these comments. **However, if the City will not heed our call to develop such an**

The East Side of Jerome south the Cross Bronx includes: 6 lots

East Side of Jerome only cluster, 3 lots

Northernmost expanded cluster: 13 lots

¹⁴⁶ DEIS, p. 20-30

¹⁴⁷ DEIS, Table 20.5.1-3, p. 20-34; note that this 858 number, cited throughout the Lower Density Alternative section, seems to be a typo; when we do the math based on DCP's numbers we arrive at an increment difference of 498 fewer units

Alternative, we urge the Commission to reject both the Proposed Actions and all Alternatives offered by the City in the DEIS, and to vote NO on the rezoning.

V. Mitigation

The Coalition believes that the City has significantly understated projected development in the study area, and the magnitude of the direct and indirect displacement impacts the rezoning is likely to cause or accelerate. Once the City has corrected the flawed assumptions and methodologies that undergird its projections - as it must to meet the requirements of both the *CEQR Technical Manual*, and state law - we believe that the FEIS will reveal significant adverse impacts that the City will face a duty to mitigate. Below, the Coalition proposes a range of strategies we believe can serve to mitigate displacement of residents and businesses. We urge the City to analyze and adopt these strategies as part of the FEIS, and we will continue to advocate for these strategies both within and beyond this rezoning process.

A. Housing

1. The City should implement a citywide “no net loss” policy.

- The City should conduct a baseline assessment of affordable housing units within the city, broken down by neighborhood and affordability level (by income bracket). This inventory should include information on number of units, rent level of units, household size, and income of inhabitants. Based on the inventory, citywide and neighborhood-specific goals should be set for preservation of housing affordable to the lowest-income families.
- Specifically, each community and the City as a whole should have separate goals for the number and share of units affordable to families making between \$18,000 and \$20,000; \$20,000 and \$25,000; and \$25,000 to \$30,000. Every year, the City should update its numbers to see how much housing at each level has been won and lost and adjust its strategies to ensure no net loss of units affordable at each bracket. This policy could be modeled after the no net loss policy that was passed in Portland in 2001, which assessed the number of units below 60% AMI in Portland’s Central City and established a goal to retain at least the current number and type of housing units affordable at this level.

2. Fewer units, deeper affordability.

- The Coalition is proposing fewer units at deeper affordability to enable residents within the very low or extremely low income bracket can also afford the rent and have an opportunity to continue living in their community and not be forced out.

- The City could create fewer units by leaving more M sites zoned as-is – a change that would also preserve more of the auto businesses in the community – and reducing the amount of residential upzoning on other sites.
- The Council reduced the number of units created by both the East New York and East Harlem rezonings within the final stages of the ULURP process for those rezonings. For this rezoning, the Coalition is demanding a more significant decrease: that the City cut the total number of units the rezoning will bring in half. A reduction of this scale is critical to avoid destabilizing our neighborhood. By the City's own projections, at least half of the units the City is currently projecting will be unregulated, creating a market for luxury housing that puts the current community at risk.

B. Good Jobs & Local Hire

We believe that the creation and maintenance of well-paying, career-track jobs for current community residents is an essential strategy to combat residential displacement.

1. Create a “responsible contractor” requirement for developers seeking HPD subsidies.

- A Responsible Contractor is a contractor or subcontractor who pays workers fair wages and benefits as evidenced by payroll and employee records. “Fair benefits” may include, but are not limited to, employer-supported family health care coverage, pension benefits, and provide safety training. ‘Fair wages’ and ‘fair benefits’ are based on relevant market factors that include the nature and location of the project, comparable job or trade classifications, and the scope and complexity of services provided.

2. Implement a policy to require developers who take HPD subsidies to negotiate with community groups to sign legally enforceable contracts to provide local benefits such as open spaces, schools, and local jobs.

- A community benefits ordinance requires developers receiving subsidies above a certain dollar amount to negotiate contracts (community benefits agreements) with local groups for concrete local benefits, such as local hiring and procurement and community spaces.
- This policy could be modeled after the Detroit community benefits ordinance.

3. Make local hiring and procurement a requirement of any projects for which an agency, such as HPD or the Economic Development Corporation (EDC), issues a Request for Proposals (RFPs).

- When City agencies or the EDC initiate projects, they put out RFPs for developers who want to build the projects. Currently, many of these RFPs include local hiring and procurement *goals*, but not hard requirements.
- Agencies should instead include specific local hiring and procurement *requirements* in RFPs and state that developers who are prepared to meet those requirements will be given preference in the selection process.

4. Invest in job training & education for local residents in existing and emerging sectors.

- Fund GED programs.
- Fund local pre-apprenticeship programs and outreach for those programs, and implement them before construction projects begin so that there is a pool of skilled local workers available for contractor and subcontractor participants of HireNYC.
- Provide scholarships, childcare, and other support to residents so they can access pre-apprenticeship programs.
- Create job training and transitional job programs within HRA and SBS that train residents for jobs in the sectors where new jobs are being created.
- Provide training to existing auto workers to strengthen their skills and ensure the future viability of their businesses. This could include training programs that help auto businesses in the area obtain the necessary licenses and meet environmental standards. Trainings should be offered in the dominant language of the workers and/or support the development English language skills.

C. Commercial Tenant Anti-Displacement

1. Provide financial and technical assistance for those businesses that are displaced through the rezoning and forced to relocate.

- The City should offer support, including funding, for local, small businesses in the rezoning area to help cover the cost and needs of relocation. This would apply to local retail and restaurants and auto related businesses.

2. Expand the auto retention zones where auto-related businesses—including auto parts, security and audio stores—can remain and be protected.

- The City should keep and expand the auto retention areas it has identified within the rezoning plan. The City should also identify the best mechanisms for protecting and strengthening this area.
- DCP should set goals for the total amount of auto-related activity that should take place in these areas, and seek to prohibit specific uses that would otherwise be permitted by the current zoning uses but that would compete with the intended goals of the area (such as hotels in C8 zones).

3. Limit commercial rent increases in HPD-financed developments.

- HPD offers developers subsidies for a lot of mixed-use projects that have both housing, and commercial space on the ground floor. Through citywide legislation or HPD policy, HPD should also provide below-market rents and/or limit rent increases for the ground-floor tenants. HPD should also prioritize existing local businesses to move into these spaces.

Authors of These Comments

These comments were prepared by the Bronx Coalition for a Community Vision, with the assistance of its technical assistance providers.

The Bronx Coalition for a Community Vision is grounded in the belief that community members are the experts on the issues that most affect their lives. Since the Coalition formed in late 2014, the Coalition has hosted dozens of meetings to educate community members about the City's plans, engage residents in conversations about current needs and challenges the community faces, develop policy solutions based in our shared experiences, and prioritize and advocate for these proposals. Coalition members include Community Action for Safe Apartments-New Settlement Apartments, Latino Pastoral Action Center, Northwest Bronx Community and Clergy Coalition, Mothers on the Move, United Auto Merchants Association, Faith In New York, Local 79, Plumbers Local No. 1, NYC District Council of Carpenters, Greater NY-LECET, and 100 Black Construction Workers.

The Association for Neighborhood and Housing Development (ANHD) is a membership organization of New York City neighborhood based housing and economic development groups, including CDCs, affordable housing developers, supportive housing providers, community organizers, and economic development service providers. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers.

The Center for Urban Pedagogy (CUP) is a nonprofit organization that uses the power of design and art to increase meaningful civic engagement. CUP projects demystify the urban policy and planning issues that impact our communities, so that more individuals can better participate in shaping them. CUP designed the graphics that appear throughout this report.

The Equitable Neighborhoods Practice of the Community Development Project (CDP) at the Urban Justice Center works with grassroots groups and community coalitions to help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of "progress". CDP works together with partners and clients to ensure that residents in historically under-resourced areas have stable housing they can afford, places where they can connect and organize, jobs to make a good living, and other opportunities that allow people to thrive.

Pratt Center for Community Development is a university-based urban planning and policy organization that works with community-based groups throughout New York City to help them plan for and realize their futures. We develop innovative models for sustainable and equitable communities directly shaped by our on the ground experience with community-based organizations and small businesses throughout New York City. Our policy work is grounded in the day-to-day realities of a diverse range of New Yorkers.

Appendix A - “Resisting Displacement in the Southwest Bronx: Lessons from CASA’s Tenant Organizing,” A White Paper by New Settlement Apartment’s Community Action for Safe Apartments (CASA), May 2017

Appendix B - “Out of Gas: How the City Can Do Better for Jerome Avenue’s Auto Workers,” A White Paper by the Bronx Coalition for a Community Vision, August 2017

Resisting Displacement in the Southwest Bronx:

Lessons from CASA's Tenant Organizing

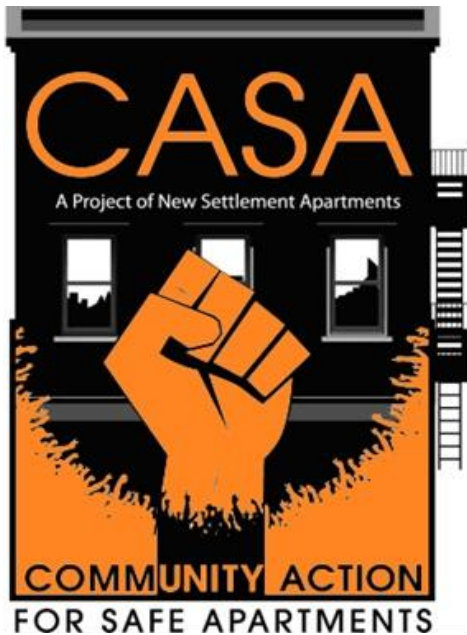
A White Paper by New Settlement Apartment's Community Action
for Safe Apartments (CASA)

May 2017



Acknowledgements

A Report By



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Introduction

This is a critical moment for the Southwest Bronx.

A potential rezoning is imminent, and could have devastating impacts on low-income tenants of color, their communities, and the state of affordable housing.

Community Action for Safe Apartments (CASA) has drawn on our organizing experience, coalition work, previous research and the experiences of the tenants we work with to draft this white paper.

In the following pages, we:

- **Present a clear and accurate definition of displacement and counter the false assertion that most tenants leave neighborhoods by choice;**
- **Explain the tactics that landlords already use to exert displacement pressures on low-income tenants of color;**
- **Emphasize the risk of increased displacement posed by rezoning, and in particular the Jerome Avenue rezoning, when new housing is not genuinely affordable and there are insufficient protections against displacement;**
- **Offer solutions that would protect tenants from displacement, allow them to remain in their homes, and preserve their communities.**

Who We Are and Where We Work

Community Action for Safe Apartments (CASA), has been organizing for safe and affordable housing in the Southwest Bronx for more than 11 years. As a project of a larger nonprofit, New Settlement Apartments, that is both a landlord and a social service agency, we also know the ins and outs of what it means to provide truly safe and truly affordable housing.

CASA's tenant organizing work is rooted in preventing displacement and harassment through tenant education, the formation of tenant associations, and empowering tenants to collectively exercise their rights. Our work is centered in the Highbridge and Concourse neighborhoods of

the Southwest Bronx, primarily situated in Community Board 4 (CB4). CB 4 is located within the poorest Urban Congressional District in the U.S.: almost 40% of residents in CB4 make less than \$18,500 per year,^{1,2} and residents suffer from an unemployment rate of 9.2% compared to the city-wide rate of 5.2%.³

In the last year, CASA has organized or provided technical assistance to over 90 buildings, which are home to more than 7,000 families. In the last year, over 4,000 tenants have attended our monthly membership meetings, workshops, tenant association meetings, and campaign meetings to develop and advance policy proposals that increase tenant protections and tenant power in the city. Unfortunately, all of the tenants we organize are part of CASA because they experience significant issues such as lack of repairs, landlord harassment, and unaffordable housing.



CASA members march to demand deeper levels of affordability in response to de Blasio's Mandatory Inclusionary Housing plan.

Why This Paper

When, in September 2014, the city announced its plans⁴ for a rezoning⁵ that would change the use of 73 blocks on and around Jerome Avenue, facilitating the construction of privately owned residential buildings and impacting approximately 98,000 households,⁶ we were immediately concerned about increased speculation and pressures of displacement. We helped form a coalition⁷ to respond to the Jerome Avenue rezoning and to create a set of solutions⁸ that could offer a

path to create investment and development without displacement.

But a key challenge to advancing that work has been lack of consensus about the nature of displacement itself. City and elected officials who craft policies about how land is used and what kind of affordable housing should be subsidized have consistently told us that rezoning doesn't cause displacement.⁹ We are writing this paper to rebut that argument, to document the lived collective experience of displacement, and to demonstrate how, if we don't intervene now or if we intervene in the wrong way, it will get worse.



Residents of 315 East 167 Street celebrate uniting together to form a Tenant Association.

We are writing this paper because we think we can and must do better. When neighborhood change is discussed, we are constantly presented with false choices. Do we choose to endure unsafe conditions or do we leave our homes? Do we choose safe, stable, career jobs or deeply affordable housing that reflects neighborhood needs? Do we choose affordable housing or do we make our neighborhoods "investment worthy?" These aren't choices, they are ultimatums. They don't reflect possibilities, they reflect power. Rather than presenting communities with these false choices, we believe the City should use its power to create thoughtful, bold policies that combat displacement and support responsible and smart development.

To develop grounded solutions, we have to understand what displacement is, its history in the Southwest Bronx, and the current threat it poses.

What is Displacement and Why Does it Matter?

Displacement as Forced Movement

Displacement is forced movement, or movement minus power and choice. It is when people don't want to move but have to because of forces outside of their control. It's about why they move, who benefits from them moving, and what forces cause them to move.

Displacement is incredibly harmful and destabilizing. We know that eviction is an extremely traumatic event that can lead to suicide.¹⁰ We know that mass displacement from formerly tight-knit, culturally-rich communities is an experience that breaks apart social networks, takes away people's pride, sense of self, and community, and takes years from which to recover.¹¹

Displacement is about race and class. One way to tell New York's history is to tell it through the history of land use and the forced movement of black and brown, immigrant, and mostly poor and working class people. Displacement is one of the many mechanisms of institutional racism that has to be dismantled in the long road towards racial and economic justice.

Why Displacement in the Southwest Bronx Should Concern Everyone

Displacement can have a devastating impact on the families and people who are displaced, and it also reaches well beyond the individual or the family level. Displacement is about neighborhoods as a whole, and about the overall supply of affordable housing in our city. What we choose, or fail, to do about displacement reflects our values. Our choices about displacement reflect choices about which people matter, for whom we should build, and who we should protect. Displacement in the Southwest Bronx in particular is a warning sign about the stability of our city's neighborhoods and the ability of low-income people to live here.

98,000 households live within a half mile of the Jerome Avenue study area: the area of land the city is contemplating for rezoning.¹² Most of the land in the Jerome Avenue study lies in

poorest urban congressional district in the country, approximately three-quarters of all of the housing is rent stabilized, and close to half of residents pay more than 50% of their income towards rent, making them severely rent burdened.¹³

Already, people can barely afford to live in the Southwest Bronx. Creating additional pressures that increase rents, speculation and harassment will likely mean that tenants will leave the city altogether. We risk becoming a city where poor and working class tenants can no longer live.



Tenant Leader Lamar Howell of 955 Walton Avenue facilitates at a tenant meeting for the first time!

Every time a rent stabilized tenant leaves their apartment, landlords are legally allowed to increase rents by at least 18%.¹⁴ On top of this, landlords can raise rents by passing off the costs of Individual Apartment Improvements and Major Capital Improvements for repairs and renovations made to the apartment during its vacancy, making the legally allowed rent increases significantly higher.¹⁵ This means not only do tenants lose a rent stabilized apartment, but the apartment is made less affordable for others in the community and eventually becomes part of the open market. Thus, displacement pressures, which lead to tenant push-out, risk jeopardizing the overall affordability in the community.

Because the Bronx is home to the highest percentage of rent burdened tenants in the city, this risk is particularly acute.¹⁶ If rents rise to \$1,875, only 10% of Community Board 4 and 5 residents could afford them.¹⁷ When tenants can no longer sustain a massive rent burden—paying upwards of 50% of their income towards rent—or cannot double up, they must leave their homes. And because the Bronx is currently home to some of the lowest rents in the city, there is no other neighborhood in the city to go to.¹⁸

The History of Displacement and Community Organizing in the Southwest Bronx, and Implications for the Current Context

In order to talk about the current context of displacement in the Southwest Bronx, we need to look at history. There is a common critique that community members are only objecting to rezoning plans because people “have been conditioned to the fear of change.”¹⁹ We know that residents are not afraid of change in the abstract; they are drawing on real experience and real history. Current community members have lived through many types of displacement and neglect and experienced repeated trauma as a result. It is not that people are just afraid of change. They have repeatedly experienced change in the form of harassment and displacement. Rather than dismissing their concerns, we have to be even *more* careful in communities that have lived through such experiences.



1111 Gerard Avenue Tenant Leader Marjorie King speaks out against the building-wide illegal rent overcharges at a press conference!

Over the last few decades, the history of the neighborhood for many Southwest Bronx residents is one of disinvestment and displacement. Since the founding of our nation and continuing today, city, state, and federal housing policies —many founded on overtly racist ideologies —have shaped the housing landscape and perpetuated segregation and inequality. We highlight several policies here to provide a snapshot of how

displacement has occurred in the Bronx historically. This is not an exhaustive list, but rather components of a larger, deeply traumatic history.

As part of New Deal legislation in the 1930s and in response to the Great Depression, the federal government created programs designed to save small homeowners from foreclosure and make it easier for people to take out loans to build and purchase homes.²⁰ But these benefits were not equally available to everyone. Federal agencies involved with mortgage refinancing and lending created maps that rated neighborhoods according to the level of investment risk, assigning the lowest ratings to neighborhoods where there was a “threat of infiltration of foreign-born, negro, or lower grade population.”²¹ This practice of “redlining” (so called because low-rated neighborhoods, including many in the south and central Bronx,²² were colored in red on the federal government’s maps) prevented people of color from accessing mortgages backed by the government and “destroyed the possibility of investment wherever black people lived.”²³ With entire neighborhoods deemed ineligible for federal loan guarantees, private lenders steered clear, causing housing to deteriorate and property values in communities of color to plummet. At the same time, the government facilitated “white flight” from New York City and other urban areas by offering white families sizable government subsidies to purchase homes in high-rated white areas in the suburbs.²⁴

In the 1960s, Robert Moses— (in)famous for overseeing billions of dollars of public works projects that fundamentally reshaped New York City²⁵ and displaced half a million people²⁶ —advanced a vision for the Bronx which furthered segregation in the borough. The Cross Bronx Expressway was constructed, displacing 5,000 residents and isolating the low-income communities of color in the South Bronx from the rest of the borough.²⁷

Subsequently, in the 1970s, the Bronx experienced a decade of fire. “[R]ocked by the decline of manufacturing and the flight of the white middle class to the suburbs”²⁸ —white flight that had been fueled by federal policy and took a substantial hit to the city’s tax base —New York found itself in a budgetary crisis. Seeking to cut costs, the City reduced essential services, cutting fire services “in a way that stacked the deck against poorer neighborhoods ... [and] allowed smaller fires to rage

uncontrolled in the city's most vulnerable communities.”²⁹ More than fifty census tracts in the Bronx lost half or more of their buildings to fire and abandonment, resulting in “blocks and blocks of rubble”³⁰ and exacerbating the effects of years of redlining, segregation, and divestment.³¹ Although ordinary fires caused most of the destruction, some landlords deliberately burned down buildings in order to cash in on the insurance payouts.³²



CASA members' victory pose in reaction to Mayor de Blasio's commitment to supporting Right to Counsel.

Throughout this history of rampant displacement, residents have organized and fought back. Community groups, such as Banana Kelly, empowered residents to take control of the land, reconstruct the buildings through sweat equity, and build community. This period of reconstruction stretched beyond the '80s and into the '90s as non-profits rehabbed buildings, rebuilt the infrastructure of the community, and started to provide social service programs.³³

Residents have remained in their community despite governmental failure. They have lived through decades of racist housing policy. They rebuilt the Bronx with their own hands. But those fights aren't over. Tenants today continue to fight in the legacy of those who rebuilt the Bronx. In addition to those struggles, current residents are now faced with a rezoning, which they experience as a continuation of this history.

Current Tools and Tactics that Landlords Use to Displace People in the Southwest Bronx

Our previous research and the experiences of our members demonstrate that landlords in the Southwest Bronx are already employing multiple long-term strategies in their attempt to displace rent-stabilized low-income tenants of color and to prepare and upgrade the current housing stock for future, whiter, higher income-earning tenants.

- **The first tactic is to deny tenants decent living conditions, quality repairs, and essential services in an attempt to make their homes unlivable.**
- **Second, landlords exploit several city and state housing laws, capitalizing on loopholes and lack of enforcement mechanisms which allow them to unjustly increase the rent burden on rent-regulated tenants. They use the Major Capital Improvement (MCI) program to impose additional charges on tenants. They also add confusing and often unwarranted fees to tenant's rent bills, knowing that it will be difficult to challenge them. And they exploit the system of preferential rents to threaten tenants with rent increases if they organize.**

These tactics and tools, which are explained in detail below, ultimately create the conditions necessary to facilitate tenant displacement: the forced removal or movement of people out of their communities. The rezoning process will increase financial incentives for landlords to utilize these tactics already at their disposal.

Displacement Tactic: Denial of Basic Services and Repairs

Landlords in the Southwest Bronx subject tenants to deplorable conditions. Many working-class tenants of color are denied heat and hot water, experience constant leaks and mold, live with un-repaired collapsed ceilings and broken windows, are exposed to lead, and have no gas for months.

This denial of basic services is designed to create harsh

environments in which tenants must either endure unsafe and substandard living conditions, or leave the Southwest Bronx. Obviously, neither choice—being displaced from one’s home and community or living in substandard conditions—is a viable option. Unfortunately, many residents are put in a position to choose either/or.

It is incredibly hard for tenants to compel unwilling landlords to complete repairs. The complaints system places the onus on the tenants, and there are numerous barriers to navigating the system. Tenants can make complaints to the super or management office. If ignored, tenants can then call 311 to make a formal complaint with the New York City Housing and Preservation Department (HPD), which, upon inspection, can result in a violation for the landlords. Many landlords understand that they will not be penalized in a meaningful way, and thus do not respond to orders to complete repairs. If landlords do respond to complaints or violations, they often perform patch-work repairs that don’t address the actual issues. A collapsed ceiling with a leak may merely be plastered up, without the landlord ever actually addressing the plumbing or pipes.

By refusing to spend money on quality repairs, landlords increase their profit margins. Meanwhile, tenants are forced to complain to the City or to confront the landlord, which exposes them to risks of harassment and threats. Persistent or outspoken tenants can then end up in housing court fighting for the future of their home, stability, and family.



Tenant Leader Luciano Manzueta exposes the kind of conditions tenants at 1221-25 Sheridan Avenue have been living with for months to the press.

Previously collected data demonstrate that this tactic is already in use by landlords in the Bronx. In fact, a survey of neighborhood residents conducted for the Bronx Coalition for a Community Vision policy platform found that 57% of respondents reported problems getting repairs done, 27% have lived without basic services, and 33% have seen a decrease in maintenance services in their building.³⁴ And data show that it is challenging for tenants to navigate the systems to make repairs or to get positive results. In a 2015 report by the Stand for Tenant Safety Coalition, 71% of tenants rated their experience reporting a problem to 311 as fair or poor.³⁵ For many tenants, problems were never addressed: 58% said they did not think that calling 311 led to the problem being resolved.³⁶

This displacement tactic is already in the playbook of unscrupulous landlords. If landlords feel that, as the result of rezoning, they stand to profit even more from displacing low-income tenants, those tenants will be at increased risk of being subjected to denial of basic services and repairs. As we discuss in our recommendations section, additional protections are crucial.

Displacement Tactic: Loopholes and Lack of Enforcement in Laws: MCI's, Non-Rent Fees and Preferential Rents

Landlords are exploiting weak laws to exert displacement pressures on tenants. The three primary legal loopholes are: Major Capital Improvements, non-rent fees, and preferential rents.

Major Capital Improvements (MCIs)

Major Capital Improvements (MCIs) were enacted into law as part of rent stabilization in order to incentivize landlords to maintain their buildings and allow them to do building-wide systemic upgrades such as replacing boilers, roofs, or all the plumbing. MCIs pass along the total cost of these repairs to tenants as a permanent rent increase that continues to be paid for the lifetime of the tenancy, even after the initial investment is recouped. But the MCI system was not an effective policy for maintaining buildings, as landlords chose insurance payouts during the decade of fire as 80% of buildings in some Bronx neighborhoods were reduced to rubble.³⁷

The MCI law is still on the books, despite the fact that it is no longer a necessary policy, given today's thriving real estate market and the almost guaranteed returns that landlords of rent stabilized yield on their investments (41 cents for every dollar invested).³⁸ Furthermore, landlords are profiting highly off the program. A 2016 article reported that the MCI program "will allow city landlords to reap [a] windfall estimated to be more than \$270 million" that year.³⁹



The Tenant Association of 1475 Sheridan Avenue protests MCI's and announce the filing of a Supreme Court case in response to the conditions they endured during months of renovations.

Today, the MCI system is used by landlords as a way to impose an additional rent burden on tenants. For example, in 11 buildings CASA is currently organizing in, representing 900 families, the average MCI permanent rent increase in a 2-bedroom apartment will be \$126. In rent-stabilized apartments, landlords are prohibited from imposing an annual MCI increase that exceeds 6% of a tenant's rent.⁴⁰ However, landlords can flout this limitation because enforcement only takes place if tenants report the violation, and tenants often are either unaware of their rights or afraid of retaliation if they challenge their landlord. And even if tenants do attempt to challenge the increases, they must go through an administrative process with the New York State

Division of Homes and Community Renewal (DHCR) that can take anywhere from two months to years to be approved.

Non-Rent Fees

Non-rent fees are another area where landlords have used legal loopholes and lax enforcement to exploit low-income tenants and drive up rent burdens. Non-rent fees are charges that are added to tenant's rent bills. These include fees for appliances, legal fees, repairs fees, and damage fees. These fees are often confusing and unwarranted: arbitrarily applied to unsuspecting tenants on their monthly rent bills. Some non-rent fees are legally permitted, but some are not, and lack of clarity in DHCR regulation leads to abuse of the law.

Tenants can refuse to pay these fees, but many pay anyway because they are unaware of their rights or concerned about retaliation. While landlords cannot take a tenant to housing court for non-payment of fees, many tenants end up in housing court unrepresented and unaware of their rights. In these cases, a landlord's attorney may successfully include the non-rent fees on a stipulation, thus obligating the tenant to pay them.



Tenant Leader Daisy Bautista knocks on doors at 1005 Walton Avenue, encouraging neighbors to join the court case for repairs.

As with MCIs, many tenants do not challenge fees, even illegal ones, because they are not aware they can, do not know how, or are afraid to do so. Even if they do pursue a challenge, tenants' only recourse is to file an administrative overcharge complaint with DHCR. As documented in our previous report, this is a lengthy process that can take months or even years,

and is challenging to navigate: tenants must collect numerous documents, have a legal team review them and draft a brief, and then submit that information.⁴¹ Moreover, there is a four year statute of limitations, so if a tenant does not challenge the fee within four years of the time it was first charged to them, they are barred from bringing a claim. And when tenants do win these administrative cases, their monetary gains are applied toward their rent in the form of rent reductions: leaving the tenant feeling vulnerable by not paying their full rent, or putting them in the position of having to file an additional complaint if the rent reduction is not applied. While our research found that tenants who had filed overcharge complaints were overwhelmingly successful, relying on such a long, administrative process for relief is not a successful solution as the burden is still on the tenant.⁴²

Our previous research has shown patterns that point to the likelihood that landlords are using fees to increase tenant's rent burden in an attempt to displace them from their homes. Our report, *The Burden of Fees*, demonstrated the extent to which landlords can exploit this fee system to increase their profits and burden tenants. 81% of tenants surveyed had been charged a fee on their rent bill.⁴³ From the rent bills we reviewed, the average tenant was being charged an outrageous \$671.13 on their most recent rent bill. For these low income tenants, such a sum represents a significant increase in their rent burden. Our subsequent report addendum to *The Burden of Fees* expanded this research beyond the Bronx and demonstrated that the charging of fees was a pervasive issue for low-income tenants citywide.⁴⁴

Preferential Rents

A final law that landlords exploit to promote displacement is that of preferential rents. The maximum or legal rent that a landlord may collect from rent stabilized tenants is subject to city and state regulation. While landlords cannot charge above the specified rents, they can charge a lower, "preferential rent" if they choose to do so.⁴⁵ For example, if a landlord in the Bronx can legally charge \$1,385 for a one-bedroom but the current market only yields \$1,200, the landlord can choose to rent out the apartment to a tenant at the lesser rent, calling it a preferential rent. A landlord must properly inform tenants they are signing a preferential rent lease, but sometimes fail to do so. These preferential rents are not permanent: once the lease expires in a year or two, the landlord can eliminate the preferential rent and charge the full legal allowed amount. Currently, approximately 23% of all rent stabilized tenants have preferential rents.⁴⁶

Preferential rents can be exploited to promote displacement in several ways. They can be a deterrent to organizing. Landlords can use the threat of discontinuing a preferential rent to suppress tenant organizing activities, and to keep tenants from reporting hazardous conditions or harassment. Tenants with preferential rents living in bad conditions who choose to exercise their rights must make a conscious choice to put themselves at risk of losing their preferential rents. In addition, tenants who are not aware they are being charged a preferential rent can be completely unprepared when their rent changes suddenly. Tenants can watch their rents rise inexplicably from \$1,000 to \$1,500, and be left without having any actual legal claims to fight the sudden rent increase. Moreover, tenants who actually are overcharged when their preferential rent ends may not be aware of this, or of the fact that they do have legal recourse.



CASA members testify in support of Intro-214A, Right to Counsel, at City Council chambers.

Landlords exploit legal loopholes and lack of enforcement in these areas—MCIs, non-rent fees, and preferential rents—often in combination with one another. These tactics serve to increase the rent burden on tenants. Coupled with denying basic services and repairs, these landlord tactics contribute significantly to displacement pressures. Historically, housing court has also contributed to displacement, as it was used as an eviction mill by landlords, who capitalized on the fact that most tenants were there without legal representation. CASA has organized around this issue for years, and is excited that the Mayor has announced support for Right To Counsel—providing legal representation to low income tenants in housing court. However, at the time of this report, the law has not yet passed. Our recommendation section discusses the need for

passage, implementation and monitoring to ensure that housing court is no longer a site of displacement for tenants.

If rezoning increases the financial gains that landlords stand to make by displacing tenants, there will be more incentive for landlords to use these tactics to push tenants out.

Tenant Profile

Batista

1485 Macombs Road

Interview translated from Spanish

Batista has been in the Bronx over half her life, living 27 years in her current 'building. After a 16-year career as a school bus driver, she recently resigned to care for her sick father as a health attendant. She is active in CASA, as well as the tenant association of her building.

Batista has been in the Bronx over half her life, living 27 years in her current building. After a 16-year career as a school bus driver, she recently resigned to care for her sick father as a health attendant. She is active in CASA, as well as the tenant association of her building. Batista has experienced numerous harassment tactics from her landlord. She has been charged fees by the landlord “without specifying...or saying what those fees are.” She suddenly began receiving fees for a washing machine, despite never having been charged these fees in the past. “I felt very bad,” she says, “very frustrated, because every month it kept accumulating and accumulating.” She has also experienced landlord refusal to do repairs. And four years ago, Batista and other tenants applied for and were granted a rent reduction, but her landlord never actually reduced her rent, capitalizing on the fact that she was not aware the reduction was supposed to have taken place. “He was supposed to reduce everyone’s rent who signed the application,” she says, “and because I didn’t know, he didn’t reduce it. He stayed quiet. He was supposed to reduce it automatically, and he hasn’t given it to me.” These harassment tactics take a toll. “I felt really bad,” she says, “because from one moment to another...they raise your rent without you expecting it...You feel bad and then you are harassed...[T]hey don’t make repairs.”

The landlord hires a changing cast of people who Batista feels harassed by. “I have never seen the landlord,” she says, “nor the manager.” They operate by changing manager after manager.” “We live nervously,” she says. “I’ve felt very depressed,” she continues, “because they knock on your door—POW POW POW POW—like they own the apartment, like they pay the rent. So you have to open the door, and there’s always

two people...I don’t know who they are because they’re not the landlord but representatives of the landlord. And they’re always wanting to take pictures of my home.”

But reporting these issues has its own risks. “I even am afraid to call 311,” she says. “When they find out you make complaints, right away, they send you to court. I even almost spent 5 months going to court. They wouldn’t close the case without me owing them or nothing, they wouldn’t close the case, just to bug me so I would lose another day of work going to court.” She sees these tactics as part of an attempt to displace tenants. “[T]he people who have been long-term in a building, they abuse so much, because what they want is that people leave so they can rent out to someone else. ...what they want is to harass you in such a way that you will leave.”

Batista advocates for “more, stronger laws against landlords because they abuse tenants so much.” “Stronger laws,” she says, “[t]o give you more security and confidence because you live with fear...you live with the fear that they can displace you at any moment.”

“[W]hat they want is to harass you in such a way that you will leave.”

Tenant Profile

Ram Bhul

1591 Townsend Avenue

Ram Bhul grew up in British Guyana, and came to New York at 16 with his family. He has lived in the Bronx since then: “I got into the Bronx, and I never left the Bronx” he says. Bhul has been a volunteer with New York Cares helping with recovery efforts after superstorm Sandy, and is also a member of CASA.

Bhul was balancing numerous responsibilities—work, school and family care—when his negative experiences with his landlord began. “I worked four part-time jobs,” he says. “Two hours sleep, full time college, and I almost finished my PhD when the landlord started giving me a hard time. In that moment, my mom was very ill with breast cancer.”

Bhul had always paid his rent on time and thought his relationship with his landlord was on solid ground, but the landlord started to use multiple tactics in an attempt to displace him. One day, after Bhul had pushed for a repair in his apartment, he came home to find his electricity off. “I came back [from school], I walk in to my apartment: click-click, no light.” At first, he couldn’t believe his landlord would have done this. He thought “he’s a just man, he’s a priest...he wouldn’t actually go that far.” But it became clear that it was in fact his landlord. “So then finally,” he says, “I decided for the first time in my life I would call 311.” The 311 inspectors found that his landlord had left his apartment in disrepair. “The radiator was leaking steam, and the steam was going up and softening the plaster,” he says. “The bathroom ceiling came down.” His landlord also stopped cashing his rent checks. Ultimately, Bhul wound up in housing court.

Bhul describes court as “like another harassment from my landlord. Because his lawyer comes screaming and yelling at you.” The court itself is challenging to navigate. “I was not sure what the process was, and what the procedure was of going to court for the first time. And even after the first time, what happens when you go the second time? The third time?” Bhul was determined to win his case. “I was paying my rent, my apartment was running down, my apartment had no heat, some

days had no hot water. I’m always on the right side,” he said. His fight in court was taxing. “I did everything,” he said. “I was late for my job... I received four or five letters in my file at the job that I’m late for work. But without a home, I can’t go to work. I need my home to take my shower, get dressed and everything. So I have to fight for my home. [It] was really hard, and the court didn’t really care. I was alone.” “The landlord, his goal is to get me out of the apartment,” Bhul said. “He will do anything he can. I had to put up a shield. It’s like you pull a trigger, I had to block it, to move away. How I did it, I don’t know. I only had like one hour...sleep some times.” Bhul feels hopeful that the Right to Counsel (providing low-income tenants access to legal representation in housing court) could “be a very good resource that can help us out,” and he advocates for tenants to be pro-actively notified of their rights, and the procedures in court, when they move in to their apartments. The more educated tenants are, the stronger defense they will have, because landlords exploit and harass tenants who do not know their rights. “They take the lack of knowledge,” he says, “and they turn it against you, and abuse you and insult you and then rip you off at the same time.”

“I came back [from school], I walk in to my apartment: click-click, no light.”

Tenant Profile

Maria Valerio

1295 Grand Concourse

Interview translated from Spanish

Maria Valerio grew up in Santo Domingo and lived in lower Manhattan when she first moved to the U.S., but could not afford to stay there. She has lived in the Bronx, with her daughter, since 2008, and has “been battling ever since...fighting for something affordable.

Maria Valerio grew up in Santo Domingo and lived in lower Manhattan when she first moved to the U.S., but could not afford to stay there. She has lived in the Bronx, with her daughter, since 2008, and has “been battling ever since...fighting for something affordable.” Valerio is passionate about her job working with special needs children. “I’m very dedicated,” she says. “It’s a rewarding career, and you need to be really dedicated to provide the type of love and the time necessary.” Valerio is also involved with CASA, fighting for affordable housing in the Bronx.

Valerio has experienced harassment by her landlord in the form of failure to make necessary repairs. “I’ve tried to always make complaints directly to the office,” she said, “but...the landlord, on many occasions, hangs up the telephone.” Her repair requests have gone ignored, and, she says, “I’ve had to withhold my rent so they make the repairs I need in my apartment.” But the issues persisted. The judge has ordered the landlord to make repairs, but the landlord has evaded responsibility. “[T]hey gave me two dates in which I’ve had to call out of work or pay for someone to stay in my apartment [to be home for repairs], and they never came. They say that I don’t give them access to my apartment, which is a lie.”

The landlords have failed to maintain the apartment for years, making, at best, patchwork repairs. “The ceiling leaks,” Valerio says. “We’re talking about 7 years with the same problem that hasn’t been resolved...it doesn’t matter if they...do patch work or something but if they don’t fix the ceiling, which is where they need to invest, then it’s not worth it.”

The failure to make repairs has taken a toll on

Valerio and her daughter. “[I]t’s been frustrating because I’ve had a daughter that’s had to go through all of this with me,” she says. Valerio has slipped before due to water leaking from the ceiling, and this is now a persistent concern of her daughter. “Every time she sees something like a little bit of a yellow wall, she’ll say ‘Oh mommy, be careful, because you might fall,’” she says. Valerio once had to take leave from her job because of a fall in her apartment.

Valerio had previously navigated the court system alone, but now, she says: “I’m no longer alone...I have the community and family of CASA who is helping me...and I’m not alone in this anymore.”

Valerio calls on landlords and housing court judges to see the humanity of tenants like her fighting for their basic rights. “I’ve seen single mothers like me that take pictures or have proof of their money orders, and don’t get a chance to reclaim their apartments,” she says. “I’d like to say, if humanly possible, for the landlord....the judge, if they put themselves in the shoes of tenants, for each person that goes to housing court.”

“I’ve had to withhold my rent so they make the repairs I need in my apartment.”

Tenant Organizing Profile

Tenant Organizing Profile: The Power of Collective Action at 1777 Grand Concourse

For more than 150 families who live at 1777 Grand Concourse, a building just north of the Cross Bronx Expressway, living with dignity and respect has been a daily fight. Since 2012, the building has been sold three times, almost doubling the property value ⁴⁷, yet tenants have not benefited from the change in ownership.



The day before Thanksgiving, Tenants at 1777 Grand Concourse hold a press conference to protest their lack of cooking gas and publicly shame their landlord for lack of accountability.

On June 3, 2016, the cooking gas was shut off in the entire building due to a gas leak. After waiting a couple of months for the issue to be fixed by the landlord, Dilcia, a tenant in the building decided to take action by suing her landlord in court. Dilcia has lived in the building for 10 years, has family in the building, and has built relationships with her neighbors. Dilcia met an organizer from CASA and learned the importance of tenant organizing and collective action. These deep relationships inspired a commitment to working collectively. She was determined to work with all her neighbors instead of taking on this fight alone.

After discussing the issues with her neighbors, they joined forces as a tenant association to begin a group case for repairs with the support of Bronx Legal Services. Working with CASA, Dilcia understood they needed as many tenants as possible to join the case. After two months of flyering the building, hard work and strategizing at meetings, one-on-one conversations in the lobby, and more, over 60 tenants had signed up.

Dilcia was also aware that tenants needed to develop other strategies to build and demonstrate their power. In early November of 2016, Dilcia and other tenant leaders led and facilitated a tenant association meeting. They talked to their neighbors about the case and about the urgency to take action to fight for their rights and dignity. Tenant leaders also realized that in order to get more tenants involved, they needed to address internal issues such as language barriers and racial tensions. They worked closely with CASA to structure trainings and conversations about language and racial justice. These conversations were essential in bridging and building relationships to further the organizing work.

After several meetings, tenants decided to involve the media by scheduling a press conference to publically hold their landlord accountable. While some tenants felt equipped to speak publically and present their issues, there were others who were nervous, scared, and frustrated. In order to prepare, tenant leaders ran a mock press conference at a tenant meeting, helped edit each other's portions of the agenda, provided feedback, and crafted their message to the media. The day before Thanksgiving, tenants held the press conference to a large crowd and garnered great coverage. Tenant leaders who spoke shared a wide variety of experience and represented the diversity of the tenants in the building. And the media work did not end there. On the following day, Thanksgiving, Univision showed up to the building without any prior notice. The tenant leaders quickly organized, called neighbors, door-knocked, got their signs and held an impromptu press conference about what it meant to celebrate Thanksgiving without gas. One week later, gas was turned on for about

50 tenants: one-third of the building.

But tenants did not relent or stop their fight. They spent the majority of December 2016 collecting signatures for a building-wide application to DHCR to have their rents reduced for lack cooking gas and broken elevators. Over 60 tenants ended up filing the rent reduction with the state, and a few weeks before Christmas, the judge on the case ordered the landlord to fix the gas by February 6th 2017.

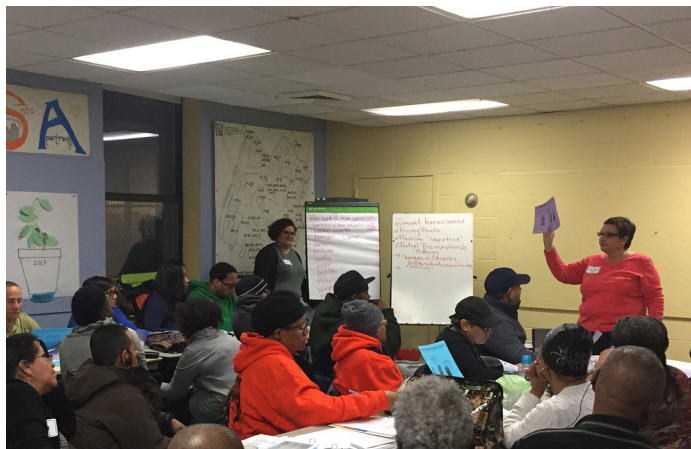
When February 6th came and went without the gas being restored, tenant leaders moved to action. Three leaders attended CASA's five-week leadership development course to further develop their skills and knowledge. Tenant leaders brought in attorneys to address concerns about their rights as immigrants in the new political climate. Leaders also decided that they needed to celebrate their resistance, hard work and community. They cooked, collected donations and held a celebration in the lobby of their building. The celebration inspired a sense of community, accomplishment and appreciation—and renewed commitment to keep fighting.

The struggle for these tenants is ongoing, and two-thirds of them still don't have cooking gas at the time we are writing this paper. But they have gained a sense of their power, their leadership and their community. Their leadership has taken many forms: speaking at press conferences, flyering and door-knocking, turning their homes into meeting spaces, coordinating a tenant celebration, and providing each other and their families support. After 10 months of organizing there are new networks and a new sense of community. These tenants will use these organizing skills and networks to win justice for themselves and the community.

“But they have gained a sense of their power, their leadership and their community.”

Rezoning Will Increase Displacement and Jeopardize Affordability

As we have outlined, there are a series of tactics and mechanisms that landlords are already exploiting to displace tenants in the Southwest Bronx. The City's plans for rezoning threaten to increase displacement pressures without adding protections. While the City could be releasing a robust policy agenda to combat displacement and preserve affordable housing, they've instead laid out a plan to facilitate the construction of privately owned residential housing, some of which they will subsidize at levels that will be mostly unaffordable to current residents. They have done so without offering sufficient neighborhood-based preservation and anti-displacement measures.



CASA Leader Carmen Vega-Rivera facilitates a teach-in on the Jerome Avenue rezoning at a Leadership Development Institute session for members.

City officials have repeatedly said that rezoning is not connected to displacement,⁴⁸ but the links between the two are clear. Rezoning changes the use of the land. Changing the use of land changes the value of land. In the Jerome Avenue rezoning, there is almost no publicly owned land available for development,⁴⁹ which means the government is changing the uses and values for private purposes. The plan is explicitly about changing the use of manufacturing, industrial and auto-related land to be used for residential housing, making the land significantly more valuable, given that land

zoned for commercial use can be valued up to twice as high as industrial in the same area, and land zoned for residential uses can be valued as much as four times as high as industrial.⁵⁰ When the government changes the rules in this way, it is not only influencing the housing market, it is creating an investment opportunity. This increases the incentives for landlords to use the tactics already at their disposal to attempt to displace existing tenants so they can make more profit. Unless we can control what kinds of investment opportunities are created, and have strong protections against displacement, rezoning will translate into putting money in the pockets of private developers while displacing current residents.

The City's Current Rezoning Plans Do Not Create Genuinely Affordable Housing

In the context of privately owned land that's zoned for residential housing, the City has put forward two primary tools to control what kind of new housing and commercial development is built in the neighborhood and for whom.

One is Mandatory Inclusionary Housing (MIH), which mandates that developers set aside a portion of the new units to be affordable. The complicating factor is that "affordability" is not universal. Even if new units meet a definition of "affordability," they may not be genuinely affordable to community members. For the Southwest Bronx, the levels of affordability that MIH mandates are out of reach: excluding 78% of neighborhood residents in Bronx Community Boards 4 and 5.⁵¹

The other tool is the use of subsidy programs: using public money to subsidize developers to build housing. The subsidy program that currently provides the deepest level of affordable housing, called ELLA, creates apartments that are affordable, primarily, to families making \$50,000 per year.⁵² Given that the median annual income for a family of 4 in the Bronx neighborhoods being rezoned is \$24,000, this is also inadequate.⁵³

A rezoning is a statement about how and for whom a neighborhood should be designed. The City's rezoning sends the message that the neighborhood is not being designed for low-income people or current residents. Neither MIH nor ELLA can be used to create housing that is truly affordable for

residents of the Southwest Bronx. Unless the city creates new programs, current residents will not benefit from the new housing development, and those with higher incomes will move in, creating more displacement pressure.

Unaffordable Housing Creates Displacement

Many people argue that higher-income tenants will fuel economic growth and raise living standards as the neighborhood changes.⁵⁴ While this may be true, the critical question is whether current residents, low-income people of color, will still be around to benefit. For example, after the rezonings in Williamsburg and Harlem, the neighborhoods became dramatically whiter, wealthier and more expensive.^{55,56}

In a real estate market where housing is privately owned, higher income tenants mean higher profits. Once higher income tenants begin moving into a neighborhood, and especially if they move in rapidly, landlords of existing housing will have an increased financial incentive to push out low-income, rent stabilized tenants. As we have outlined, many of these landlords are already using a variety of tactics to displace tenants: harassing tenants and exploiting legal loopholes. Giving them this additional profit incentive will only embolden their efforts.

not end there. As tenants are forced to move, the apartments they leave behind will become less affordable. If these displacement pressures are successful, individuals will be hurt, communities will be disbanded, and we risk losing one of the few remaining affordable neighborhoods in our city.



The Tenant Association at 65 Jesup Avenue meets with their attorneys to strategize filing a case for repairs.

As we know, displacement can and will have devastating impacts on individual tenants and their families. But it does

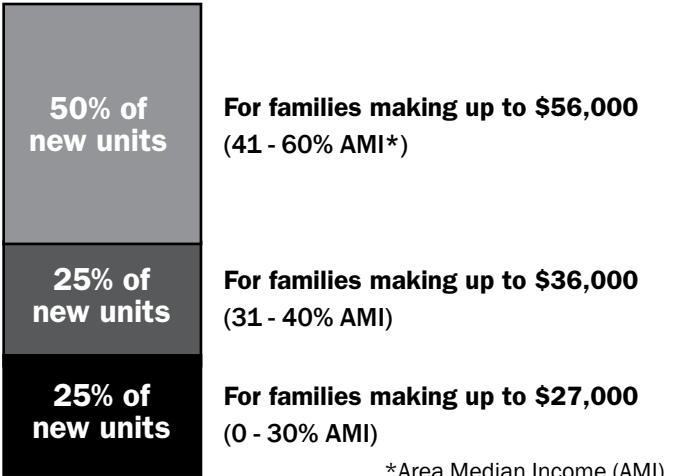
The City Must Promote Real Affordability and Implement Strong Anti-Displacement Measures

We don't need to repeat our past. We don't need to work within the confines of the market. We need to create new possibilities and we need to raise the expectations and standards for what it means to be a New York City tenant. We can fuel investment and growth but must do it in a way that respects our history and builds our dignity. Creating bold new financial models for deeply affordable housing and inventing new strategies to stop displacement are crucial in the fight for a just city.

Create Housing that is Affordable to Current Residents

Creating housing that meets current neighborhood needs will not spur this cycle of displacement. That is why building real affordable housing is a key preservation and anti-displacement policy. So how can we do that in the context of a private housing market? We should not use any public dollars or public land to finance housing that is not affordable to the public. ELLA and MIH won't work in the Southwest Bronx, because they do not produce housing that is affordable to the people who live there. We need a new way of subsidizing affordable housing that meets neighborhood needs. Here is what a real affordable subsidy program looks like:

Here is what a real affordable subsidy program looks like:



Protect Tenants from Displacement

We need a robust preservation strategy and we need it now, before the rezoning happens and land prices change. Here is what a robust preservation strategy looks like:

- Pass, Implement and Monitor Intro 214-A, the Right to Counsel.** Mandating a right to counsel for tenants to protect their homes not only reduces evictions (research shows that legal counsel can reduce evictions by as much as 77%⁵⁷) but it changes the nature of what housing court is. It also strips landlords of an effective harassment tool—threatening tenants with eviction knowing that they can win because they have power. A right to counsel establishes a new base line for tenant organizing— tenants no longer fear eviction as a result of organizing. The Mayor's announcement in February of 2017 to support, fund and pass this law was a major step forward. However, this commitment must still be enacted and implemented in a way that creates a right, not a program. Careful monitoring is crucial, and tenant voices must be centered in the process.



CASA members celebrate a historic Right to Counsel hearing with one of the bill's sponsors, Council Member Vanessa Gibson.

■ **Pass and Implement Citywide “Certificate of No Harassment” Legislation.** Renovations are one of the key tools landlords use to raise rents through Individual Apartment Increases (IAs) and Major Capital Improvements (MCIs), and, more generally, are often needed to attract higher-paying tenants. Renovations also represent a moment in the cycle of displacement where the City has a real ability to intervene because of the need for Department of Buildings (DOB) permits for most major work in both individual apartments and building-wide. A Certificate of No Harassment (CONH) law would discourage tenant harassment by preventing landlords with a history of harassment from accessing those DOB permits. Where now landlords see tenant harassment as a means to increase rents, a CONH law would turn tenant harassment into an impediment to higher profits. This proactive protection is urgently needed in the Bronx, and should be passed swiftly into law, and implemented with sufficient funding to both agencies and local community organizations to ensure the new law can be successfully used by tenants and enforced by HPD and DOB.



Tenant Leaders of 1212 Grant Avenue pose after a strategy meeting.

■ **Create an Anti-Displacement Task Force** with regular meetings between local community organizations and HPD to discuss strategies for preservation. The task force should have the necessary resources to use all of HPD’s available tools, including Alternative Enforcement Program (AEP), 7A, 8A loans, aggressive litigation, and Spiegel, in a collaborative, focused, and consolidated way to maximize impact. This task force should also create a live map of distressed buildings to help community stakeholders and City officials identify buildings in distress.



Tenants from 750 Grand Concourse protest former ‘NYC Worst Landlord’ Parkash in front of Bronx Housing Court.

■ **Implement our previous recommendations related to non-rent fees.** Our research has demonstrated that these non-rent fees are used by landlords to increase the rent burden on low income tenants in order to push them from their homes. Protection against displacement must include protection from these fees. Our recommendations can be found in our reports on non-rent fees: *The Burden of Fees*⁵⁸ and the subsequent citywide addendum to that report.⁵⁹

In addition, cities across the globe are dealing with similar challenges and have introduced new and exciting ideas, from a racial justice analysis toolkit to giving tenants the choice of who buys their building in a foreclosure.⁶⁰ We should learn from them and make policies that work even better.

Call to Action



Tenant Leaders at 949 Ogden Ave. hold a press conference to announce that they're taking their landlord to court.

We often hear a false narrative about why low-income tenants of color leave their communities. We are told that people leave their apartments by choice. We are told that tenants' fears of displacement in the context of a rezoning are not legitimate, and that they merely fear change. Landlords in that story are innocent. But that story is ahistorical—it denies the history of the Bronx and the racist and profit-driven housing policies that contextualize our lived experience today. And that story flies in the face of our 4,000 members. We have shown in this paper that displacement is real; that it is forced movement. The Southwest Bronx has a long history with displacement, and tenants have led the way in fighting back and rebuilding their communities. We have demonstrated that private for-profit landlords engage daily and systematically in practices to force tenants to move so that they can raise rents. Landlords strategically pick tactics to achieve the goal of displacing tenants. They deny basic services and repairs, utilize housing court as an eviction mill, and exploit loopholes and lack of enforcement in laws. If, as the result of a rezoning, landlords have an added financial incentive to displace tenants, they will already have these tools at their disposal.

In this pivotal moment, when the City is poised to move forward with a rezoning in the Southwest Bronx, we are faced with two possibilities. The first possibility is that the rezoning will be a gift to landlords. The tactics that landlords use to displace tenants will pay off when the

rezoning changes land values, and the promise of their slow and steady neglect will bear fruit in richer, whiter tenants. The other possibility, the one we fight for, is that this will prove to be a rezoning for low-income tenants of color. That the rezoning will be buttressed by so many anti-displacement policies that it will be something different: investment that corrects the past wrongs of our city's developers and policy makers and creates a new path forward of development without displacement. This paper shows that this alternate path forward is necessary, and our recommendations show that it is possible.

If current city regulations worked to protect against displacement, tenants wouldn't need to organize tenants' associations or form campaigns to win basic things like heat or the right to not be charged illegal fees. But tenants do fight these fights—every day. CASA members spend hours at meetings, doing the hard work of turning strangers into neighbors, conquering their fears to speak in public, and making demands of city officials so that they can have what they should have just by virtue of living in New York City. We should be awed by them, by their persistence to make their lives and their homes better for themselves and their neighbors, and we should follow their lead. The City has the opportunity to do just that, and to create a plan for the future of the Southwest Bronx that learns from, honors and protects these tenants.

The Bronx is a tipping point for our city: a measure of how we succeed and whose lives we value. If we cannot figure out how to bring in investment in the Southwest Bronx without displacing thousands of tenants, without repeating our past, then we can't do it anywhere.

But if we can do it here we can do it everywhere.

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AUGUST 2017

Overview

The **Bronx Coalition for Community Vision** ("the Coalition") calls for a comprehensive approach to address its four priorities including (i) *strong anti-harassment and anti-displacement policies for residential and commercial tenants*; (ii) *real affordable housing*, (iii) *good jobs and local hire*, and (iv) *real community participation*. To date, Mayor de Blasio and the Department of City Planning (DCP) have not adopted meaningful strategies to advance any Coalition priorities. Building off of the Policy Platform released by the Coalition in 2015, this document identifies a potential pathway for advancing the goal of protecting auto tenants from displacement. The Coalition engaged Pratt Center for Community Development to develop an alternative proposal that retains a greater number of auto businesses as just one example of how the City can do much more to protect these important jobs. The strategies described in this document are not meant to reflect a stand alone approach but should be considered as part of a holistic plan that advances the Coalition's set of priorities.

DCP's Proposal will Displace the Majority of Auto Businesses

According to a DCP survey conducted in 2014, there are 145 auto-related businesses in the Jerome Avenue rezoning area.¹ These businesses include auto body mechanics, glass repair and tire shops, comprising a closely-knit auto cluster that provides both employment for local residents and competitive advantages for businesses and their customers.

DCP's proposed rezoning encompasses 73 blocks along Jerome Avenue, a corridor characterized by local mom and pop shops, many of which are auto-related. Currently, the majority of the area is zoned C8, a commercial zoning district that allows auto-related uses as-of-right and prohibits residential development. DCP's proposal is to rezone the vast majority of these blocks to allow residential development, retaining only four small

areas as C8 or M1.² These four clusters host 40 auto businesses or just 28%. The remaining 72% of auto-related businesses are located on blocks where the City plans to change the zoning to allow residential development. The introduction of housing will displace auto businesses in these areas, as property owners can receive a significantly greater return on their investment for residential uses. As the character of adjacent blocks shift, auto businesses in the four C8 and M1 "retention zones" will likely face displacement pressures as landlords are incentivized to cater to a growing residential community.

How Can Jerome Auto Businesses Be Saved?

The Bronx Coalition for a Community Vision is calling for NO REZONING unless auto businesses and workers in the area are protected from displacement and are given a real opportunity to continue making a living. The Coalition's proposal is just one example of how a rezoning can protect auto workers from displacement.

DCP proposes to leave just 4 small areas where the zoning stays the same. The City predicts that, after a rezoning, 72% of existing auto businesses will be eligible to be displaced by new housing, a new status that will make it virtually impossible to survive. With no new protections, the remaining businesses will have to compete with new stores and restaurants and likely lead to even more closures.

The Coalition proposes developing additional retention areas and expanding supportive services to assist auto businesses. Figure 1 demonstrates that by expanding the retention areas to 8 clusters, the City could retain a much higher percentage (64%) of auto business in the neighborhood, resulting in only 486 fewer housing units on the four projected sites, which could be built elsewhere nearby. A guaranteed relocation program would ensure that 100% of auto businesses have the opportunity to keep operating. Any relocation must seek to replicate the benefits of a clustered location close to a major thoroughfare.

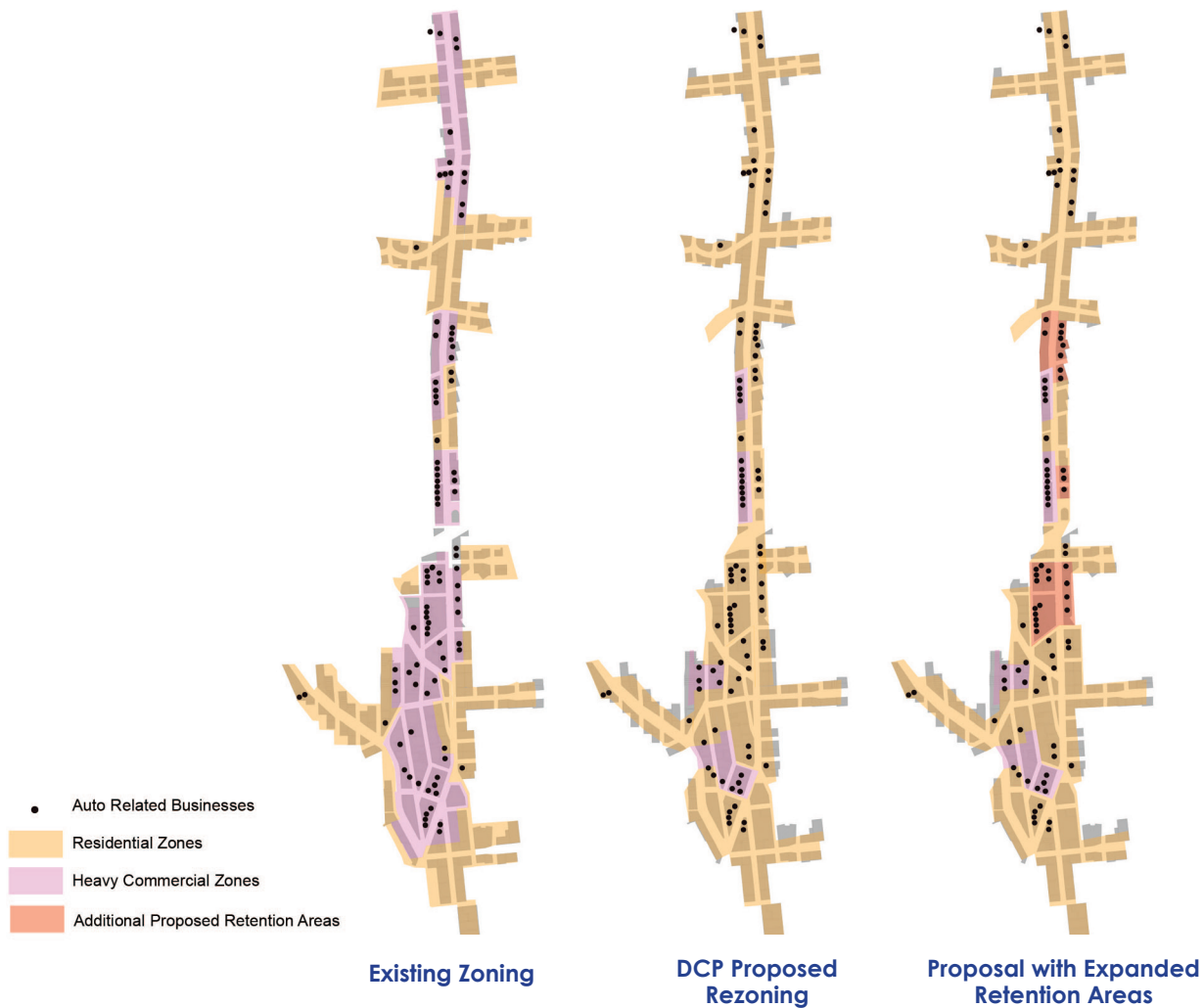
¹ The following categories from DCP's survey are included as "auto related": auto accessory and repair, auto repair, auto sales/rentals and other auto. Gas stations, parking and covered parking are included as Other Businesses. If these were to be included as auto-related businesses the total would be increased to 192, representing 25% of all businesses in the rezoning area.

² M zones, or manufacturing zones, also allow auto uses as-of-right and prohibit housing

THE PROPOSED STRATEGY CALLS FOR:

1. Limiting other uses in the retention areas to protect the remaining auto businesses
2. Expanding the auto retention areas to preserve a greater percentage of auto businesses
3. Supporting auto businesses with new publicly funded programs
 - a. Establishing Amnesty Program for Certificate of Occupancy so businesses can obtain necessary permits and licenses, and provide support for ongoing compliance
 - b. Forming an auto business "clinic" to assist companies with business management and administration
 - c. Provide training programs for auto business employees and local residents in auto sector
 - d. Creating an advertising campaign to promote Jerome Avenue auto businesses
4. Establishing a Guaranteed Relocation Program for Jerome Auto Businesses³
 - a. Assist displaced companies to relocate within the Jerome Avenue retention areas
 - b. For companies that cannot stay on Jerome Avenue, develop a site that can house a large group of auto businesses **BEFORE** the rezoning action is completed

FIGURE 1 Jerome Avenue Rezoning & Expanded Auto-Business Retention Areas Comparison



³ Relocation can be a strategy that works ONLY if and when: (i) there is enough funding for the project before businesses have to move; (ii) the timing is right – new facilities must be completed and ready to be occupied before businesses are forced to close.

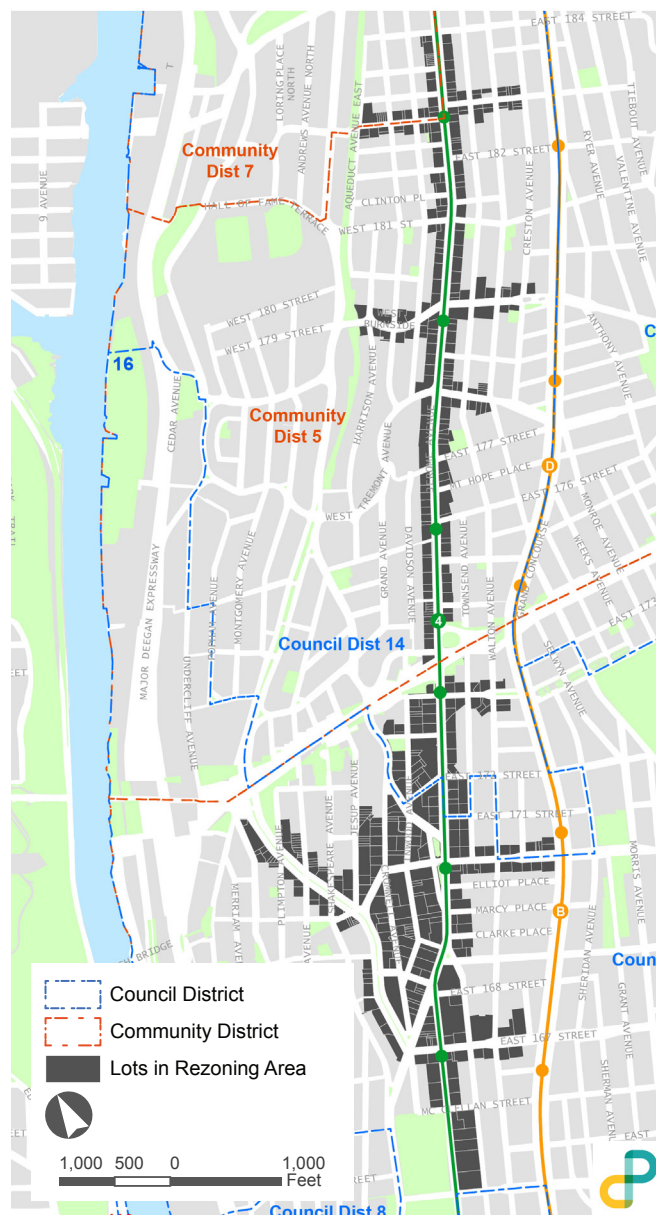
The Jerome Avenue Auto Corridor

The Jerome Avenue rezoning area stretches along Jerome Avenue from 165th Street to 184th Street; the Cross Bronx Expressway intersects the corridor at approximately 174th Street (see Map 1). This portion of Jerome Avenue is one of the city's dense auto clusters, with concentrations of auto-related businesses on both sides of the street.

In preparation for the rezoning, the New York City Department of City Planning (DCP) surveyed businesses in the Jerome Avenue Rezoning Area. Findings from the 2014 survey showed that the documented 145 auto-related businesses in the area comprised 16% of all businesses, not including gas stations and parking (see Map 2).

Similar to the city's other auto corridors, the businesses along Jerome Avenue form a tight network that depend on their clustered nature; multiple businesses operating in one area. Clustering facilitates the purchasing of products and services from one business to another and keeps prices competitive for customers who quickly and easily find a range of goods and services in one location. These businesses also benefit from their close location to major thoroughfares, such as the Cross Bronx Expressway. Its close proximity to the number 4 subway line not only enables customers to drop off their cars for repair, but allows employees to quickly commute to work via mass transit.

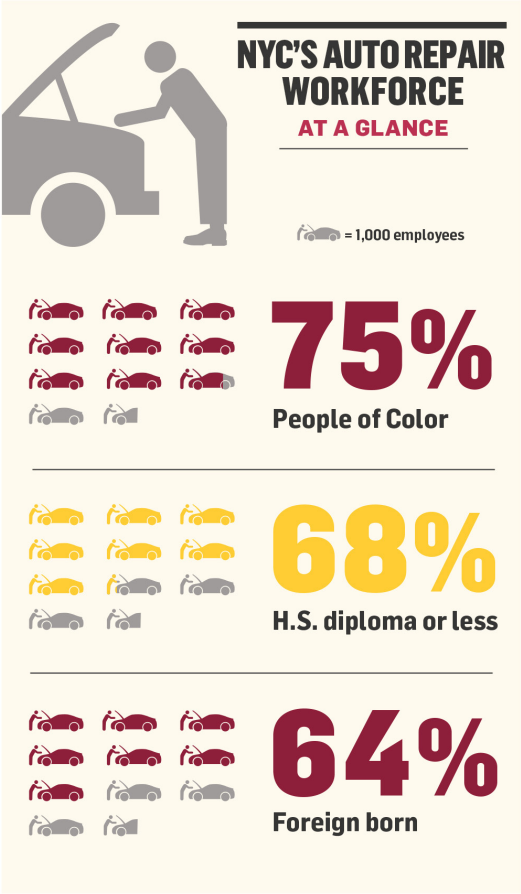
MAP 1: Context Map



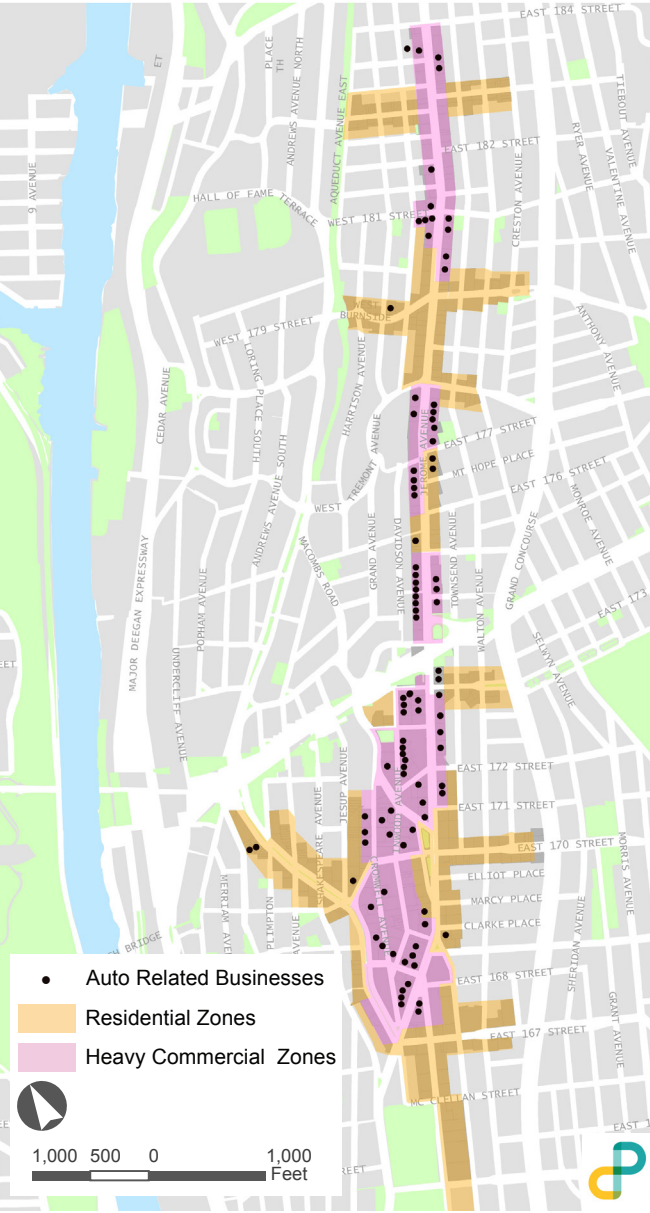
The area's current zoning districts, primarily C8 and M1, prohibit housing, further supporting the operation of auto-related businesses without the conflict from residential development and the pressure of high rents.⁴

4 Auto repair businesses are able to locate as-of-right (i.e. without a special permit) in C8 and M1, M2 and M3 zones.

Further, auto businesses are a critical source of employment, especially for immigrants, people of color, and those with limited educational attainment. Citywide, careers in the auto industry provide decent wages. The average annual wage for auto occupations in New York City is \$44,000.⁵ By comparison, food preparation and retail—two industries that employ large numbers of individuals with a high school degree or less—have average annual wages \$20,000 less a year.⁶ Actions that jeopardize the area’s well-paying jobs in an area with a 17% high unemployment rate must be reconsidered.⁷



MAP 2
Auto Related Businesses in Jerome Ave
Proposed Rezoning



5 NYS Department of Labor Occupation Employment Statistics, 2015
6 NYS Department of Labor Occupation Employment Statistics, 2015
7 NYC Department of City Planning Jerome Ave Neighborhood Profile

Department of City Planning's Proposal

To encourage residential development, DCP has proposed to rezone the majority of the 73 block area to R7, R8, R9 (high density residential districts) and C4-4DL (a regional commercial zone that permits high density housing). There are three small areas that will retain their existing C8 zoning designation and another small area that will retain its existing M1 zoning.

Although currently in the proposal stage, the Jerome Avenue Corridor has begun to feel the weight of displacement. Already, the plan has produced a variety of negative impacts on auto repair businesses including, month to month lease installments and rent increases. Further, some auto repair businesses have been evicted in anticipation of higher paying uses.⁸ Although the inclusion of these "retention zones" within the plan acknowledges the critical role of the auto industry in the Southwest Bronx, DCP's proposal puts many businesses at risk while failing to address many of the most urgent issues faced by auto businesses along Jerome Avenue.

DCP's proposal leaves too many businesses at risk and fails to address many of the most urgent issues faced by auto businesses along Jerome Avenue.

To better serve these businesses and ensure that they remain part of the future of the Southwest Bronx, the Bronx Coalition For A Community Vision calls on the City to modify its proposal to ensure greater opportunities for auto businesses and employment in the rezoning area. As such, the Coalition puts forth the following recommendations.

⁸ United Automotive Merchants Association

1

EXPAND THE RETENTION ZONES

To maintain the Jerome Avenue auto cluster, the most critical action is to expand the areas where the current zoning does not change, allowing auto businesses to continue to operate as-of-right. The retention zones under DCP's current plan only host 40 auto-related businesses, leaving 105 auto businesses in blocks slated for residential development, and therefore likely to be displaced (see Map 3). In theory, auto businesses displaced from the rezoned blocks could move to one of the "retention zones." However, these areas have very low vacancy: according to DCP, there are only 10 vacant properties in the retention areas with a total of 83,500 square feet of space. The remaining 105 businesses occupy 613,000 square feet of space, a clear gap between the expected need and supply.

The Coalition proposes four additional areas where there are currently clusters of auto businesses (see Map 4a and 4b):

- An area between 175th and Clifford Place on the eastern side of Jerome Avenue
- Tremont and (almost) Mount Hope on both sides of Jerome Avenue
- Triangular blocks south of the M1-2 district near 167th Street
- 172nd Street to Mt. Eden Avenue on both sides of Jerome Avenue

Together, these areas have 53 auto businesses, bringing the total number of auto businesses in the "retention zone" to 93, representing 64% of all auto businesses in the study area (see Table 1). These additional "retention zones"

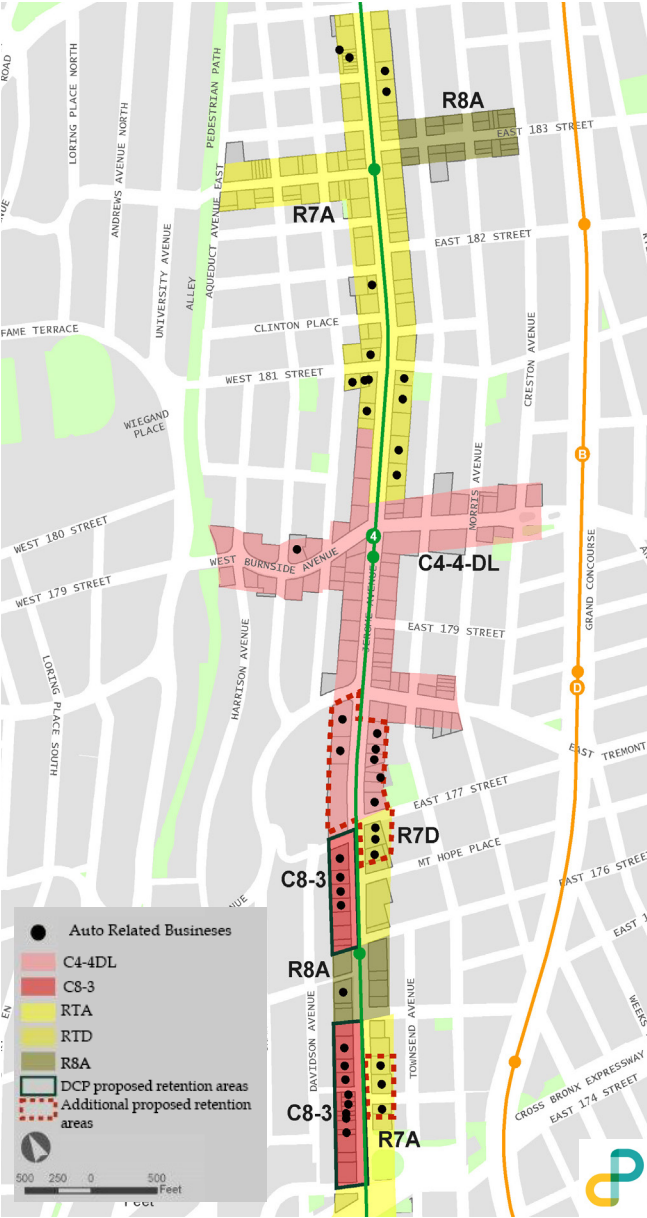
have 5 vacant properties totaling almost 25,000 square feet, bringing the total vacancy in the eight retention areas to just over 108,000 square feet across 15 properties.

MAP 3

Auto Related Businesses in Jerome Ave Expanded Coalition Retention Areas



MAP 4a
DCP and Coalition Proposed Retention Zones (North)



MAP 4b
DCP and Coalition Proposed Retention Zones (South)

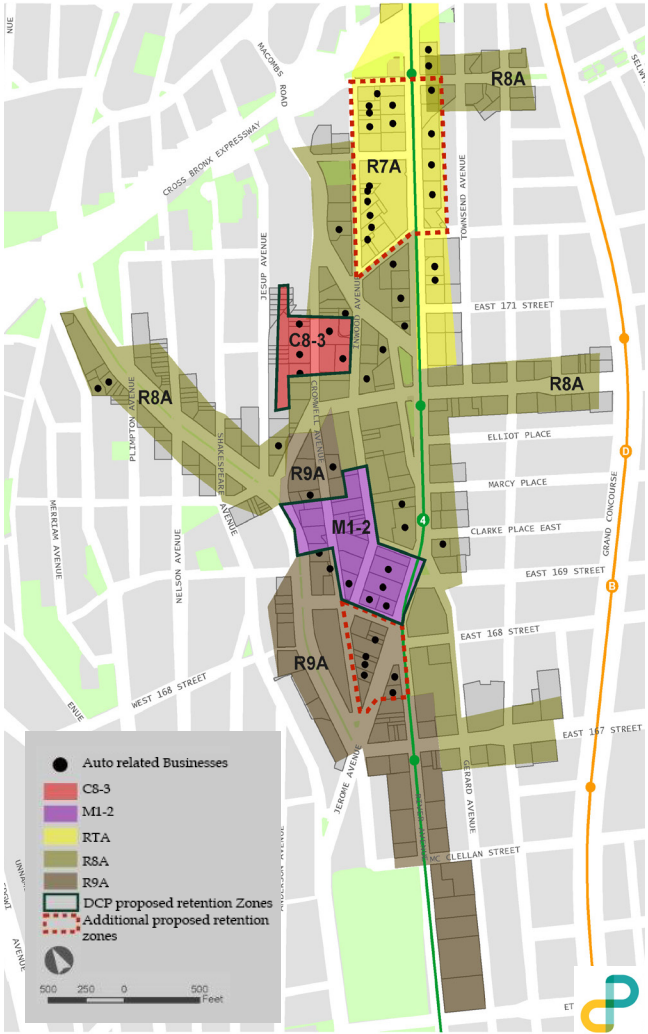


Table 1
Number/Percent of Auto Businesses Per Square Foot

	Number of Auto Businesses	Percentage of Auto Businesses
Existing area proposed to be rezoned	145	100%
City's four proposed retention areas	40	27.60%
Coalition's additional four proposed retention areas	53	36.60%
Total proposed retention areas	93	64.10%

Most of the sites in the additional retention zones are not projected for housing development. Currently, there are four sites in the blocks just south of the Cross Bronx Expressway that the City has projected a total of 486 new units of housing. However, if the retention zones were expanded as we recommend, there would still be 3,544 dwelling units on projected sites and another 6,511 units on potential sites in the rezoning area.⁹ If just 7.5% of the potential sites were developed, the housing production goals remain the

same, while concurrently, including 93 auto businesses in the retention zones. Additionally, the Coalition has consistently advocated for deeper levels of affordability –higher levels of subsidy per unit – than the City's current term sheets create. If the overall number of dwelling units were to be reduced slightly, the Coalition feels that the funds "saved" on these units should be redirected to make the remaining units more **deeply** affordable.

⁹ Projected sites are considered more likely to be developed within DCP's ten-year analysis period. Potential sites are considered less likely to be developed within that same time period. However, the criteria for determining a potential site is based partially on subjective criteria and as such could be developed after the rezoning action was approved.

2

STRENGTHEN RETENTION AREAS BY LIMITING ALLOWABLE USES

Auto businesses in the retention areas are not free from displacement pressure. While the “retention zones” maintain zoning that allows auto uses as-of-right, they also allow other commercial businesses as-of-right that can pay more than auto uses typically can afford. For example, self-storage, restaurants and retail establishments have land values as much as five and a half times that of an auto business. As a result, landlords will court these higher-paying uses, placing real estate pressure on auto businesses even in the retention zones.

In addition to a large auto cluster, Jerome Avenue is home to a large variety of other businesses, most of which are small and locally

owned. Food stores, salons, and other small-scale businesses located on Jerome avenue provide much needed goods and services to area residents and employees. There are 60 non-auto businesses in the proposed expanded retention zones. Maintaining the existing zoning in these expanded retention zones will help to keep rents more affordable for these key businesses.

In order to strike a balance between having a variety of business types along the retail corridor and maintaining affordable rents throughout the retention zones,¹⁰ the City should restrict non-auto businesses to a small footprint and require a special permit for self-storage, hotels, and entertainment uses.

10 Pratt Center for Community Development, *Under the Hood: A Look into New York City's Auto Repair Industry*, February 2017, p. 3

3

CREATE AN ENHANCED PACKAGE OF AUTO BUSINESS SUPPORT

3A. Establish a Certificate of Occupancy Amnesty Program so businesses can obtain necessary permits and licenses and provide support for ongoing compliance.

Jerome Avenue auto businesses, like many auto businesses around the city, have another vulnerability that may be exacerbated once a rezoning is approved: many auto businesses operate in a building with an inaccurate Certificate of Occupancy (C of O). Auto businesses are required to operate in buildings that have a C of O issued by the New York City Department of Buildings specifically for auto repair. This C of O is required for the approval of permits from a number of state and city agencies; without it the auto business is subject to fines from each of the agencies.

Auto businesses are subject to a long list of regulations from a variety of government agencies. Without an accurate Certificate of Occupancy from the NYC Department of Buildings, the process for obtaining the required licenses and permits from the following agencies is compromised:

- NY State Department of Motor Vehicles (DMV)
- NY City Department of Consumer Affairs (DCA)
- Fire Department of New York
- NY City Department of Environmental Protection (DEP)
- NY City Department of Environmental Conservation (DEC)

TABLE 2

Permits that Cannot be Properly Obtained without Correct Certificate of Occupancy

1	License (DMV)
2	License (DCA)
3	Business Permit for Auto Repairs (FDNY)
4	Business permit for compressor (FDNY)
5	Business permit for blow torch (FDNY)
6	Business permit for oxygen tank (FDNY)
7	Employee certificate of fitness for compressor use (FDNY)
8	Employee certificate of fitness for welding machinery (FDNY)
9	Employees certificate of fitness for spray paint use (FDNY)
10	Certifications of annual inventory of chemicals stored on site (DEP)
11	Business permit for used oil tanks (DEC)
12	Business permit for bulk petroleum storage (DEC)

In the Jerome Avenue rezoning area, 70% of the buildings do not have a C of O appropriate for an auto repair operation.¹¹ However, only the landlord can change the C of O, which is a difficult and lengthy process. Landlords will have little incentive to take the time and effort to make this change if they can receive higher rents from a higher paying commercial or residential use. This paves the way for the displacement of auto businesses and employees and makes it harder for auto businesses to open in a new space.

To make sure area auto businesses can comply with local and state regulations, the NYC Department of Buildings should establish a Certificate of Occupancy Amnesty Program that can be initiated by auto business owners regardless of whether they rent their space or not. This program should:

- Provide an accurate C of O; and
- Exempt applicable fines from other government agencies stemming from the inaccurate C of O.

Going forward, tenants should be allowed to initiate changes to a building's Certificate of Occupancy with a landlord's consent. However, even with a correct C of O, complying with the long series of regulations can be a difficult and timely process for most small business owners. To assist local auto businesses in their compliance efforts, the City should provide programming funds to offer free or discounted legal services to individual businesses.

3B. Form an auto business “clinic” to assist companies with business management and administration.

The vast majority of auto businesses along the Jerome Corridor are small, independent shops that face the same challenges as other similar sized businesses across the city. However, as real estate pressure mounts in the area, Jerome Avenues shops will need to maintain efficient operations to remain successful.

In order to assist local auto businesses, the City should provide programming funds to offer free or discounted business support services. These services can include, helping tenant businesses negotiate lease terms, advising businesses on administration practices, and informing business owners of their rights. The entity that provides these services should be located in the Jerome Avenue area with close ties to the auto industry for the greatest impact of service delivery. Such programming should be delivered in a culturally and linguistically appropriate manner, and tailored to fit the needs of the businesses owners in the area.

¹¹ Pratt Center for Community Development, Under the Hood: A Look into New York City's Auto Repair Industry, February 2017.

3C. Provide training and educational programs for auto business employees and local residents interested in a career in the auto sector.

The Jerome Avenue auto corridor provides well-paying jobs for local residents, especially immigrants with limited English skills. Citywide, the average annual wage for auto occupations in New York City is \$44,000.¹² In the Jerome Avenue corridor, current unemployment is at 17%.¹³ Access to decent jobs is critical to the vitality of the neighborhood.

To support career pathways in the auto sector—both for incumbent and new workers—the City should provide training and other educational programming for local residents. These trainings should be held in the workers' dominant language and/or support the development of English language skills. Additionally, trainings in the development of worker cooperatives, a legal way for undocumented immigrants to earn a living, should be offered.

3D. Initiate a marketing and advertising campaign to promote Jerome Avenue auto businesses.

As non-auto commercial and residential uses begin to increase in the area, the neighborhood character will undoubtedly change. Any displacement of auto businesses will undermine the area's reputation as an auto cluster, encouraging customers to shop elsewhere for goods and services.

To ensure the area continues to be known as a place customers can easily travel to for a variety of auto repair needs, the City should brand the retention areas with appropriate signage and initiate marketing and advertising efforts to promote the Jerome Avenue auto cluster.

¹² NYS Department of Labor Occupation Employment Statistics, 2015

¹³ NYC Department of City Planning Jerome Ave Neighborhood Profile

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ESTABLISH A RELOCATION PROGRAM FOR DISPLACED BUSINESSES

Relocating a business is not an easy endeavor, even when it involves moving just down the block. The moving costs, time, and money required to relocate, coupled with general business disruption can be quite onerous for a small business. Nonetheless, relocation will be a reality for many auto businesses in the Jerome Avenue area if a rezoning action proceeds. To mitigate this impact, the Coalition calls on the City to establish a multi-pronged relocation strategy for area auto businesses before a rezoning is certified.

The Coalition seeks to retain Jerome Avenue auto businesses in the area, but recognizes that there is not enough space in the retention zones (even once expanded) to accommodate the large number of firms that will face displacement. As such, it calls for a relocation program in the following priority order:

4A. Assist displaced companies to relocate within the eight retention zones in the Jerome Avenue auto corridor.

As noted above, according to DCP there are 15 vacant properties in the eight “retention zones” (DCP’s and the Coalition’s proposed areas combined), comprising approximately 120,000 square feet.¹⁴ The City should work with auto businesses located in the rezoned areas to move to, and fit out if necessary, vacant properties in the “retention zones.” In doing so, they can remain a part of the Jerome Avenue auto cluster and continue to reap the benefits of this prime auto location. Each displaced business relocating to a “retention zone” should be eligible for a relocation grant equal to 12 months of their rent from the previous calendar year.

¹⁴ DCP’s survey was conducted in 2014 and as such the current status of each of the vacant properties may have changed

4B. Develop a site or group of adjacent sites that can accommodate a large cohort of displaced Jerome Avenue auto businesses before the rezoning action is completed.

Auto businesses gain competitive advantages by locating close to major thoroughfares and in immediate proximity to other auto businesses. Any strategy to relocate auto businesses outside the Jerome Avenue corridor must have these two criteria as fundamental requirements.

The Coalition estimates that, 150,000 to 300,000 square feet of space will be required to accommodate approximately 60 displaced auto businesses outside of the Jerome Avenue area, depending on the configuration of the host facility/facilities.¹⁵ In New York City's tight real estate market, it will be difficult to identify a group of sites in close proximity to replicate the clustered environment along Jerome Avenue, and in an area that is guaranteed to not face similar displacement in the future. As such, the United Automotive Merchants Association (UAMA) has worked with Hyke Engineering and Management to develop a concept for a multi-level facility that will house multiple automotive repair businesses. Specifically, the facility would:

- Be owned and operated by a cooperative of relocated businesses
- Be designed so that each business would have its own space but share common spaces such as training classrooms, parking and building mechanical rooms and services such as waste disposal and recycling, utilities, professional licensing maintenance, etc.
- Have street level access and ample room for parking
- Be funded by the City of New York, including funding for site acquisition, individual and common space fit out, start up operation costs and advertising efforts to promote the new location as a center for auto services.

In 2016, UAMA surveyed Jerome Avenue auto businesses, and the vast majority of businesses were willing to relocate to such a facility provided they retain some ownership in the property.

¹⁵ This assumes that all of the auto businesses outside the expanded retention zones and a smaller number of firms inside the retention zones will be displaced due to rising rents or other reasons.

Conclusion

Since the rezoning for the Jerome Avenue Corridor was first proposed by the City in 2014, the Bronx Coalition for a Community Vision has engaged thousands of neighborhood residents and workers. Through a robust public process, the Coalition has developed a detailed vision for a just rezoning for the Jerome Avenue area. A rezoning cannot be just if residents and workers are unable to stay and maintain their livelihoods. The City has yet to respond with any viable proposals or creative ideas to preserve the rights and livelihoods of our residents. The City should choose to learn from impacts of past rezonings, many of which exacerbated injustice against low-income people and communities of color.

The recommendations in this paper demonstrate that there are other plans possible. This report represents just one example of how to achieve a more just rezoning. It is not an endorsement of any specific land-use proposal, nor is it separate from the Coalition's other priorities--*Real Affordable Housing for All, Anti-displacement and Anti-Harassment for Residential Tenants, Good Jobs and Local Hire, and Real Community Participation*. We call on the City to include a meaningful plan for Anti-Displacement of Commercial Tenants in its rezoning proposal. If our recommendations are not incorporated into the plan before the Uniform Land Use Review Procedure (ULURP) starts, we believe that the displacement pressures will be so great that the negative consequences of the rezoning will greatly outweigh any benefits it might bring. If not included, we will have no choice but to urge our elected officials to vote no to any plan that doesn't promote housing and job security for those who need it the most.

LESSONS FROM WILLETS POINT

In 2013, in an effort to redevelop Willets Point, the City initiated eviction proceedings for some of the 240 auto businesses that for years had been operating as an interconnected auto cluster in the area despite a lack of basic municipal services. Facing mass displacement, about 45 auto businesses came together to form the Sunrise Cooperative. Through a lawsuit settlement the Cooperative was ultimately awarded \$5.8 million from the City and developers to develop an 80,000 square foot warehouse in the Bronx into a multi-business auto complex. However, four years later, the Sunrise Cooperative businesses are still waiting to move into the new space.

The delay to move in is largely to key missteps on the part of the City. The funding behind the retrofit of the space identified at 1080 Leggett Avenue was bid out at a certain level and then later substantially cut through negotiations with developers and the City. Had the commitment from the City been clear and unwavering, the new complex could have been planned to be constructed and operational prior to the eviction date. Initiating a relocation strategy before the "receiving site" is ready unnecessarily puts companies and jobs at risk. In Jerome, there is the opportunity to provide for a seamless and successful transition of auto businesses, building on the lessons learned and the strengths from the design of the facility at 1080 Leggett.

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ABOUT:

The Bronx Coalition for A Community Vision formed after learning about the City's plans to rezone 73 blocks along Jerome Avenue, from 167th Street to 184th Street

WE ARE:

Community Action for Safe Apartments-New Settlement Apartments, Latino Pastoral Action Center, Northwest Bronx Community and Clergy Coalition, Mothers on the Move, United Auto Merchants Association, Faith In New York, Local 79, Plumbers Local No. 1, NYC District Council of Carpenters, Greater NY-LECET, 100 Black Construction Workers. List in formation

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GET INVOLVED:

Contact Sheila at CASA
718-716-8000 ext. 125 or
s.garcia@newsettlement.org

