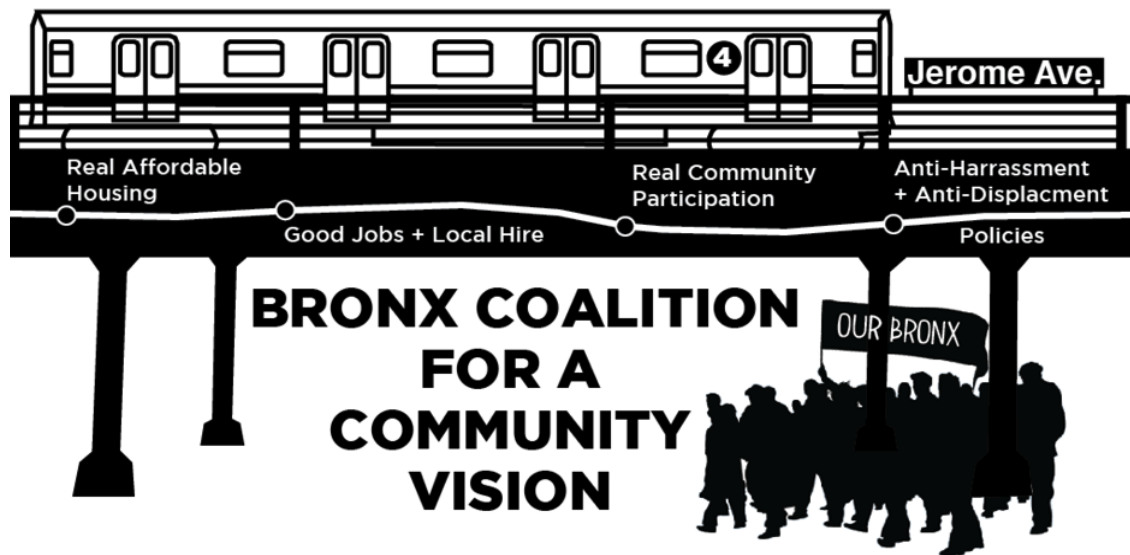


# **Comments on the Draft Scope of Work for the Jerome Avenue Rezoning**



Submitted November 7, 2016

## **Table of Contents**

<b>I. Introduction</b>	<b>3</b>
<b>II. Land Use, Zoning, and Public Policy</b>	<b>8</b>
<b>III. Socio-Economic Conditions</b>	<b>18</b>
<b>IV. Community Facilities</b>	<b>38</b>
<b>VI. Shadows</b>	<b>42</b>
<b>VII. Urban Design and Visual Resources</b>	<b>43</b>
<b>VIII. Transportation</b>	<b>44</b>
<b>IX. Air Quality</b>	<b>47</b>
<b>X. Public Health</b>	<b>49</b>
<b>XI. Neighborhood Character</b>	<b>51</b>
<b>XII. Construction</b>	<b>57</b>
<b>XIII. Mitigation</b>	<b>59</b>
<b>XIV. Alternatives</b>	<b>61</b>
<b>XV. Conclusion</b>	<b>64</b>
<b>Appendices</b>	<b>67</b>

# I. Introduction

The city's plan to rezone 73 blocks along Jerome Avenue in the Southwest and Northwest Bronx is the largest proposed land change in the Bronx since Co-Op City in 1973. It will change the use of land to facilitate the displacement of the manufacturing, auto and industrial spaces and to facilitate the construction of more than 4,000 privately owned residential apartments, providing housing for more than 12,000 people.

But who will the housing be for? Who will build the housing? How will this impact the displacement pressures on the mostly rent-stabilized tenants who live in the surrounding blocks? And how will this impact the immigrant, Dominican auto industry?

## ***The City's Plans Must Reflect the Community's Goals***

Formed in early 2015 in response to the City's proposed plans to rezone Jerome Avenue, 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. Beginning in March 2015, the Coalition has hosted numerous 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, and have collectively developed four main principles and corresponding policy priorities:

- Anti-displacement strategies for current residential and commercial tenants. Current tenants and small business owners will not benefit from the rezoning if the rezoning increases rents, speculation, and the forces of displacement. The City should take steps to ensure that the people and businesses that are here now are protected and are able to stay.
- Real affordable housing. All of the new housing built in the community should be at rent levels that reflect the need in the community.
- Good jobs & local hire. New construction and businesses will mean a lot of new jobs in the area and the City should guarantee that those jobs create career opportunities for local residents. Also, developers should not be allowed to build unless they commit to using contractors that are part of State Department of Labor Registered and Approved Apprenticeship programs. The City must mandate provisions for worker safety and training to ensure our most vulnerable workers are protected.
- Real community engagement. Residents need to have a say over what happens in the community, and the City should have long-term tools to ensure accountability for implementing commitments made during rezoning approval process, including a role for community in

overseeing progress. The community needs this to ensure that the rezoning is actually part of a community plan that is effective and fully implemented.

If the City takes these community goals to heart and adopts the policy proposals and practices that residents have developed over the course of almost two years, we believe that it will be possible for the Jerome Avenue rezoning to serve as an important example of responsible, equitable development. As the first rezoning in the Bronx under the de Blasio administration, this rezoning will set the stage for all future rezonings in the Bronx, and we feel strongly that the de Blasio administration must seize this opportunity to rewrite the story of disinvestment and displacement that has dominated the South Bronx for too long.

But after careful review of the Draft Scope of Work, we are gravely concerned that the City is on the wrong track already. Almost two hundred community members testified at the hearing on the Draft Scope of Work on September 29, 2016, and of those, only a tiny handful spoke in favor of the City's plans. Instead, many community residents expressed outrage at the City's seeming dismissal of the concerns and policy proposals the community has spent almost two years developing; fear at the thought that they may be displaced from the neighborhoods they either grew up in, or adopted as new homes after being displaced from other New York City neighborhoods; anger at a process that arbitrarily turns a blind eye from serious real-world problems, including the illegal displacement tactics many tenants are fighting every day; and determination to fight the City's plans if they are not written to reflect what residents need.

### ***The Need for Real Community Engagement***

The Draft Scope of Work significantly misrepresents the extent to which the Department of City Planning has engaged community members and formulated a plan consistent with the community's demands. For instance, this spring, the Coalition sent the Department of City Planning a detailed document that set forth the zoning text provisions we felt were critical for this rezoning - provisions that would help create deeply affordable housing, protect existing small businesses and auto workers, and ensure adequate space for community facilities, among other community goals. Yet DCP has failed to include any of our suggestions in the plan as described in the Draft Scope of Work. This does not seem like meaningful engagement to us.

As another example, in the Draft Scope, the City states that :

The [Jerome Avenue Neighborhood] Study takes a broad look at the needs of the community and through a community outreach process has developed a vision for the study area which has resulted in the Jerome Avenue Neighborhood Plan ('the Plan'). The Plan provides a number of strategies to spur affordable housing, economic development, improve health and quality of life, investment in the public realm, in addition to proposed land use actions that accommodate the need for high quality affordable and retail uses.<sup>1</sup>

But the community has yet to see the Plan to which DCP refers, and it is unclear at this point what this plan is or where, if anywhere, it can be accessed by the public. The text makes it appear as though the Plan has been completed, even though our conversations with DCP, our presence at planning meetings convened

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1 Draft Scope of Work, p.1.



by DCP, and an exploration of the DCP website all indicate that only preliminary activities related to the creation of what will be called the JANP have taken place and that there is no Plan that can be properly considered at this time.

On page 15, lofty goals are stated and their achievement is attributed to the “direct result” of a Plan that is not yet completed. These claims are unexplained and unsubstantiated – *how* will JANP protect existing tenants and preserve affordability? *How* will small businesses be supported? How will the so-called direct results of the JANP be measured? How will these results be compared or weighed against the direct results of the proposed actions? Has DCP already completed the Plan? Will community members have an opportunity to meaningfully weigh in on whatever Plan DCP ultimately puts forth? Critically, will the community have an opportunity to review the Plan before the next stage of environmental review proceeds, or will we be forced to provide feedback on the basis of a Plan we have never seen?

Further obscuring the public’s ability to evaluate what will be in the “Plan” and what is specifically linked to this land use action, there are a number of unclear or uncited statements in the Draft Scope. On page 16, greater detail describing the range of government regulation of housing should be provided, as should detail about the levels of affordability that were achieved for the 8500 preserved units, and the programs that were used to accomplish this. Recent housing and other development should be mapped, and the unsubsidized construction of housing that is referenced on page 16 should be labeled alongside the HPD-financed construction and location of HPD preserved units. Page 17 makes a reference to proposed infrastructure investments that the proposed zoning will leverage. These should be named to allow for the public to evaluate the status of these investments.

In addition to clarifying the misleading language about the status of a completed plan, the process section should include the dates of the events referenced on page 5 - the Open Houses, Community Workshops and the Visioning Session - as well as the number of attendees of these sessions and who they represented. The involvement of Community Board 7 is not described – it is unclear in what way, if any, they were engaged in the process. This section should also include information about alternative ways that community stakeholders have been planning for the neighborhood and how those processes relate and how input for those processes has been considered (or rejected).

Finally, in the listing of the goals of the engagement process, it is unclear how decisions were made to prioritize or balance among competing goals. Certainly, there has been no clear, collective process that carried this out. The decision-making process should be made explicit, since it is the underpinning of the proposed action and eventual plan.

In the sections below, we outline our specific concerns about the Draft Scope of Work and the City’s plans for the Jerome Avenue rezoning as they currently stand. We demand that the Department of City Planning engage in the rigorous analysis necessary to determine the real consequences of the proposed rezoning, and consider our policy proposals as mitigation strategies for the significant detrimental impacts that are otherwise certain to come.

## ***The Reasonable Worst-Case Development Scenario (RWCDs) Must Be Adjusted***

The RWCDs distinguishes where DCP believes that development will happen (projected sites) from where DCP believes development may happen (potential sites). In the aggregate, whether a site is classified as projected or potential has major bearing on the impacts analyzed and mitigated as part of the environmental review – especially with regard to direct and indirect residential and business displacement. Performing this analysis incorrectly calls into question the entire rest of the document.

### **Problems with estimating where there will be new development**

We believe that the proposed analysis for projected development will lead to an incorrect undercount of impacts, and that the methodology for projecting development should be adjusted in the final Scope. Overall, we believe that projected development is underestimated and that 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.

First, the draft Scope lists the size threshold for considering where new development will take place at 5,000 feet. Applying this threshold across the entire area without examining local site conditions is too generalized an approach which may inappropriately exclude likely development. In particular, in the areas zoned R9 where Cromwell meets Jerome and on the smaller sites rezoned to R8A on 183<sup>rd</sup> Street, east of Jerome, it is likely that smaller sites will be developed.

In addition to initial criteria that is too restrictive, the draft Scope goes on to detail further exclusions from within the initial criteria. Several of these exclusions are problematic.

First, the draft Scope assumes that no multi-family residential building in the rezoning area will be redeveloped. This is based on the assumption that the required relocation of rent-stabilized tenants would preclude development, regardless of the incentive to build. Yet this assumption is unlikely to hold true. Harassment of rent stabilized tenants in and around the rezoning area is well-documented, making it obvious that landlord actions to empty a building of rent-stabilized tenants by illegal means is entirely a possibility. Furthermore, the greater the degree of underutilized FAR, the greater economic incentive to redevelop. Currently, 30 residential properties in the rezoning area are significantly underbuilt (with at least 2.5 FAR available for development)<sup>2</sup> and the proposed action would only increase the potential to build, suggesting that an “across the board” exclusion of existing residential properties - regardless of particular characteristics and vulnerabilities - is insufficient.

Additional screening items that exclude sites from the projected category have great potential to result in an overly conservative projection. For example, lots “upon which the majority of the floor area is occupied by active businesses” were considered to be potential - instead of projected - sites. But being an active business is no actual protection for tenant businesses in properties that have sky-rocketed in value. Nothing in this criterion speaks to the extent of the economic incentive that a landlord would have to displace active businesses; it only speaks to the potential disincentive to the landlord caused by the

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<sup>2</sup> Analysis by Municipal Arts Society, accessible at file:///C:/Users/econte/Downloads/testimony-2016-10-10-dcp%20(2).pdf

hassle of ending leases and evicting multiple businesses. When the economic incentive to displace is great enough, landlords are not deterred by active uses on site.

Similarly, being a “unique” or “valuable” business is no protection against the actions of a landlord if a business rents its space, like the overwhelming majority of businesses in the area do.

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. At a minimum, DCP should remove the criteria in bullets 1 and 5 on page 25 for differentiating between projected and potential sites, should evaluate residential properties on a site by site basis to determine the likelihood of redevelopment, and should remove the 5,000 ft screen when projecting development in the areas mentioned above.

### **Problems with population projections**

We find that the multipliers used to estimate the projected population increase caused by the rezoning to be inappropriate for this piece of analysis. DCP’s methodology as stated in the DSOW is to use the average household size for the community district of the three districts intersected by the rezoning as a multiplier against the number of projected dwelling units in these individual community districts. This is problematic as the household size within the rezoning area is likely to be reflective of a far different density and fabric than the broader community district. Further, some these community districts barely intersect with the study area at all (CD 7 has only 3 projected sites within its boundaries) which makes their use even less relevant.

Since data is readily available at a much more granular level that would provide a far more accurate picture of average household size in the rezoning area we ask that DCP update its methodology to use the average household size of the 78 census tracts used in DCP’s initial neighborhood profile as the multiplier for all projected sites across the study area. The neighborhood profile identifies an average household size of 3.01<sup>3</sup> for renter occupied units which we feel is more accurate than the numbers used in the individual community districts - yet still may not reflect the reality of larger household sizes in the study area.

## II. Land Use, Zoning, and Public Policy

This rezoning is massive. It affects more than 300 businesses and thousands of rent stabilized tenants, and it will drastically shape the history of the Bronx.

As part of its analysis of Land Use, Zoning and Public Policy, the City will describe public policies applicable to the study area, and the extent of the Proposed Actions' consistency with such policies. One major policy that will be analyzed is Housing New York, "a five-borough, ten-year strategy to build and preserve affordable housing throughout New York City ... to foster a more equitable and livable New York City." The plan's five guiding policies and principles include both "building new affordable housing for all New Yorkers" and "preserving the affordability and quality of the existing stock."

### ***The Proposed Actions Will Not Advance Housing New York's Goal of "Building New Affordable Housing for All New Yorkers" Unless the Coalition's Term Sheet is Adopted***

The City says that without a rezoning, the market would create 780 new apartments over the next 10 years. The rezoning will add 3,250 apartments to that number, across 146 different development sites. In total, the rezoning will determine the nature of the more than 4,000 residential units over the next 10 years. This is an incredibly bold government action.

The plan repeatedly says that the City's aim is to create permanently affordable housing. The City says it will do this through Mandatory Inclusionary Housing (MIH) and city and state financing programs for affordable housing. Unfortunately neither of these options create a significant number of units that match the neighborhood need.

City officials have touted MIH as a vehicle to create deeply affordable housing. But the Area Median Income (AMI) for CB4 is \$27,000 and \$21,000 for CB5, and no Option in MIH reflects neighborhood needs—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 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 (45%) are at these low income levels.

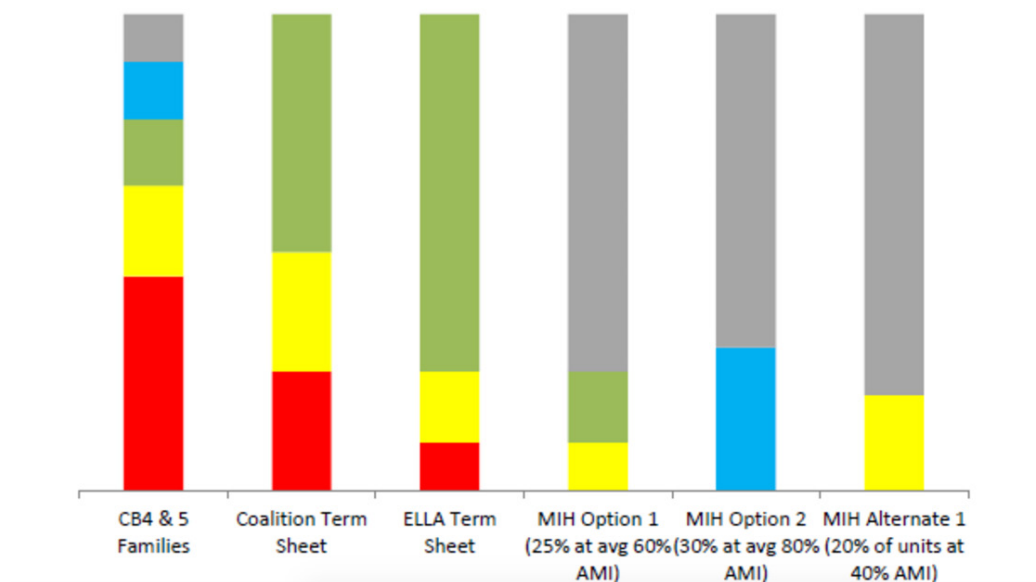
The city's best financing program, ELLA, is also wholly inadequate as most of the housing it subsidizes are for families making \$52,000 a year. Under ELLA, only a quarter of the roughly 4000 apartments the rezoning will bring to the neighborhood would be affordable to families making \$35,000 a year or less. The city therefore has no mechanism to mandate deeply affordable housing or leverage the market to create it,

at levels that reflect the needs of neighborhood residents. The stated goals of the rezoning are therefore either entirely false or entirely for another population.

It is not simply that the housing built above rent levels affordable to current residents will fail to meet the existing neighborhood needs - it may in fact make matters worse, increasing instability and homelessness. As a recent report by the Institute for Children, Poverty and Homelessness concluded of Concourse/Highbridge, one of the areas impacted by the proposed rezoning, “The neighborhood faces significant gaps in affordability for its poorest residents, and development that does not address these gaps could further destabilize the community and place thousands more children and families at risk for homelessness. Ensuring that development includes accessible rental units for all income brackets and addressing residents’ needs beyond housing, such as child care, education, and workforce development, are crucial to bring stability to a neighborhood that has long struggled with family homelessness.”<sup>4</sup>

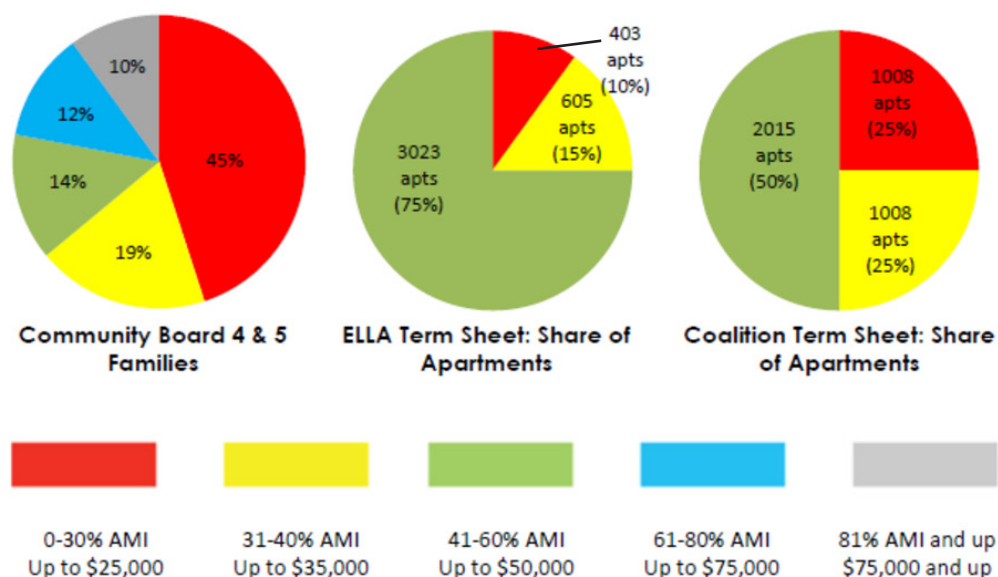
Our coalition has worked with nonprofit developers, community residents and the building and construction trades to create a new financing program that would subsidize affordable housing at the levels that reflect the current needs while also at a cost that reflect the needs of career oriented and safe jobs. The rezoning cannot move forward until this financing program is created. Under our proposal, the affordability levels of new subsidized apartments would be:

- 25% of apartments at 27% of AMI, (\$24,462 or less)
- 25% at 37% of AMI, (\$33,522 or less)
- 25% at 47% of AMI, (\$42,582 or less)
- 25% at 57% of AMI, (\$51,642 or less)



4 “Housing Affordability in Concourse/Highbridge: The Promise of Affordable Housing May Bring False Hope,” Institute for Children, Poverty & Homelessness (June 2016). Online at [http://www.icphusa.org/PDF/reports/ICPH%20ConcourseHighbridge\\_Web.pdf](http://www.icphusa.org/PDF/reports/ICPH%20ConcourseHighbridge_Web.pdf).

### Comparison: Rezoning Area Family's, City's Term Sheet, and Coalition Proposal



Under the Coalition's proposal, over 600 more apartments would be available to families making less than \$25,000 a year than would be the case under the City's ELLA term sheet. In addition, over 400 more apartments would be affordable to families making less than \$35,000 a year. In total, under the Coalition's proposal, half of all of the apartments created by the rezoning would be affordable to families less than 40% AMI – twice the share of housing that would be created at these levels using the ELLA term sheet. By adopting the Coalition's term sheet for subsidized housing, the City can help to ensure that this area remains accessible to low-income families for generations to come and make good on its promise to create affordable housing for the people who need it most.

We believe that use of our proposed term sheet offers numerous benefits, both immediate and long-term. First, housing built with this term sheet would be affordable to 78% of current residents in CB 4 and 5. Second, although this proposed term sheet would require greater City subsidy per unit, creating housing that is affordable to a greater share of lower-income CB 4 and 5 residents is ultimately far more cost effective than housing homeless families temporarily. Currently, many families in our communities are living doubled up, one step away from homelessness, and too many end up in the shelter system each year.<sup>5</sup> Our proposal could help shift those trends. Third, our subsidy program, unlike the City's, would promote safe, career-oriented union jobs, supporting economic stability for our residents. Fourth, our term sheet would help preserve the southwest Bronx as a mixed income community in the long-term. Today, "the neighborhoods that the Jerome Ave rezoning encompasses are already mixed-income neighborhoods. While the median income for a family of four is about \$25,000, close to 25 percent of households make

5 See "Housing Affordability in Concourse/Highbridge: The Promise of Affordable Housing May Bring False Hope," Institute for Children, Poverty & Homelessness (June 2016) (describing Concourse/Highbridge as "a chronic feeder to the shelter system, ranking among the top four community districts for the number of families entering shelter since FY 2005"). Online at [http://www.icphusa.org/PDF/reports/ICPH%20ConcourseHighbridge\\_Web.pdf](http://www.icphusa.org/PDF/reports/ICPH%20ConcourseHighbridge_Web.pdf).



above \$50,000 and 15 percent make above \$150,000.”<sup>6</sup> At the same time, our communities already have a surplus of housing affordable to families making more than \$50,000 a year. The City does not need to create more housing in our area to attract higher-income residents, or to justify long-overdue investments in our area as ways to attract richer people. The residents who are here today matter, and their needs matter whether or not any of our neighborhoods become the next “it” area in the City, as many developers seem to hope will be the case. By increasing the amount of housing that will be affordable to the people who are at the greatest risk of displacement, we can ensure that our area will stay accessible and meaningfully mixed-income over time.

## Analysis

- › The City should analyze and disclose the income levels of the households that stand to be displaced, then compare those figures to the amount of affordable housing expected to be made available at those income levels under the rezoning, in order to calculate the share of the new affordable housing that would potentially be accessible to current residents. The City should consider scenarios both with and without the 50% community preference.
- › The City should also analyze and disclose the share of proposed housing that would be affordable at local income levels if the City were to adopt the Coalition’s proposed term sheet. Although we have already performed a basic analysis of the differences, we request that DCP perform this analysis as part of the public CEQR review process and include it in the record to allow the community to make meaningful comparisons between the two options.
- › The City should not assume that developers will continue to accept HPD subsidies throughout the 15-year period following a rezoning. Instead, the City should analyze and disclose the impacts of the rezoning based on:
  - A scenario in which developers accept HPD subsidies for the entire period
  - A scenario in which developers accept HPD subsidies for only 5 years
  - A scenario in which developers accept HPD subsidies for only 10 years
  - The zoning text and public sites alone
- › The City should look into past rezonings and examine housing market shifts after these rezonings, for the purpose of determining the length of time during which developers are likely to seek HPD subsidies and the point at which interest in such subsidies may cease due to improved market conditions. Although the City indicated in the context of the East New York rezoning that analyses of past rezonings go beyond the scope of the CEQR review process for new neighborhood rezonings, if the City ignores these past rezonings, it ignores valuable data that could help to create a more accurate picture of future neighborhood change in our area.
- › The City should also disclose the extent of its capacity to move projects through the HPD subsidy pipeline - specifically, the number of projects and affordable units the City anticipates being able to move in the Jerome Avenue rezoning area a given year, given its current staffing, budgetary, and other limitations and the nature and extent of its work to create subsidized housing in other neighborhoods, including other rezoning neighborhoods.

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6 Susanna Blankley, “Four Wrong Ideas Driving de Blasio’s Housing Plan,” *City Limits* (Fe. 25, 2016). Online at [citylimits.org/2016/02/25/cityviewsfour-wrong-ideas-driving-de-blasios-housing-plan/](http://citylimits.org/2016/02/25/cityviewsfour-wrong-ideas-driving-de-blasios-housing-plan/).

## Mitigation

- › If the City's analysis demonstrates that the City's current plans fail to adequately advance the goals of creating affordable housing for "all" New Yorkers, the City should disclose, analyze and adopt additional mitigation strategies, including the adoption of the proposed Coalition term sheet for subsidized housing; dedication of additional funds as needed to create more housing affordable at local income levels; and, potentially, a reduction in the scale of the rezoning to better reflect the amount of subsidized affordable housing that the City is realistically capable of producing within our community in the next 5-10 years, given limits on its own capacity and interests of developers as market conditions shift.

### ***The Proposed Actions Will Not Advance Housing New York's Goals of Affordable Housing Preservation and Equity—Unless the Coalition's Anti-Displacement Strategies Are Adopted***

The preservation goal of the Housing New York plan accounts for 120,000 of the total 200,000 affordable units the City hopes to build and preserve in the coming years. But the de Blasio administration has yet to develop a comprehensive policy to prevent the displacement of low-income people in rezoning neighborhoods and otherwise. Creating new affordable housing - though important - will do nothing to preserve affordable housing that already exists. Extending affordability of apartments where subsidy agreements are expiring - though also important - is extremely difficult. For example, a recent study of Concourse/Highbridge showed that, "Every single subsidized rental unit—more than 1,800—that was eligible to convert to market rate did so from 2002–2011, ending affordability commitments" in these apartments.<sup>7</sup>

Within this context, the protection of rent-stabilized apartments should be of paramount concern as part of the City's overall preservation strategies. As the Housing New York plan states, "The most effective preservation strategies will depend upon neighborhood characteristics and needs."<sup>8</sup> For the communities in the Jerome Avenue impact area, neighborhood characteristics and needs demand a focus on better tools and strategies to preserve affordability and prevent displacement in rent stabilized housing in particular.

The City has invested significant funding into providing anti-displacement legal services for renters within the rezoning communities, acknowledging in the Housing New York plan that, "The lack of legal representation for low- and moderate-income tenants facing eviction limits their awareness of their rights as tenants and makes it more difficult for them to defend themselves against actions initiated by landlords. Legal services are a critical preservation tool as they can prevent landlords from pursuing evictions simply to move their apartments out of rent stabilization. Unfortunately, the current demand for tenant legal

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7 "Housing Affordability in Concourse/Highbridge: The Promise of Affordable Housing May Bring False Hope," Institute for Children, Poverty & Homelessness (June 2016) (citing NYU Furman Center Moelis Institute for Affordable Housing Policy, Subsidized Housing Information Project (SHIP) database, <http://furmancenter.org/data>, accessed April 19, 2016; NYU Furman Center Moelis Institute for Affordable Housing Policy, *What Can We Learn About the Low-Income Housing Tax Credit Program by Looking at the Tenants?* (October 2012). Online at [http://www.icphusa.org/PDF/reports/ICPH%20ConcourseHighbridge\\_Web.pdf](http://www.icphusa.org/PDF/reports/ICPH%20ConcourseHighbridge_Web.pdf).

8 "Housing New York: A Five-Borough, Ten-Year Plan," p.49. Online at [http://www1.nyc.gov/assets/housing/downloads/pdf/housing\\_plan.pdf](http://www1.nyc.gov/assets/housing/downloads/pdf/housing_plan.pdf).



services far exceeds supply.”<sup>9</sup> Though the existing anti-displacement legal services are meaningful, they are not enough. First, they are not sufficient to break the profit motive that will always drive landlords of low-rent, rent-stabilized apartments to make moves to push out low-income tenants. Second, they lack permanence, do not cover tenants just outside of the zip codes designated for legal services, and could disappear with a subsequent mayoral administration. And third, they are not comprehensive, in that defending tenants in housing court is all too often a response to landlord harassment that should not have occurred in the first place. That is why the Coalition is proposing three core anti-displacement strategies - passage of a citywide Right to Counsel, creation of a citywide Certificate of No Harassment requirement, and creation of an anti-displacement taskforce - that will help to create a comprehensive safety net around existing tenants in rent-stabilized apartments. These new strategies -described more fully in our response to the section on residential displacement - are necessary to shore up a critical source of affordable housing in our community.

It’s especially critical that the City develop meaningful anti-displacement strategies given the demographics of the communities the City is proposing to rezone - so far, almost exclusively low-income communities of color with long histories of divestment and institutional neglect. If “equity” is a goal of the Housing New York plan, it is troubling that the City has selected only low-income communities of color for neighborhood-wide rezonings, with no guarantees that any significant share of the new housing will be affordable to local residents and no commitments that new development will bring high-quality, career-track jobs.

In making these choices, the de Blasio administration is following closely in the footsteps of the Bloomberg administration, which also disproportionately targeted low-income neighborhoods of color for massive upzonings. 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.”<sup>10</sup> In these areas, white populations increased significantly - in marked contrast to an overall citywide decrease in the white population<sup>11</sup> - and median incomes and the number of higher-income earners increased substantially.<sup>12</sup> 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.”<sup>13</sup> And nor were these changes inevitable, or part of broader citywide trends; in upzoned communities, “Even though housing supply outpaced population change, rents increased far faster than citywide.”<sup>14</sup>

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9       Id at 53.

10       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>.

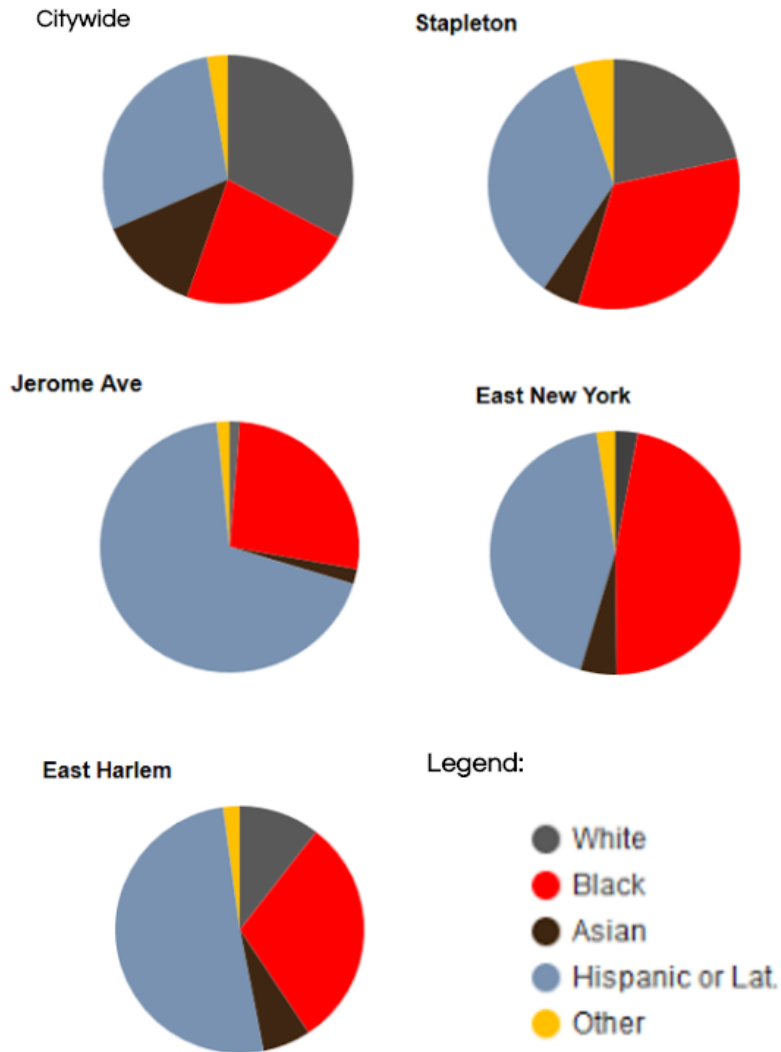
11       Id. at 66.

12       Id. at 67.

13       Id. at 68.

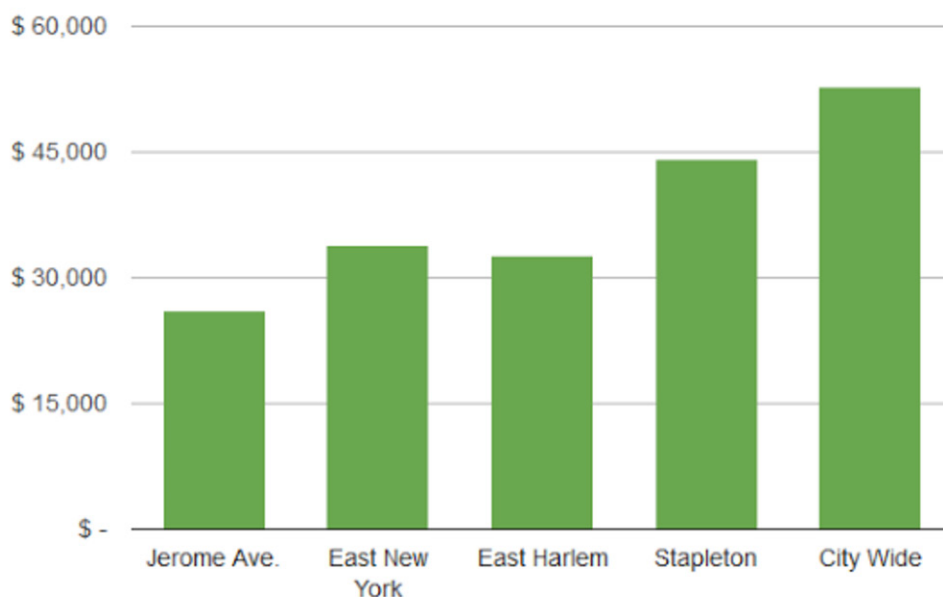
14       Id. at 83.

## Racial Demographics of Rezoning Areas



1. Jerome Ave: Bronx County, NY, Census Tracts - 197, 199, 209, 211, 213.02, 217, 219, 221.01, 221.02, 223, 227.01, 227.02, 233.01, 237.03, 237.04, 239, 241, 243, 251, 253
  2. East New York: Kings County, NY, Census Tracts - 365.02, 367, 369, 906, 908, 1198, 1144, 1146, 1150, 1152, 1166, 1168, 1170, 1172.01, 1174, 1178, 1184, 1186, 1190, 1192, 1194, 1196
  3. East Harlem: New York County, NY, Census Tracts - 166, 170, 172, 174.02, 180, 182, 184, 188, 194, 196, 198, 206, 242
  4. Stapleton: Richmond County, NY, Census Tracts - 3,7,11,21,27
- All data - American Community Survey, 2014, 5 Year Estimates

## Median Household Incomes in Rezoning Areas vs Citywide



1. Jerome Ave: Bronx County, NY, Census Tracts - 197, 199, 209, 211, 213.02, 217, 219, 221.01, 221.02, 223, 227.01, 227.02, 233.01, 237.03, 237.04, 239, 241, 243, 251, 253

2. East New York: Kings County, NY, Census Tracts - 365.02, 367, 369, 906, 908, 1198, 1144, 1146, 1150, 1152, 1166, 1168, 1170, 1172.01, 1174, 1178, 1184, 1186, 1190, 1192, 1194, 1196

3. East Harlem: New York County, NY, Census Tracts - 166, 170, 172, 174.02, 180, 182, 184, 188, 194, 196, 198, 206, 242

4. Stapleton: Richmond County, NY, Census Tracts - 3,7,11,21,27

All data - American Community Survey, 2014, 5 Year Estimates

We believe it is possible for the de Blasio administration to begin to write a different narrative and to achieve equitable development with this rezoning - but only if the City takes seriously the need to ensure that today's community residents will be around to reap the benefits of the better tomorrow the City promises, and only if the City centers the goal of creating new economic opportunities and paths to advancement for current residents.

## Analysis

In analyzing the consistency of this proposed rezoning with other policies, the City should consider:

- The extent to which the Proposed Actions would create affordable housing for “all” New Yorkers, in particular individuals and families making below 30% AMI, who represent a significant share of rezoning area residents and are grossly underserved by the City’s current MIH policy and subsidy term sheets.
- The feasibility of adopting the Coalition’s proposed term sheet in order to better advance the creation of low-income housing.
- The extent to which the Proposed Actions would advance the goal of Housing New York to “preserve rent-regulated ... affordable housing,” “stem the tide of units exiting rent stabilization” and “strengthen protections for tenants of rent-stabilized housing,”<sup>15</sup> versus the extent to which an influx

15 “Housing New York: A Five-Borough, Ten-Year Plan,” p.52-53. Online at [http://www1.nyc.gov/assets/housing/downloads/pdf/housing\\_plan.pdf](http://www1.nyc.gov/assets/housing/downloads/pdf/housing_plan.pdf).

of housing aimed at higher-income residents might undermine these goals.

## Mitigation

If the City concludes that the proposed rezoning fails to create affordable housing for “all” New Yorkers or is otherwise inconsistent with larger policy initiatives, the City should modify its plans to better meet these goals and/or adopt mitigation strategies to ensure that the proposed rezoning more closely aligns with the City’s stated policy goals. Among other mitigation strategies, the City should consider:

- › The adoption of the Coalition’s proposed term sheet in order to better advance the creation of low-income housing.
- › The adoption of the Coalition’s proposed preservation strategies to more effectively advance the goal of preservation. The City has pledged to “proactively reach out to ... community groups to identify preservation opportunities in the broader housing stock ... [to] design and target preservation tools to address the needs of properties that existing programs currently do not serve.”<sup>16</sup> We believe that Right to Counsel, a citywide Certificate of No Harassment policy, and an anti-harassment task force will serve critical needs that the City’s current policies and programs do not reach, and we urge the City to implement all three strategies, which have a broad base of community support.

## ***The List of Applicable Policies is Incomplete***

### Analysis

- › The City should analyze the consistency of the Proposed Actions with the City’s Industrial Action Plan. The list of public policies that apply to the study area<sup>17</sup> notably excludes Mayor de Blasio’s industrial policy, announced in fall 2015. The Industrial Action Plan is available here: <http://www.nycedc.com/industry/industrial> and should be named and addressed as a policy that applies to the area.
- › The City should undertake a study and develop a citywide policy for the auto sector. The Bronx Coalition for a Community Vision and others have been calling for the City to craft an auto sector policy before proceeding with land use actions, such as this one, that will deeply impact the sector. The Jerome auto corridor is the second densest cluster in the City, and 80% of the auto businesses in community districts 4 and 5 are located in the rezoning area. Currently, less than 1% of city land is zoned C-8 and just 14% is zoned M. A citywide study that looks at the city’s need for auto repair, land use considerations, and other issues for the sector’s future is needed to fairly guide actions that will have a major impact on the industry’s local presence, and consider them in the context of citywide needs.

## Mitigation

If the City finds that the Proposed Actions fail to advance the goals of the existing Industrial Action Plan

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16 “Housing New York: A Five-Borough, Ten-Year Plan,” p.49. Online at [http://www1.nyc.gov/assets/housing/downloads/pdf/housing\\_plan.pdf](http://www1.nyc.gov/assets/housing/downloads/pdf/housing_plan.pdf).

17 Draft Scope of Work, p.29.

or harm the auto businesses on Jerome Avenue, the City should modify its plans or adopt mitigation strategies as appropriate. These strategies could include:

- › Maintaining no net loss of C8-3 and M1-2 land and buildable FAR citywide.
- › Adoption of a citywide policy for the auto sector, as described above.

### ***Expansion of Study Area***

The secondary land use study area should be expanded from a quarter-mile boundary from the rezoning area to a half-mile or more from the rezoning area. The planning area that is mentioned as part of the “JANP” process is a half- mile, and the study area for this land use action should correspond with that of the Plan it is supposed to support. Furthermore, certain analyses detailed in the draft Scope of work will look at half-mile study areas while others do not. This is inconsistent and confusing, and there is no compelling rationale offered for these differences. The Proposed Actions are likely to have far-reaching effects and this proposed rezoning is only the first step in a process that is intended to plan for a much larger area.

# III. Socio-Economic Conditions

## **Residential Displacement**

*"I'm all for the new. The people who live in the Bronx deserve new, they deserve good, they deserve fair. But they don't deserve it if the new, the good, and the fair is going to push us out."*

- Bronx resident at the Draft Scoping Hearing

*"My children were born in the Bronx, as well as my grandchildren ... I'm not saying we don't need improvement, but not at the expense of people who have been here for decades ... [and] built their communities ..."*

- 30 year resident of 1081 Jerome Avenue at the Draft Scoping Hearing

*"I have been living here in the southwest Bronx since 1975, and have contributed all I could to help preserve my community, in my adopted home, for my own self and for my family here in New York ... I was here during the ugly days when the city of New York as well as Main Street New York disinvested in the borough – when, as the popular phrase goes, the Bronx was burning. I was here when fire houses were closed; when schools and after-school programs were defunded; when parks and our other green spaces were neglected and left to deteriorate along with other parts of the infrastructure. I was here and stayed here when others were leaving. I was not alone. Tens of thousands of others were here, too. Building families and communities. Creating businesses to serve the communities we were maintaining. Working two and sometimes more jobs to take care of our families. Dedicating our lives to making sure our children get opportunities we did not have, becoming college and university graduates, becoming doctors and nurses and lawyers and engineers and architects and teachers and bio-chemists and judges and physicists and accountants and other career professionals in all areas of life. And here, this evening, in this space, I am before you to decline the reward you have offered me and the rest of us for our decades of struggle to maintain and grow our communities despite all odds. And 'What is that reward?' you may ask. My displacement. Our displacement. For that is what you are proposing in your Scope of Work just recently released. You are saying in the clearest possible terms that you need the space we are occupying, that the tens thousands of us have called our home, for others. So we got to go."*

- Fitzroy Christian, CASA Tenant Leader & Bronx Coalition for a Community Vision member

Progress and change are not the same as gentrification. Gentrification is the process of creating or transforming a neighborhood exclusively for the gentry. Progress can and should mean stability, security, and opportunity for all who live and work in the community - including, even especially, those who have been traditionally disadvantaged and denied access to job and career opportunities and safe, affordable housing. But change that does not fully examine and proactively address the needs of local residents and businesses is likely to become gentrification. Historically, neighborhood-wide rezonings in New York City have failed to slow rising rents or stem the displacement of low-income residents. We will not allow that to happen here. We deserve to build neighborhoods for and by the people who live and work in our community so that we can live with dignity and respect. This includes preventing residential displacement, and preserving jobs for local residents that provide access to pathways for advancement.

The Draft Scope documents the current housing conditions of the impact area—or all of Community Boards 4 and 5. Two-thirds of the housing stock is government-regulated. The community is made up primarily of low-income people of color. Median household income is \$25,900, and only 25% of households make more than \$50,000. Approximately 45% of residents have incomes at or below 30% of AMI. And although rents in the area are lower than in many other parts of the city, they are already above what is affordable for many local residents. In 2014, the most recent year for which we have data, the median asking rents in CB4 and CB5 were \$1,395, and \$1,250 respectively - levels already unaffordable to well over 2/3 of existing residents. And rents are steadily increasing. The median rent for CB4 rose by 10.3% from 2005 to 2014. In CB5, the corresponding increase was 7.5%.<sup>18</sup>

Household Income	AMI Level	% CB4 Population	% CB5 Population
>\$20,000	Below 30% AMI	40.7%	48.7%
\$20,000-\$35,000	30%- 40% AMI	19.6%	18.5%
\$35,000-\$50,000	40%-60% AMI	13.4%	13.9%
\$50,000-\$75,000	60%-80% AMI	14.4%	10.2%
\$75,000-\$100,000	80%-120% AMI	7.5%	4.0%
\$100,000 and up	120% AMI & up	4.4%	4.7%

*U.S. Census Bureau; American Community Survey 3-Year Estimates, 2014.*

The neighborhoods surrounding Jerome Avenue are majority Latino, with a substantial Black population, and small White and Asian populations.

	NYC population	CB4&5 Combined Population	Population in Census tracts touching Jerome Ave study area
White	32.7%	1.45%	1.5%
Black	22.6%	29.1%	26.7%
Asian	13.2%	1.5%	2.4%
Latino	28.8%	66.5%	68.5%
Other		1.6%	1.6%

*U.S. Census Bureau; American Community Survey 3-Year Estimates, 2014.*

18 “State of New York City’s Housing and Neighborhoods in 2015”, Furman Center, NYU.

Unsurprisingly, given the numbers just listed, rent burdening is a serious problem for local residents. In CB4 median rent burden in 2014 was 39.7%, with 47.9% of low-income households severely rent burdened. In CB5, median rent burden in 2014 was 45.6%, with 48.5% of low-income households severely rent burdened. Most tenants (over 55%) pay more than 30% of their income towards rent.<sup>19</sup>

<b>Household Income</b>	<b>AMI</b>	<b># Rent Burdened Households, CB4&amp;5 Combined</b>	<b>% of Households Rent Burdened, CB4&amp;5 Combined</b>
<\$20,000	Below 30% AMI	34,617	84%
\$20-\$35,000	30% to 40% AMI	14,168	80%
\$35-\$50,000	40% to 60% AMI	7,448	59%
\$50-\$75,000	60% to 80% AMI	1,740	15%
\$75-\$100,000	80% AMI and greater	318	3%

*U.S. Census Bureau; American Community Survey 3-Year Estimates, 2014.*

A survey conducted by the Bronx Coalition for a Community Vision found that 59% of respondents were concerned about being displaced from the neighborhood. Numerous residents have provided examples of both rising rents and landlord harassment as having displaced or threatened to displace them from their homes.

At the public scoping hearing, one woman testified, “My family has been in the Bronx for over 60 years and I serve my borough as a case manager for families who are facing displacement ... After the rezoning proposals, you can’t even imagine how many more families came to my office praying and begging ... Landlords were telling them directly to their face, ‘The rezoning is going to get me a lot of money, I’m going to rent to richer white people’ ... Any progress that is made through walking all over us is not for us.”

However, the methodology for measuring indirect displacement in the draft scope promises to severely underestimate the real risk to many local residents because it considers only legal forms of displacement. Over half of the housing units in CB4 & 5 are rent stabilized. In theory, these residents are protected from displacement because they have the legal right to a lease renewal, and landlords are legally limited as to the rent increases they can impose. In fact, DCP’s methodology automatically assumes that rent stabilized tenants will not be displaced, and looks no further. But in reality tenants – *especially* rent stabilized tenants – commonly face a wide range of harassment tactics specifically designed to drive them out of their homes so that landlords can take advantage of both legal loopholes in the rent laws, and insufficient enforcement practices, to raise rents and deregulate apartments. And the displacement of tenants from rent regulated apartments often leads to the deregulation of that apartment, or at least to significant jumps in the legally allowable rent. In other contexts, the Mayor, HPD commissioner, and other City officials have clearly recognized that rent stabilized tenants face harassment - yet DCP’s methods ignore it.

The rezoning area is currently comprised of mostly nonresidential uses. If the rezoning goes through,

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<sup>19</sup> U.S. Census Bureau; American Community Survey 3-Year Estimates, 2014.



developers will not need to tear down residential buildings to build higher ones; they will be building on sites that today are empty or include other uses, such as auto businesses. The City therefore projects direct displacement of fewer than 500 residents and concludes that this would not “typically be expected to alter the socioeconomic characteristics of a neighborhood,” making it unnecessary for the City to study direct residential displacement at all.

The City does say that it might conduct a detailed analysis of indirect residential displacement – the type that is caused when an influx of higher-income tenants move into a neighborhood and change the local housing market, driving up rents for everyone. But the City MUST commit to looking at this issue, which is critical for our community. The fact that residential displacement isn’t a central area of study is highly problematic. Without a mechanism to create real affordable housing, the more than 12,000 new residents that the rezoning will bring will make at least \$25,000 more than the average neighborhood Bronx family. If higher income tenants move in, services will change in the neighborhood and other higher income tenants will move into the rent stabilized housing.

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, further adding to the perverse incentive structure that tells landlords harassing tenants pays off.

Landlords who already engage in a series of illegal behaviors that cause displacement and whose business plans often rely on such displacement, as has been incredibly well documented by grassroots campaigns against predatory equity, will have an even greater incentive to harass lower-income rent-stabilized tenants out of their homes to make way for higher income residents. But the City typically does not examine illegal tactics of harassment and displacement in the environmental review process. Because of this, the City will not be addressing the harsh realities low-income rent stabilized tenants are likely to face after the rezoning—masking the true impact of the City’s actions. Not studying the illegal behavior the rezoning will fuel, and its impact on tenants, is simply irresponsible and unacceptable. This rezoning will result in an increase in both legal and illegal displacement. We cannot and should not have to wait for ULURP to start to hear from the city about a comprehensive anti-displacement plan.

In order to accurately evaluate the likely secondary displacement impacts of the proposed rezoning along Jerome Avenue, 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.

Further, DCP should look at likely secondary displacement impacts in relation to a range of potential development scenarios under proposed zoning changes, because differences in both amounts and rent levels of new housing will have different likely impacts on the rates of indirect residential impact we should anticipate seeing. For example, an assumption that most new units will be built using both MIH and HPD’s ELLA subsidy program would yield an incoming population that is richer and whiter than the current local

population. Even though both MIH and HPD's ELLA subsidy programs generate affordable housing units the majority of the units are priced above the local population and therefore bring an incoming population that is distinct that the current neighborhood.

An examination of other neighborhoods that have seen a substantial increase in Non-Hispanic or Latino White population to a previously Black and/or Latino community indicates cause for concern about the impact on both loss of rent regulated housing and rates of rent increases. Citywide, the percent change in the white population decreased by 6.01% from 2000 to 2014. However, in some neighborhoods, the trend was drastically different. Bedford Stuyvesant (Brooklyn CB3) saw the most drastic jump, with the percent change in the white population increasing by 665.76% over that same period. These same neighborhoods saw higher rates of the loss of rent regulated housing than the citywide average, and much higher increases in median rents. The 5 community districts with the highest rates of white share of population increase each saw either an above-average rate of rent increases or an above average rate of loss of rent regulated units – and some had both. The chart below illustrates the correlation.

### Changes 2000-2014

	<b>% Change in White Population</b>	<b>Rent Reg Loss</b>	<b>Change in Median Rent</b>
Rent			
Citywide	-6.01%	-17.83%	14.7%
BK CB3 (Bedford Stuyvesant)	665.76%	-32.90%	26.1%
MN CB10 (Central Harlem)	478.96%	-16.30%	24.7%
BK CB4 (Bushwick)	276.28%	-35.80%	33.8%
BK CB8 (Crown Hts)	156.93%	-23.83%	13.0%
BK CB16 (Brownsville)	108.92%	-14.31%	24.6%

*U.S. Census Bureau; American Community Survey 3-Year Estimates, 2014. U.S. Census Bureau; Decennial Census, 2000.*

Bringing in more than 12,000 residents and displacing almost all of the auto industry is an extreme act. Where is an equally extreme effort to enact an anti-displacement plan for residents who live here now? We need a study that encompasses both the legal and illegal displacement that could occur.

Furthermore, the Jerome Avenue proposal does not exist in a vacuum, but rather should be considered in the context of past, current and future actions, and within the context of public and private actions. To the North, the Webster Avenue rezoning has already spurred private investment in the surrounding area.<sup>20</sup> To the South, there is market rate development ongoing in the Port Morris Section of the Bronx, along with aggressive efforts to “re-brand” the area as the “Piano District,” an approach that has preceded every area being gentrified in the city to date. This market-based development is complemented by the

20 See Rebecca Baird-Remba, “Permits Filed: 235 West Kingsbridge Road, Kingsbridge Heights,” YIMBY (Sept. 12, 2016) (site on West Kingsbridge Road reported on as an example of a site anticipated to be filed for market development). Online at <http://newyorkyimby.com/2016/09/permits-filed-235-west-kingsbridge-road-kingsbridge-heights.html>.

Melrose Common Urban Renewal Plan, substantially developed for affordable housing at 60% AMI and above, which excludes the majority of area residents, targeting “affordable” units for those earning two or more times the incomes of the area residents. To the east, there are plans underway for transforming of the Sheridan Expressway, providing new boulevards and new housing, along with an expanded park and various points of entry for waterfront access. The “impact area” for that proposal stretches from Bronx Park South to the tip of Hunts Point. Now, to the west, there is the Jerome Avenue Rezoning Plan, anticipated to spur the development of over 4,000 units of new housing along 73 blocks, relying on MIH to provide permanent affordability, which is not affordable to the vast majority of local residents, displacing hundreds of jobs, and likely already encouraging displacement and tenant harassment in adjoining neighborhoods by its simple announcement. All of these past, present and anticipated future actions need to be part of the cumulative impact assessment on South Bronx residents as a result of the proposed Jerome Avenue rezoning.

## Analysis

In order to appropriately analyze the likely impacts of the proposed rezoning on residential displacement, DCP should:

- Separately analyze preservation and creation of affordable housing. Creation of new affordable housing does not protect existing residents of the community, many of whom will be displaced by the time the new housing is created.
- Look both at the impact on that housing stock typically included in the City’s evaluation of units preserved through subsidy and/or regulatory agreements, and at rent regulated housing that lacks additional regulatory frameworks, which is a different and crucial source of affordable housing for which City actions can speed or slow the rate of loss.
- Analyze the effect on overall median rents that various city actions could have, examining not just units that fall into particular categories of regulation but also simply affordability levels.
- In its analysis of potential displacement, present both best- and worst-case scenarios for the direct displacement that may be caused by the actions of private landowners who may seek to redevelop their sites after the rezoning. Although CEQR [City Environmental Quality Review] typically requires an analysis that illustrates a “conservative assessment of the potential effects of the proposed project on sites likely to be redeveloped,” we are concerned that for an area-wide rezoning of this magnitude, a “conservative assessment” will paint an inaccurately mild picture of potential displacement. Therefore, the City should present both best- and worst-case scenarios so the community can have a better understanding of the full range of possible outcomes in terms of direct displacement.
- Conduct a detailed analysis of direct residential displacement, even if DCP’s initial assessment suggests that the amount of direct displacement falls below the threshold that requires a detailed analysis. This detailed analysis would require DCP to examine prevailing trends in vacancies and rental and sale prices in the area... DCP should also conduct a detailed analysis of indirect residential displacement.
- Analyze both the extent to which the rezoning may cause indirect residential displacement, and the degree to which it may accelerate displacement that is already occurring. This is required by the

CEQR Technical Manual, and it is a critical piece of the analysis because it permits the community to assess whether and the extent to which the rezoning might exacerbate displacement pressures our residents are already experiencing today. In the critical *Chinese Staff and Workers* case, the New York Court of Appeals held that, “The potential *acceleration of the displacement* [emphasis added] of local residents and businesses is a secondary long-term effect on population patterns, community goals and neighborhood character such that CEQR requires these impacts on the environment to be considered in an environmental analysis. The fact that the actual construction on the proposed site will not cause the displacement of any residents or businesses is not dispositive for displacement can occur in the community surrounding a project as well as on the site of a project.”<sup>21</sup> Typically, the City responds to the community’s concerns about the rezoning by saying that gentrification and displacement are already occurring and by stating, in a conclusory manner, that the rezoning will help address these problems. This is not sufficient to meet the requirements of the CEQR process; the City must analyze the extent to which displacement may be accelerated.

› Expressly address the potential displacement risk of vulnerable populations in the area, including:

- Tenants in unregulated apartments
- Tenants in rent stabilized apartments
- Tenants who are rent burdened
- Tenants in apartments where regulatory agreements for affordability are expiring
- Shelter, halfway house, and three quarter house residents
- Residents of cluster site housing
- Section 8 voucher holders
- People of color
- Seniors. One elderly tenant spoke powerfully to the displacement risks faced by seniors at the Draft Scoping hearing: “The majority of us – the most that we make is \$25,000 a year... half of that goes to rent. Another quarter goes to your medication. Whatever you got left is for food and for clothing, and God forbid you don’t get sick too many times ... What is going to happen to us [seniors]? We can’t go to the shelters anymore, the shelters are full. I worked all my life ... If next year, my rent goes up \$100 like it did this year, I gotta go. We the seniors need help.”

› Analyze and disclose the impacts of past rezonings of similar magnitude as the proposed Jerome Ave rezoning. As part of this, the City should disclose and analyze demographic information suggestive of displacement, including changes (pre and post rezoning) in:

- Racial demographics
- Local area median income
- Educational attainment level of residents
- Average rent levels in market-rate units
- Number of rent-stabilized units
- Percentage of non-English speaking populations

› Consider the Jerome Avenue proposal in the context of other public and private actions

- Under the 1986 *Chinese Staff Workers* case, when a proposed action is inconsistent with area character and is likely to change neighborhood population patterns and community character, the city is required to consider secondary, as well as cumulative, impacts.
- In assessing cumulative displacement, the President's Council on Environmental Quality explains that consideration should be given to a proposed action's cumulative effects in the context of "past, present, and reasonably foreseeable future actions regardless of who undertakes the action."
- The cumulative assessment for the proposed Jerome Avenue rezoning should cover an area that at the very least covers Bronx Community Districts 1 through 6. Considerations should include, but not be limited to, direct and indirect resident displacement; loss of political power; loss of cultural expression and interaction; loss of access to necessary and affordable goods and services; loss of social networks, destruction of social capital, and loss of institutional affiliations, including churches.

## **Mitigation**

The City should analyze, disclose, and adopt a broad range of mitigation strategies for residential anti-displacement, including all those described in the Coalition's platform. Most importantly, the City must take proactive measures to preserve affordable housing and create high-quality local jobs, as described more fully below.

## ***Preservation of Affordable Housing***

- › Pass and fund Intro 214, providing a right to a lawyer for tenants facing the loss of their homes. For many years, advocates and tenants throughout New York City have been advocating for New York to establish a Right to Counsel—a right for New Yorkers facing the loss of their home to have an attorney to defend them even if they are too poor to pay for counsel. From a funding perspective, we are closer to a Right to Counsel than we've ever been. But a right is so much more than just funding. We believe that people have a right to stay in their homes and communities with dignity and respect, and that housing court can become a place where justice is applied equitably. A Right to Counsel is a key piece in making these goals a reality. Although the anti-displacement legal services the City has created are an important start, a Right to Counsel would make provision of legal representation less vulnerable to the funding priorities of a future administration and close the gaps in services that are already being provided now (including by guaranteeing services to tenants who may experience displacement pressures, but fall outside the zip codes currently covered by anti-displacement legal services funding). In addition, a Right to Counsel would help ensure tenant safety by empowering tenants to report housing code violations, form tenants' associations, file overcharge complaints, and even take their landlords to court - secure in the knowledge that they will have legal counsel if a landlord attempts to punish them for exercising their rights. A fully funded and well-implemented Right to Counsel, which could be phased in over time, would be a strong step forward in the path toward institutionalizing justice. More information about the need for and financial benefits of Right to Counsel is attached as Appendix A.
- › Pass and fund Intro 152-A, which would create citywide "Certificate of No Harassment"

requirements, preventing landlords who have harassed tenants from getting certain permits from the Department of Buildings unless they agree to set aside part of the building as permanently affordable housing. This model has been locally effective in the Clinton special district, and should be expanded by requiring that DOB and HPD put a similar policy in place across the city. In addition, the policy should apply to a larger set of DOB permits. More information about the need for and benefits of a citywide Certificate of No Harassment policy is attached as Appendix B.

- 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 AEP, 7A, 8A loans, aggressive litigation, and Spiegel, in a collaborative, focused, and consolidated way to maximize impact.
- Create a live map of distressed buildings allowing local community groups to map progress and insert updates based on local information gathering. The map should include every residential building in CB 4 & 5, and the following information about each building:
  - Ownership status, private vs. nonprofit
  - High rate of violations (3 or more) per unit
  - Financial Distress
  - Pattern of Cases in Housing Court
  - Word of Mouth Harassment Complaints
  - MCIs
  - High percentage of units with Preferential Rents
  - Foreclosure
  - Level of engagement, including who has done outreach at what time periods, whether an active Tenant Association exists, and whether the building has engaged in litigation
- Adopt a new HPD subsidy term sheet to ensure that new housing more closely reflects the income levels of current neighborhood residents. Although new affordable housing should not be thought of as a direct mitigation for displacement, the more closely new housing matches the current income and rent levels, the less likely it is that new development will change neighborhood conditions in a manner that triggers higher rents, gentrification and displacement.

### ***Local Hiring***

There is nothing in this scope about the jobs needed to create more than 4,000 units of housing or the safety requirements for those jobs. 4,000+ units of housing will create about 4,000+ construction jobs.

In her testimony at the Public Scoping hearing, a community member asked, "Who will build this new housing? As a woman in the construction industry, my concern is, will women and local residents have opportunities associated with the more than 4000 apartments that are being built? ... With unemployment in the community at 15% and the average income at \$24,000, the average single woman making less than \$20,000, why isn't the City studying the socioeconomic impact of job creation? ... The community deserves the opportunity to join the middle class, just as I did 18 years ago when I was a single mother of three kids ... The union provided me with good wages, equal pay, and skills ... The working man is not a sucker. Put



the money in the hands of the people, and they will put the money back in the community!”

Our neighborhoods have a 15% unemployment rate. Only 60% of the population over 16 participates in the labor force. If we are creating jobs in our neighborhood, we need to create jobs for our neighborhood. And not just any job, but safe, well-paying jobs. Moreover, we don’t want jobs—we want pathways to careers. With more than 4,000+ workers needed to build these buildings, we need to ensure that they come through state approved apprenticeship programs and that we have local hire provisions.

The city can act now to reform its subsidy programs to mandate local hire and state approved apprenticeship programs. The city can act now to pass legislation to make sure work sites are safe and that workers are protected. The city cannot and should not facilitate the creation of 4,000+ jobs, without making sure they are high quality, well-paying jobs, for the Bronx.

- Ensure local hiring, because no apartment is affordable without a job. City agencies (such as HPD) and the Economic Development Corporation (EDC) should make local hiring a requirement of projects they fund. The City should make this a requirement for all agency-funded projects citywide, through either legislation or an Executive Order issued by the Mayor. This would be especially helpful in the rezoning communities, where the City is investing a lot of money, where the risk of displacement is high because of increased development interest, and where the existing need for jobs is great.
  - When City agencies or the EDC start projects, they put out Requests for Proposal (RFPs) for developers who want to build the projects. These RFPs must include specific local hiring standards and state that developers who are prepared to meet those requirements will be given preference in the selection process.
  - These standards should be similar to and build on the standards and requirements set in the Build It Back Sandy recovery RFP:
    - *Targeted hire standards:*
      - 30% of work hours conducted by local residents
    - *15% of work hours conducted by disadvantaged local residents*
      - 10% of work hours conducted by women
    - *Local Hiring Plan. Requirement that the Contractor develop a plan that*
      - Clearly demonstrates the proposer’s plan and capacity for ensuring compliance with the hiring requirements, and
      - Identifies local organizations that the Contractor will work with to establish job pipelines and career opportunities on each project.
    - *Dedicated Staff. The Contractor must provide at least one full-time staff member dedicated to tracking daily hiring at the job sites and ensuring implementation of the requirements of the Plan.*
    - *Reporting Requirements. The Contractor must comply with, in the least, monthly reporting requirements in line with Local Law 140 of 2013, known as the Sandy*

- Provide Job Training & Education to local residents. The City should provide funding for programs to ensure that local residents are eligible and prepared for state certified apprenticeship programs.
  - Fund GED programs in neighborhoods where apprenticeship programs are being implemented.
  - Allocate additional funding dedicated to local apprenticeship programs and implement them before construction projects begin so that there is a pool of skilled, available and local workers. The city must also conduct outreach so people know about training programs.
  - Provide scholarships, childcare and other support to residents so they can access apprenticeship programs.
  - Allocate funding to enable community-based organizations to provide sector-specific workforce training. The city should fund local Bronx organizations to provide training for industries with a strong presence in the Bronx. Focus trainings on fields that offer high-quality, highly skilled jobs.
  - HRA and SBS should also have job training programs and transitional job programs that train residents for jobs in the sectors where new jobs are being created.

## **Business Displacement**

*“When I came to this country, the first avenue I knew was Jerome Avenue...and because of my work eventually I was able to own my own business...I want to say to the Governor of New York, the Mayor, the elected officials, you are elected to represent the people, not to take people out, not to take the salaries of the workers of Jerome Avenue. I understand the world is changing and we want to modernize...but the changes have to be with the people and by the people. And not enough people are talking about the auto workers...but we serve the poor people of the Bronx... we want to be part of serving the people of the Bronx, we want to be part of the development of the Bronx. I want the city to remember that every step you take is going to be paid for at the end because this is the town that votes for you.”*

- Miguel Diaz, CASA member and automotive worker

“Do you think that the auto workers on Jerome, who work hard every day to provide for their families, do you think they want to get rid of 75% of their jobs? It’s late at night, and one person spoke in favor of the rezoning, and he got booed. It’s very clear what the community wants ... The community does not want this deal, and any deal that comes in should benefit them, and require local hire and good jobs like the ones you’re getting rid of on Jerome Avenue ... “

-Speaker at Bronx Draft Scope hearing

## **On the Displacement of the Immigrant Auto Industry**

The scope is completely silent on the benefits of the auto industry. Instead, according to the scope, auto shops (heavy commercial uses), block sidewalks, encourage vehicles to cross into auto shops and parking garages, operate in bays and behind heavy gates removing “eyes from the street,” and produce extreme levels of noise, all of which are generally “incompatible with a strong pedestrian experience.”



We will correct that here. Auto repair businesses are an important source of jobs for people of color, immigrants, and people without a high school diploma or college degree. In NYC, more than 60% of auto workers are immigrant, 75% are people of color (with large percentages of African Americans and Latinos), 25% of auto jobs pay \$40,000 to \$60,000 a year, 23% of auto jobs pay more than \$60,000 a year, about 70% of auto workers have a high school diploma or less<sup>22</sup>.

Auto repair jobs—like mechanics and body repair—pay better than other jobs that don’t require a formal degree, like restaurant and retail work. For example, the average annual wage for auto jobs in the New York area is \$44,000, compared to \$25,000<sup>23</sup> for food preparers. The city currently has no stated intention to assess loss of jobs and the impact on the local economy, neighborhood, communities and families.

The proposed Jerome Avenue rezoning area is home to more than 100 shops, which employ hundreds of people<sup>24</sup>. It’s one of the densest auto corridors in the city, with high concentrations of businesses in a small area. This increases the area’s competitiveness, because customers go to places where they can find many services in one place and hunt for the best price.

These businesses show no signs of wanting to move within the next 10 years. 77% of businesses surveyed along Jerome Avenue by United Auto Merchants Association (UAMA) say they plan on staying. 60% of these businesses have been operating and providing jobs on the corridor for more than 15 years.

Despite these “retention areas,” the zoning of 83% of the land currently available for auto-related uses will change to allow housing. Landlords will be able to make more money from their property by selling it, or redeveloping it to build housing or bring in businesses that can pay higher rents.

Under the current plan, the land the city will keep available for auto-related uses represents less than one-third of Jerome’s auto sector. Only 28% of existing auto businesses are in these retention areas, and only 26% of Jerome’s auto repair workers work at these businesses<sup>25</sup>.

The rezoning plan’s message to the predominantly Dominican Auto Industry is: Get Out of the Way.

The proposed rezoning corridor is a complex economic ecosystem that includes tenant businesses, subtenant businesses, and a large workforce with high percentages of immigrants who derive their livelihoods in a variety of arrangements, including full time, part time, and “per job” commissions. These conditions are poorly captured by traditional data sets. When considering the analysis of business and worker displacement, it will be essential for the scope of the DEIS and the DEIS not to rely on standard methods of “behind the desk” data sets and to instead incorporate field data that is reflective of the reality of businesses and workers in the rezoning corridor.

In addition, many restaurants, retail stores, churches and social service organizations currently rent space on the streets that will be rezoned. Under rezoning, they risk being displaced as property owners demolish

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22 ACS PUMS 5 Year 2014

23 NYSDOL Occupational Employment Statistics

24 UAMA Auto Survey 2015

25 NETS 2014

their buildings, rebuild and seek higher paying tenants.

To date, the city has expressed an indifferent view to the fate of the auto sector. Hundreds of shops were displaced from Willets Point to make way for more “attractive” uses at the expense of a largely immigrant workforce. Without a plan to accommodate the relocation or meaningful retention of the auto sector on Jerome Ave, the businesses and workers who have made their living in the area for decades will be forced out of business and out of work with nowhere to go. The city must change its stance on the fate of the auto sector or risk widening the gap of economic equality instead of closing it as intended by this administration.

## **Context**

Auto and Industrial businesses are valuable and will experience significant negative impacts due to the proposed rezoning. This reality is disregarded by the Draft Scope and documents upon which it relies.

The proposed Jerome Avenue rezoning will have a significant impact on auto related and industrial businesses that currently exist in the study area. There are statements in the draft Scope that indicate that this sector is not valued by the City and subsequently scapegoated for many of the negative characteristics currently associated with Jerome Avenue.

For example, the draft Scope cites noise levels that destroy the pedestrian experience on Jerome Ave<sup>26</sup> as attributed to uses under the current zoning in C8-3 and M1-2 (i.e. auto). Considering that the Jerome is located underneath an elevated train, it’s disingenuous to portray local businesses as the sole or even primary source of noise on the avenue.

The draft Scope also relies on documents that include similarly biased and unsubstantiated claims about the auto industry. For example, the Place-Based Community Brownfield Planning Foundation Report on Existing Conditions – Jerome Avenue Corridor (2015) states<sup>27</sup>, without any substantiation: “Despite their proximity to mass transit stations, both Cromwell and Jerome Avenues are lined with dismantling shops, junk yards, open parking lots and auto-repair shops whose operations frequently spill over into the public streets and sidewalks. These uses do not generate significant jobs or provide basic services to local residents.”

It seems that the displacement of this sector which is so critical to providing employment opportunities to a vulnerable and largely immigrant workforce is a major intended outcome of the proposed actions. At the same time, the extent to which auto and industrial businesses will be impacted is underestimated because of methodological flaws at various points of analysis, including the selection of projected and potential sites, the counting of jobs, and the individualized approach to economic impact that does not take into account the impact of disrupting clusters. As described below, we urge a fairer methodology to analyzing the impacts on the auto and industrial sectors in the study area.

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26 DEIS 15.

27 Place-Based Community Brownfield Planning Foundation Report on Existing Conditions – Jerome Avenue Corridor (2015), 10

Furthermore, the draft Scope rationalizes the displacement of these specialized businesses that provide well-paying jobs with the idea that general retail development is a better alternative that is currently being stifled under existing zoning. However, the DEIS's own analysis showing an expected increase of 200,000 sq ft of commercial space under the no action scenario contradicts the conclusion that current zoning is stifling the retail sector.

We urge the City to study alternatives to the proposed land use actions that would enhance the opportunities for well-paying jobs in the Jerome Avenue corridor instead of dismantling them. The study area has a staggeringly high unemployment rate of 17%<sup>28</sup> and a large population of residents who need access to quality blue-collar jobs. The auto repair and industrial sectors pay far higher wages on average – \$44,000 and \$50,000 per year respectively – than the retail sector, which pays an average of \$24,000 per year.<sup>29</sup> As described above, the auto industry is a critical source of quality jobs for people of color and immigrants with limited formal education. The proposed actions and subsequent displacement of auto related businesses will remove the job opportunities provided by the auto sector almost entirely from this area of the Bronx. 80% of auto related businesses within Community Districts 4 and 5 exist within the rezoning area.

## Analysis

### 1. Assessing and describing job quantities and qualities; a more accurate methodology is needed

The draft Scope cites an increase of 1,016 jobs<sup>30</sup> as a result of the rezoning over a “No Action” scenario, yet fails to provide reference as to how this number was determined,<sup>31</sup> what percent of these jobs are expected to pay a living wage and in which sectors, and - assuming this is a net figure - what number and type of job loss it obscures. DCP should disclose the methodology used to create this number, and be transparent about which sectors and wages these new employees are likely to be associated with, and about what can and cannot be known from the analysis.

The City's proposed method for assessing job displacement improperly relies on counts from New York State Department of Labor (NYSDOL) and US Census. The Jerome Ave rezoning geography is far too small for either data set to produce an accurate count of jobs and many of the auto businesses employ workers that would not be represented in official record for various reasons<sup>32</sup>. Fortunately, the CEQR technical manual explicitly allows for alternatives, stating that the City can use information collected and published by local organizations to characterize the employment of businesses in the rezoning area.<sup>33</sup> Department of Small Business Service (DSBS) recently contracted with three local community based organizations (WHEDco and Davidson), to collect detailed data as part of their Commercial District Needs Assessment (CDNA) process. It also contracted with another community-based organization, United Auto Merchant Association (UAMA) to obtain additional critical data about the auto industry in the area. DCP should

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28 Department of City Planning Jerome Ave Neighborhood Profile.

29 NYSBLS Occupational Employment Statistics.

30 DSOW Table 1, Pg 27.

31 A footnote in the document offers calculations for expected resident increase but not worker increase.

32 Workers not on official payroll would not be counted in datasets relying on unemployment insurance.

33 Section 5-6, 321.2

incorporate this data as well as other primary methods to base their analysis on – instead of data sets that will grossly undercount the workforce. As part of this, the DEIS should analyze the change in the number of auto-related businesses and workers in the corridor since DCP’s initial field study and incorporate those trends into its displacement analysis.

Using data collected through these and other appropriate methods, the City should disclose real job numbers for any businesses identified as being likely to be directly or indirectly displaced by rezoning. Further, the City should explicitly disclose which businesses would be directly or indirectly displaced from rezoning are family-owned and operated versus which are chain store businesses

Development projections are too conservative and the business displacement analysis will not capture actual impacts on auto or industrial businesses.

The draft Scope proposes to measure direct business displacement based on a site-by-site analysis of where DCP projects development to take place. The factors that are considered for determining the projected development sites assume that development occurs in an isolated vacuum. The problems with estimating where there will be new development are described in the section about the RWCDs, but new development is not the only way a business can be displaced on a site. Tenant businesses are particularly vulnerable to the actions of landlords who seek to replace businesses that pay lower rents with ones that pay higher rents, which is often the pattern that is triggered by dramatic changes in land values in an area. The City should take into account a full range of variables when assessing which businesses could be indirectly displaced by rezoning. These variables should include business tenure and whether the business owns or rents.

## 2. Direct and indirect displacement analysis must take into account the importance of clustering

The CEQR technical manual states that “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”<sup>34</sup> and allows for wide discretion for *how* that analysis can be conducted.

There is an important symbiotic relationship that exists between auto retail and auto repair businesses, and among auto related businesses in general; clustering is essential to the survival of the sector. The auto businesses in the rezoning area that are licensed by the Department of Motor Vehicles is one of the most tightly clustered auto corridors in the City. An analysis by the Pratt Center for Community Development reveals that the industry is highly clustered citywide – with half of all DMV shops forming part of 18 main clusters. Of these clusters, Jerome Avenue is the second densest, with the equivalence of 344 shops per square mile. It is difficult for auto shops to survive outside of clusters, and as auto shops are displaced clusters are broken up or weakened, a domino effect takes place.

An important element of these auto clusters is the auto retail component. Without the nearby presence of auto repair shops, auto retail becomes barely viable. Therefore, a disrupted cluster has impacts on repair and auto shops.

The City must acknowledge this relationship and employ a methodology that will accurately assess the impact of rezoning on the full Jerome auto economic ecosystem, including the retail component. DCP must include a detailed methodology of how this will be achieved in the Final Scope of Work.

The Draft Scope of Work references that significant adverse impact of direct business displacement will be found if “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”<sup>35</sup>. When assessing the auto industries trade area, the city should consider the auto *cluster* that exists on Jerome Ave as the major driver of commerce and a competitive advantage over other districts due to the concentration and diversity of services and prices. The City must evaluate whether there are other clusters of similar density and diversity, or areas where such a cluster could relocate to within the “trade area”. If not, the city should determine a significant adverse impact.

As described in CEQR there is no established “trade area” that is applicable to all types of businesses.<sup>36</sup> Because of the number of auto businesses on the Jerome Ave corridor the trade area should be reflective of the customer base that is attracted to this large cluster. CEQR states that a trade area should be determined by the geography from which the majority of customers or clients of the businesses are drawn. To identify a trade area for the Jerome Ave auto cluster DCP should convene a working group of auto business workers, owners, and industry trade groups as well as local CDC’s to develop a representative trade area of this cluster.

Establishing a trade area for which to evaluate the sector is critical to accurately identifying the size of the customer base that is likely to be impacted by this rezoning. As the auto sector by nature enables more range of businesses for consumers to choose from the trade area for the Jerome Ave auto cluster is likely to be quite large. If a trade area that is too small is chosen to evaluate the auto sector it is likely that full breadth of economic activity created by the Jerome Ave auto cluster will be undercut as well as the impact on consumers from a larger area than just the rezoning geography.

The EIS should evaluate the impacts of displacement of auto workers in the context of citywide trends and the shrinking availability of, and increased competition in, land that is zoned appropriately for auto uses. It should evaluate prospects for relocation by considering actual vacancy rates and the competitive disadvantages that auto related businesses face against other uses that are allowed in C8, M1, M2, or M3 zones that can pay much higher rents.

### 3. A comparable area to study indirect business displacement must reflect characteristics of Jerome Ave

CEQR states that a preliminary assessment of indirect business displacement will identify trends that may make it difficult for existing businesses to remain in the area. CEQRA cites trends to include property values that have seen increases in other areas and similarly, rents that have reflected those increases in other areas.

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35 Section 5-6, 321.2

36 CEQRA, Socio Economic Conditions 5-10, 5-4.

In order to accurately conduct this analysis the city must identify a comparison area that has the following characteristics and disclose all similarities in the Final Scope of Work:

- › Similar public transit access
- › Similar proximity to arterial roads
- › Similar existing building stock and lot sizes
- › Similar existing business composition
- › Similar increase in density under zoning action

DCP has cited Webster Ave as a comparable location to Jerome, but the city must not use Webster Ave as a comparison area to assess indirect business displacement based on increase in rents and property values. Webster Ave does not have the same transit access, proximity to major roads, or increase in density under zoning action as proposed for Jerome Ave and therefore cannot be used as a comparison area.

#### 4. The proposed rezoning does not fit the existing retail landscape of Jerome Ave

Apart from the concentration of auto related businesses, Jerome Ave is a vibrant and active retail corridor with an incredibly diverse range of businesses. DCP has documented these businesses and the building types and sizes that they inhabit in their existing conditions report. Yet, the proposed zoning does not fit the needs of these businesses. As exhibited in the proposed and potential site analysis, the zoning designations encourage the agglomeration of sites into large lots to make housing development attractive. This lot consolidation will increase the floor plates of the ground floor commercial space to sizes likely too large for many of the smaller local retailers whose needs are for small affordable spaces as exhibited on the corridor currently. Developers are more likely to try and attract a single large ground floor commercial tenant than a number of smaller tenants as the single user creates more financial security for the project.<sup>37</sup> Further, it is likely that newly constructed commercial space will rent for higher prices than the existing spaces and may be out of reach for many smaller local businesses.

The City should conduct an analysis that would show current land value in existing building conditions versus anticipated land value under fully built out conditions as determined by area rezoning. This analysis should also provide an estimated price per square foot for renters under existing and future conditions since the cost of space is likely to determine what kind of business can exist in the new development.

While the Department of Small Business Services has undertaken a notable initiative in the form of the Commercial District Needs Assessment and subsequent programmatic funding opportunities, this initiative cannot be seen as a mitigation measure for the likely displacement of many small local retailers at any point within the Final Scope of Work or Draft Environmental Impact Statement. The programs offer no security for these businesses against the strong market forces of development that the rezoning will bring to the neighborhood.

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37 ILSR Affordable Space, How Rising Commercial Rents are Threatening Independent Businesses, 11.



## 5. “Retention Zones” are Insufficient to accomplish their stated goal; alternatives should be studied

The Draft Scope of Work sites that significant adverse impact of direct business displacement will be determined based on business displacement within a discrete trade area where their products or services are not offered by other businesses and whether a category of business is the subject of other regulations or publicly adopted plans to preserve, enhance or otherwise protect it. The draft scope of work references four areas, currently zoned C8 and M1 (heavy commercial and light manufacturing), that are excluded from the rezoning as “retention zones” in order to support the auto and industrial sectors. While factors of consideration that are mentioned include number and types of businesses as well as jobs, the specific goals are not explained, nor is the magnitude of job or business support disclosed that is expected to be accomplished. The Scope should cite the number and type of businesses, and number of workers that this action is aiming to protect, as well as provide a more detailed rationale for how this action fits into the overall impact of the proposed actions.

These so-called “retention zones” are grossly insufficient in size and not protected well enough in the plan to accomplish the stated goal. As such, they cannot be classified as a regulation or policy that will preserve, enhance or otherwise mitigate or reduce the impact of business displacement within the auto sector in any section of the Draft Scope or Environmental Impact Statement. The “retention zones” are not up to the task for multiple reasons:

- They have little to no vacancy - The City’s own analysis shows almost no vacant space within the retention zones to accept displaced businesses. DCP should make explicit their vacancy analysis within the “retention zones”.
- The retention zones - even in their current state – primarily house non-auto or industrial uses. More than 50% of the area in these zones is already occupied by other uses. The draft scope even makes reference to recent gym, restaurant and self-storage developments in C8 and M zoned areas of the study area indicating the permeability of this zoning.<sup>38</sup> DCP should make explicit the existing business composition within the “retention zones” including a full count of the number of auto related businesses and jobs that exist in these zones.
- The zones only house a small portion of the Jerome Avenue auto cluster. Just ¼ of the auto businesses in the area actually operate within them.
- The existing zoning designation – without additional protections for auto and industrial uses – is insufficient to protect these businesses against competition from higher paying uses ranging from self-storage to restaurants, which can operate as of right within both M and C8 zones.
- Because the zones are designed to be separated by high density residential development, the vulnerability of these businesses will increase. This land use pattern makes it unlikely that existing auto uses will be able to survive in the future there due to market pressures and compatibility issues.

## Mitigation

To better support the auto and industrial sectors that exist on Jerome Avenue the City should study a range of alternative land use actions. Guidance for how these can be considered appears in the section of these comments that refers to Alternatives. In brief, the City should study and consider options that 1) include the proposed retention areas in the Special District and add protections, 2) expand the retention areas 3) employ creative zoning tools designed for outcomes that generate blue-collar jobs and/or 4) combine these approaches as appropriate.

### 1. Any potential relocation plan must be well considered and account for the specific locational needs of auto businesses.

The City should provide relocation support for those businesses that are displaced through the rezoning. To do this the City should include in the Final Scope of Work and the DEIS an analysis of vacant, appropriately zoned, and otherwise suitable (correct certificate of occupancy) potentially viable sites for potential relocation, at various sizes, ranging from individual business level to sites that could accommodate a cluster of businesses and/or a vertical arrangement. These should be actual sites in the Bronx and/or Upper Manhattan and the analysis should include an evaluation of factors that rank the locations' viability based on size, proximity to transit, proximity to major roadways, correct certificate of occupancy, or city-owned. Additional input from auto merchants in the area should be incorporated to identify criteria for collective relocation (such as size, distance from original location, building type, distance from transit).

If a suitable location(s) based on mutually agreed upon criteria is identified, the city should sufficiently fund investments in the site and costs of business relocation up front and not as a reimbursement.

### 2. DCP must use zoning as tool to ensure a diverse range of retailers on Jerome Ave

The City must deploy regulations within the Jerome Ave Special District that ensure the continued viability of small independent businesses that can serve residents at existing income levels in the area. These regulations should include requirements for developers to provide a range of commercial space sizes within large sized lots created through agglomeration. These regulations should be incorporated into the zoning text of the Jerome Ave Special District.

### 3. The City must expand its understanding of the auto sector in terms of its value, services, and future needs

The City must 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. Absent of an organized policy it is likely that the auto industry will bear the impact of future rezonings as the space they inhabit is seen as "underutilized" when evaluated through the narrow lens of unused FAR and potential for building large scale residential complexes. The study should be advised by a Steering Committee that includes auto business owners and workers, and conducted by an entity that can fairly value the contributions of the sector to the city as a whole, including the necessary service it provides to consumers and as part of the city's infrastructure system, the entrepreneurship and employment pathways it creates, and economic



contribution.

The study should lead to the development of 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 so as to reduce the impact on the auto sector in future rezonings.

As part of a comprehensive alternative to the proposed action, the City should communicate with businesses in collective forums and groupings, recognizing cooperative structures and ensure that local, small businesses can be physically located in and thrive in the new, rezoned area. Ways to accomplish this include:

- Giving preference for return to local businesses. To do this, the City should create a system to offer existing, interested businesses in the proposed rezoning area a “right of first return” or preference in occupying new space(s) created by development. To support this policy, the City must consult with existing small local businesses and craft its zoning plan accordingly, as described at the beginning of this document.
- Limiting increases in rents to no more than 5% in the rezoning area through all legal mechanisms, including requirements on developments that receive public subsidy, and throughout the City through citywide legislation.

## IV. Community Facilities

### Context

Community facilities such as schools, libraries, and early child care will undoubtedly be impacted by the city's rezoning actions. Adding a substantial new population to the Jerome Ave corridor will further exasperate these already strained facilities lack of capacity. Schools in the rezoning area are already overburdened; many currently use temporary or transportable classroom seats just to keep up with the demand from current students. The addition of a potential 11,000 residents, many of which will be school aged, will make the current environment of overcrowding worse - further impacting the learning environment of existing students.

Further, the CEQR manual fails to study anything apart from the impacts of overcrowding on schools, which is a shortcoming that must be addressed immediately. Students in the area are performing at below standard rates for a number of reasons ranging from sub par teachers to youth homelessness. Investment is needed now to ensure that those attending public schools in the area are given the quality education that they deserve before the city even thinks about adding additional students. In order to fully understand the impact of land use changes on schools CEQR needs to broaden its scope to include other indicators that should be developed in collaboration with students, teachers, community groups, and professionals.

Additionally, the current population projections for expected students, and residents in general, are based on assumptions of the number of projected dwelling units that will be developed under existing MIH options. The Bronx Coalition for a Community Vision has developed its own term sheet that offers deeper affordability levels (see section 2, Land Use and Public Policy) that should be incorporated into the city's DSOW and DEIS. The city should update its population and student projections to reflect the coalition's term sheet which will likely increase the number of children requiring early child care facilities as well as students projected for the area as a result of the rezoning.

### Analysis

- The City should evaluate future impact of proposed changes on each *neighborhood*. For each neighborhood that will be affected by the rezoning, DCP and related agencies should create a profile that analyzes and addresses increased demand for community facilities and services that the rezoning will create. Each neighborhood profile should:
  - Explain the impact of a proposed zoning change on housing, schools, parks, transportation, and other facilities and services in the area.
  - Include clear proposals of how and when the future needs will be addressed, with details specific to each neighborhood.

## › Schools

- Transportable classrooms and annex buildings are a fact of life in Districts 9 and 10. These facilities are meant to be temporary and the City should not count the school seats in these sub-par facilities when calculating current utilization rates in the DEIS.
- The City should not take into account school seat capacity within the DEIS for projects under the DOE five year capital plan unless site preparation or construction has commenced for those projects.
- CEQR's current criteria for determining if there will be a significant adverse impact on school utilization has a critical flaw. Instead of just requiring that the post-rezoning "target utilization rate" be above 100 to make the determination of a significant adverse impact, it *also* requires that there be an at least 5% increase in utilization rates after the rezoning. Given that schools in this area are *already* overburdened, a post-rezoning target utilization rate of anything over 100 should be enough to qualify a significant adverse impact.
- CEQR states that only schools that are currently *under construction* can be referenced in the *quantitative* analysis of utilization. However, CEQR does allow potential school seats that are neither under construction nor in the School Construction Authority's 5-year plan to be considered in *qualitative* analyses. This is risky. School construction projects, like so many other major real estate projects across the City, are complicated, expensive undertakings that are hypothetical until a shovel hits the ground, so the City should not count its chickens before they hatch.
- The City must expand the CEQR manual to go beyond utilization rates and analyze performance and quality-related metrics when making decisions about impacts on schools. In 2013, 87% of students in grades 3-8 failed to meet grade-level math standards. Many teachers in the area are less qualified than their peers across the City, English language learners often don't get the resources and support they need, and discipline and suspension are often favored over giving students with challenges the meaningful and constructive support they need.
- The City should account for the space being consumed by charter schools within public school buildings and increased need for charter school space due to proposed rezoning project and should adjust estimates.
- The City should take into account input from the CSD Superintendent, local Community Education Council, community education activists and social service and health providers operating in school buildings on the growth patterns in the impacted schools in the study area in both the analysis and mitigation process of ULURP.
- The City should update its student population projections to reflect the affordability levels offered by the Bronx Coalition for a Community Visions term sheet.

## › General facilities

- The City should take into account space needs of neighborhood anchors that operate *within* schools in addition to the school seats themselves (i.e., Beacon, school based health clinics, etc.).

## › Libraries

- CEQR's definition of a library catchment area is a simple  $\frac{3}{4}$ -mile radius around a library itself. This geography does not take into account significant physical barriers, such as the Cross-Bronx Expressway, that may make it harder for people of all ages to access a local library. The City must recognize these types of physical barriers and adjust library catchment areas accordingly.
- In the past (e.g., the recent East New York rezoning), the City has claimed no significant adverse impacts in cases when an overburdened library's catchment area overlaps with a catchment area of a library with capacity. Nowhere in CEQR does it state that this is allowed, and this should not be claimed in the case of Jerome Avenue environmental impact review should such a scenario occur.
- The City should expand its library analysis beyond the current holdings-to-population ratio as the only measure of analysis to be used in determining a library's utility.
- The city should incorporate metrics into its analysis that display the services libraries provide in terms of community space and educational access.

## › Child care

- In assessing significant impact on childcare facilities, the City should review waitlist information to better understand to what degree which childcare facilities are already seeing more demand than they can accommodate.
- As with public schools, CEQR's current criteria for determining if there will be a significant adverse impact on child care facilities has a critical flaw. Instead of just requiring that the post-rezoning "target utilization rate" be above 100 to make the determination of a significant adverse impact, it also requires that there be an at least 5% increase in utilization rates after the rezoning. Given that child care facilities in this area are already do not meet local demand, a post-rezoning target utilization rate of anything over 100 should be enough to qualify a significant adverse impact.
- The City should update its early child care projections to reflect the affordability levels offered by the Bronx Coalition for a Community Visions term sheet which will produce more children requiring city funded early child care.

## **Mitigation**

The City should analyze, disclose, and adopt mitigation strategies to ensure that community facilities are properly developed and funded, including. The Bronx Coalition for a Community Vision has identified specific policies that could mitigate the impacts on community facilities. These strategies have been outlined in both the Coalition's platform and in letters previously sent by the Coalition to the Department of City Planning (attached as an Appendix), and include: (1) community facility zoning, (2) subsidies and programmatic commitments for new community facilities, (3) a payment in lieu of taxes (PILOT) fund to help support community facility uses, and (4) passage of a Community Benefits Ordinance.

## **V. Open Space**

Because of the public health crisis and high rates of obesity, diabetes, stress, and heart disease in the neighborhoods surrounding Jerome Avenue, ensuring that there is adequate, accessible, quality open space that meets the needs of residents and workers is especially critical. Any impacts that diminish available open space should be mitigated. Unfortunately, there are examples of significant adverse impact being found as a result of rezonings in the Bronx, where mitigations are grossly insufficient or not proposed at all. The methodology in the CEQR manual for calculating impact is complex and flawed. For example, ratios are based on acreage per residents. The special needs of neighborhoods with large youth populations, for example, are not taken into account through this ratio. Additionally, whether an area is well-served, or underserved according to the City's guidelines determines the triggers for performing analyses, but an existing condition of underservice, for example, even if it is worsened by a proposed action does not automatically qualify as a significant adverse impact. This methodology allows for the consistent and repeated chipping away of open space access through land use without requiring mitigation.

### **Analysis**

To determine the worker and daytime population, the draft Scope of work proposes to use the Census Journey to Work Data. As mentioned elsewhere, formal data sets will undercount the employees in the auto sector. The open space analysis for workers should be based on the most accurate data and should take into account the information obtained by field surveying - through direct agency efforts or through subcontracts issued to community-based organizations.

The draft Scope indicates that future development that is anticipated to be completed by 2026 as well as future new open space that is anticipated to be completed by 2026 will be accounted for in the analysis. Without a full listing of the developments in each of those categories that will be included in the analysis, it is impossible for the public to comment on the list and to make additions or comment on the likelihood of development. It is also unclear how DCP will determine which projects are eligible for inclusion.

The qualitative analysis referenced on page 37 should be a participatory process that involves community members in order to ensure that the full range of issues are captured, including limits in access that are created by unsafe roadways and proximity to the Cross Bronx Expressway, and by social and physical factors related to safety.

### **Mitigation**

The CEQR manual's methodology for assessing impact is inadequate. Mitigations should be designed in collaboration with the community to address the issues that they identify.

## VI. Shadows

The coalition is concerned with shadows cast from the proposed zoning district alongside the elevated infrastructure of the 4 train where substantial up-zoning has been proposed. The elevated train #6 and Jerome Avenue both run from south to north. Consequently, any new structures exceeding 50 feet in height will cast shadows on train infrastructure during both sunrise and sunset. The shadows cast by these buildings could have significant adverse impacts on neighboring buildings and streets, which could experience significantly less hours of sunlight. This is particularly concerning during the winter months when there is the greatest need for sunlight. Also, 6 community gardens may have shadow impact that might affect the productivity and quality of those open spaces in the community.

### Analysis

- The EIS should assess the shadow impact of buildings where zoning has been proposed that will allow structures higher than 50 feet alongside the elevated infrastructure of the train.
- The EIS should include a comparative assessment of shadow impacts between the RWCDs and a lesser build/lesser density alternative, as well as a redistributed bulk alternative.
- Any new structures next to public spaces such as parks, plazas, and playgrounds should be carefully studied by the EIS to determine shadow impacts. Special attention should be paid to the following public spaces located inside of the proposed up-zoning area and the EIS should clearly state how many hours per day the site will be in full or partial shadow for each season:
  - Mullaly Park
  - Keltch park
  - Goble Playground
  - Inwood Park
  - Jerome Playground site
  - Jennie Jerome Playground

### Mitigation

There are not enough details on proposed mitigation strategies on the DEIS to address shadow impact on the elevated train infrastructure and the public open spaces surrounded by the proposed rezoning. If shadow impact is found, the city should reduce the height of the adjacent buildings.

## VII. Urban Design and Visual Resources

The proposed up-zoning is located less than a quarter mile from the Grand Concourse Historic District. The proposed action is within a unique location that is surrounded by not only historically relevant areas such as the already mentioned Grand Concourse Historic District but also unique characteristics of the multi-family residences towards the Harlem River. The study area for rezoning not only should contextualize with the historic district but also maintain some of the current area character.

The community districts that comprise the Jerome Avenue Rezoning area have a very limited amount of existing public open space. This already has a negative impact on the physical and mental health of community residents. Additionally, the city's estimated increase of 11,788 new residents will have a detrimental effect if no actions are taken to increase the amount of public open space, which is necessary to contribute to a better built environment.

### Analysis

- A more detailed assessment of the urban design and visual resources should be included by the city to ensure the new development responds to the unique condition of the surrounded context located in the close proximity that has so much historic value. This should include 3-D studies or photo-simulations showing massing options for the proposed action on the development sites in the following two ways:
  - The newly proposed high-density character in relationship with the existing neighborhood scale context and character in relationship with the Grand Concourse Historic district
  - The newly proposed high-density character in relationship with the elevated infrastructure of the number 4 train.
- An assessment about the need of public spaces that encourage small gathering should be done by the city taking in consideration the current and expected population. Enough access to small gathering space is a pivotal urban design element to make the neighborhood more livable.

### Mitigation

- The rezoning should have specific urban design parameters in terms of scale and street front to ease the transition between the adjacent context and the new development.
- Incentives should be provided to increase the availability of small gathering spaces and plaza.



# VIII. Transportation

## Context

Increased housing and population in the Jerome Avenue corridor as a result of the rezoning will undoubtedly create increased demand for road space, public transportation, and parking. We suggest that DCP incorporate the following comments into the Final Scope of Work to ensure an accurate analysis of these impacts that will lead to appropriate mitigation strategies.

The CEQR technical manual states that projects located near stadiums should have peak periods of travel demand account for game day traffic.<sup>39</sup> The Jerome Avenue study area is just north of Yankee stadium and located directly under the 4 train, which provides access to Yankee Stadium. Parking facilities within the rezoning area currently supply spaces for attendees on game days. As such, peak hours for analysis must account for game day traffic for all modes of transportation in the Final Scope of Work and Draft Environmental Impact Statement.

Under the *with-action-scenario*, many existing parking facilities are expected to be developed for housing. The transportation analysis as related to game day peak traffic should account for this loss of parking. As baseball season has recently ended, DCP must disclose an explicit methodology in the Final Scope of Work and Draft Environmental Impact Statement of how it will include game day traffic peak demand estimates in the transportation analysis without ongoing games to assess traffic levels during.

The Draft Scope of Work lists 37 intersections that will be included in the DEIS traffic analysis. However, there is no mention of the on or off ramps of the Cross Bronx Expressway as intersections to evaluate in the traffic study. DCP must include the Cross Bronx exits and on ramps in the traffic analysis as these will be major access points for travel to and from the Jerome Ave rezoning area.

DCP recently released a Cromwell Jerome Ave Transportation Study as a standalone report from the rezoning process. The study focuses on improving safety conditions for pedestrians and cyclists, enhancing pedestrian spaces, increased traffic control measures, and improved connections to transit. The report makes a number of recommendations that work to achieve these goals. However, conspicuously absent from the report is any mention of the impact these interventions may have on the existing businesses in the area. The Jerome Ave rezoning area is currently zoned almost exclusively for heavy commercial or industrial uses. DCP must acknowledge the existence of these types of businesses in their transportation analysis and include an analysis of how loading zones, auxiliary parking, and storage areas will be impacted by both the expected increased traffic in the area and also safety interventions as proposed by the Cromwell Jerome Ave Transportation Study.

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39 CEQR 16-19.

The Draft Scope of Work states that parking demand generated by residential growth will be forecast based on auto ownership data for the rezoning area and surrounding area. New housing, as proposed under MIH, that will be constructed in the rezoning area will serve an income bracket far higher than that of current residents living in and around it. These new residents will likely have higher car ownership rates because of their higher income. The city should choose an area that has housing at comparable affordability rates to that of the projected units and should use auto ownership rates in that area as a forecast for parking demand. This comparable area should also have similar expected density, transit access, proximity to major roads, and population to RWCDs residential growth. The Bronx Coalition for a Community Vision is also calling for development that conforms to a term sheet that accomplishes much deeper affordability. The transit and auto ownership patterns for the population in this alternative should also be studied. All of this information should be disclosed explicitly in the Final Scope of Work and Draft Environmental Impact Statement.

## **Analysis**

### 7.1 Yankee stadium will produce additional traffic that must be accounted for in transportation analysis.

- The city must explicitly state how it will measure the impacts of Yankee Stadium on transportation in the rezoning area within the DSOW.
- The city must include a methodology for how they will analyze the traffic impacts caused by a reduced number of parking lots as a result of RWCDs development on traffic for game days.
- The city must detail their methodology for peak game day traffic in the absence of ongoing league play.

### 7.2 The intersection analysis must account for traffic going to and coming off of the Cross Bronx Expressway.

- DCP must include the Cross Bronx exits and on ramps in the traffic intersection analysis as these will be major access points for travel to and from the Jerome Ave rezoning area.

### 7.3 DCP must adjust mitigation strategies to reflect the needs and operations of existing industrial and auto businesses.

- DCP must acknowledge the existence of these types of businesses in their transportation analysis and include a detailed methodology for how loading zones, auxiliary parking, and storage areas that are critical to business operations will be impacted by both the expected increased traffic in the area and also by the safety interventions as proposed by the Cromwell Jerome Ave Transportation Study.

### 7.3 DCP should choose a more comparable area to evaluate impacts on parking and auto ownership.

- The City must choose areas that have housing at comparable affordability rates to those of the projected units under the alternatives that are studied. DCP should use auto ownership rates in those areas as a forecast for additional parking demand instead of housing rates in the study area.

- This comparable area should also have similar expected density, transit access, proximity to major roads, and population to RWCDs residential growth. All of this information should be disclosed explicitly in the Final Scope of Work and Draft Environmental Impact Statement.

7.4 Construction will have a significant impact on traffic and transportation within the rezoning area. The Final Scope of Work and Draft Environmental Impact Statement must include a travel demand forecast and traffic analysis for the construction period.

- The Final Scope of Work and Draft Environmental Impact Statement must include a travel demand forecast and traffic analysis for the construction period. The construction activities associated with the Proposed Actions' RWCDs meet all three criteria required for such an analysis according to the CEQR Technical Manual.<sup>40</sup>
  - The construction analysis must also include peak demand impacts of Yankee stadium game days.

## **Mitigation**

- It is likely that a Significant Adverse Impact will be found in the transportation section of the EIS due to the large influx of residents and already strained transit network. Any proposed mitigation strategy to address the SAI on traffic taken from the standalone Cromwell Jerome Ave Transportation Study must be revisited as part of the Final Scope of Work and Draft Environmental Impact Statement to evaluate the potential effects these interventions may have on auto and industrial business operations.
- It should be possible to achieve the goals of the transportation study without adversely impacting industrial businesses in the rezoning area. This balance will require engagement with the business sector. DCP should convene a working group of auto business workers, owners, and industry trade groups as well as local CDC's to develop strategies that will achieve the goals of the Cromwell Jerome Ave Transportation Study without impeding business operations.

## IX. Air Quality

According to the most recent Community Health Profiles, the neighborhoods covered in the rezoning study area have higher micrograms per cubic meter of PM<sub>2.5</sub>, which is the most harmful air pollutant. It is about 10 micrograms per cubic meter in the study area, compared with 9.1 in the Bronx and 8.6 citywide. Additionally, the neighborhoods have existing respiratory health challenges including a higher rate of child asthma hospitalization compared with the city, and higher rates of avoidable asthma hospitalizations for adults compared with the Bronx and the City overall. These respiratory problems are exacerbated by housing conditions for renters, where over 75% of renters in the area have at least one maintenance defect requiring some form of capital repair – compared to about 70% for the Bronx and 60% for the City overall. Major highways – the Cross Bronx Expressway and the Major Deegan Expressway – are included in these areas and also contribute to the existing air pollution challenges in the study area.

Because the study area already includes these related issues of highway traffic and resident respiratory concerns, the coalition requests that DCP adjust Task 14 to reflect the unique circumstances of this study area and ensure that a baseline air quality assessment is undertaken to quantify the existing concerns for residents and businesses. The coalition expects that newly introduced impacts (e.g. increase in the number of vehicle trips on the adjacent highways and local roads due to increase in car owning population), new construction and related pollution impacts, etc. be taken into consideration for an updated assessment.

Task 14 also indicates that only one location will be tested for CO and three tested for PM. The coalition requests that DCP adjust Task 14 to include additional sites given the surrounding highways and existing high levels of harmful PM<sub>2.5</sub>. Additionally, the coalition requests that DCP provide transparency to community groups on how testing locations are selected. The assessment should focus on the areas adjacent to the Cross Bronx and Major Deegan Expressways as well as recommend mitigation interventions for rezoning and future development.

### Analysis

- The CO and PM tested sites should be expanded given the surrounding highways and existing high levels of harmful PM<sub>2.5</sub> in the neighborhood.
- DCP should provide transparency on the selection of the testing locations.
- DCP should provide an assessment should focus entirely on the Cross Bronx and Major Deegan Expressways.
- DCP should provide an assessment to evaluate the indoor air pollution in the existing housing stock.

## **Mitigation**

- Increase the availability of programs that create awareness, self-management and medical facilities to treat respiratory diseases.
- DCP should work with community groups to make more transparent the selection of the testing location for CO and PM.
- A set of strategic interventions to reduce the outdoor pollution triggers by the Cross Bronx and Major Deegan Expressways.
- Incentives should be provided to upgrade the existing residential stock that is affecting the indoor air quality of low-income residents.

## X. Public Health

*“There is no excuse for ignoring our experience over the past few decades on the effects of displacement (including homelessness) on the health of the community directly impacted and the community as a whole. The lag in obtaining documented evidence on the relationship between neighborhood redevelopment and the health, education and welfare impacts manifested in displaced families, doubling up, and homelessness, when such massive undertakings such as this rezoning effort takes place should not be a basis for proceeding with such an action since we do know from experience that adverse impacts will emerge over time.”*

-Ron Shiffman, city planner and author, Building Together: Case Studies in Participatory Planning and Community Building

According to the DEIS, “a public health assessment may be warranted if an unmitigated significant adverse impact is identified in other analysis areas, such as air quality, hazardous materials, or noise”. However, existing conditions already create public health challenges that should be assessed and combined with an analysis of future impacts to public health as a result of the rezoning.

Kingsbridge Heights, Bedford, Fordham, University Heights, Highbridge and Concourse are the neighborhood that composed Bronx community districts 7, 5 and 4 and are affected by the Jerome Avenue Rezoning; currently, those community face abysmal health inequities with a multitude conditions affecting the health outcome such as, lack of educational and employment opportunities, high crimes rates, prevalence of preventable chronic diseases, lack of healthy food access, incidence of physically and emotionally traumas generated by domestic violence, lack of access to healthcare, among many other issues. According to the community health profile by DOHMM the life expectancy of the neighborhood affected by the re-zoning studies is 79 years compared with 85 years for the Upper East Side residents. Therefore, a comprehensive Public Health assessment should be provided by the city to decrease the social determinants of health.

Also, as discussed in the Air Quality comments, the most recent Community Health Profiles shows that neighborhoods covered in the rezoning study area have higher micrograms per cubic meter of PM<sub>2.5</sub>, which is the most harmful air pollutant. Also, there are existing respiratory health challenges including a higher rate of child asthma hospitalization compared with the city, and higher rates of avoidable asthma hospitalizations for adults compared with the Bronx and the City overall. Major highways – the Cross Bronx Expressway and the Major Deegan Expressway – are included in the study area and also contribute to the existing pollution challenges in the study area.

Beyond the respiratory concerns, there are several public health challenges that impact existing residents of these neighborhoods when compared to the City and even the Bronx overall. These include socioeconomic stress of high poverty (40% below the federal poverty level), high elementary school

absenteeism (about 30% of students), and higher teenage births.

Additionally, the neighborhoods have a higher smoking rate and consumption of sugary drinks compared with the City overall. Drug and alcohol hospitalization is a concern as well for the study area. There are higher numbers of stroke (380 vs. 320 city-wide), higher HIV death rates (30 vs. 8.4 city-wide), and more psychiatric hospitalizations (800-1000 vs. 680 city-wide).

Given the unique circumstance of this study area, being surrounded by highways, higher rates of respiratory issues for residents, and existing public health challenges as outlined above, the coalition requests that DCP adjust Task 17 to ensure a public health assessment is carried out to determine baseline concerns for existing residents. This should include an assessment of existing healthcare facilities, and mitigation options for current and future development scenarios.

## **Analysis**

- A public health assessment should be carried out to determine baseline concerns for existing health determinants affecting current residents.
- Assessment of the availability of health care facilities and programs that tackle the current health disparities.
- A study to focus on the barrier for a healthy living neighborhood in the existing low-income housing stock.

## **Mitigation**

- A set of actionable strategies to address the health inequity by tackling the current health determinants.
- Leverage public funding to increase the availability of health programs.
- Create incentives to increase community facilities through zoning designation on the study area to provide needed community facilities.
- Leverage funding to upgrade the existing low-income residential stock to make it more accessible to healthy living.



# XI. Neighborhood Character

## Analysis

10.1 The City should exercise its discretion to perform a detailed analysis of the impact on neighborhood character if any significant impact is identified in one of the technical areas that contribute to the neighborhood's character, or if DCP finds only moderate effects (as opposed to significant impacts) in several of the relevant analysis areas.

Under the standards in the CEQR Technical Manual, performance of a neighborhood character impact assessment is generally dependent on a finding of significant impact in another task area. But the Manual states that, “a significant impact identified in one of the technical areas that contribute to a neighborhood's character is not automatically equivalent to a significant impact on neighborhood character. Rather, it serves as an indication that neighborhood character should be examined.”<sup>41</sup> Given the tremendous risks of displacement that exist in our community today and the possibility that the proposed rezoning will exacerbate those risks, the Coalition demands that DCP perform a neighborhood character impact assessment if a significant impact is found in *any* task area.

We further demand that the City conduct a neighborhood character assessment “even if the proposed project would not have a significant impact on any one defining feature of the area ... [if] the project may have moderate impacts on a number of defining features that, cumulatively, [could] result in a significant impact on the neighborhood character.”<sup>42</sup> Although the Manual provides the caveat that, “Only under unusual circumstances would a combination of moderate effects to the neighborhood result in an impact to neighborhood character, in the absence of an impact in any of the relevant technical areas,”<sup>43</sup> we believe that this massive action, unprecedented in our community, represents an “unusual circumstance” that demands a detailed neighborhood character impact assessment.

10.2 The City's Analysis of Neighborhood Character Must Go Beyond the Area's Physical Characteristics and Include an Assessment of the Impacts on the Socio-Economic Character and Demographics of the Area

DCP must go beyond an analysis of *physical* impacts and also look at *socioeconomic and demographic* impacts in its analysis of neighborhood character.

The Jerome Draft Scope states that, “The character of a neighborhood is established by numerous factors, including land use patterns, the scale of its development, the design of its buildings, the presence of notable landmarks, and a variety of other *physical features* [emphasis added] that include traffic

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41 “Neighborhood Character,” CEQR Technical Manual (2014), Ch. 21 at 21-1.

42 Id. Sec. 400.

43 Id. Sec. 400.

and pedestrian patterns, noise, etc.”<sup>44</sup> However, this definition does not comport with what is in the CEQR Technical Manual, which defines neighborhood character as “an amalgam of various elements that give neighborhoods their distinct ‘personality.’ These elements *may* [emphasis added] include a neighborhood’s land use, urban design, visual resources, historic resources, *socioeconomics* [emphasis added], traffic, and/or noise.”<sup>45</sup>

It is clear that the definition of “neighborhood character” is broader than the City’s summary of that definition suggests. First, the analysis need not be limited to the enumerated task areas; neighborhood character “may include” those task areas, but *and* any element that gives the neighborhood a “distinct ‘personality.’”<sup>46</sup> Second, the analysis is not limited to physical characteristics; the Manual expressly includes “socioeconomics,” i.e. all factors addressed by the socio-economic conditions chapter, as a component of neighborhood character. Therefore, DCP must analyze any changes to the socio-economic character of residents and displacement of either residential or business uses as part of the neighborhood character analysis. Third, although an analysis of racial and ethnic composition is not expressly required, it is also not expressly precluded, and the Manual suggests that a neighborhood’s demographic characteristics are also relevant to an assessment of its character.<sup>47</sup>

The City should adopt a comprehensive approach to the neighborhood character analysis that looks at potential changes in the racial, ethnic, and socio-economic diversity of the community - specifically, the impact of the proposed rezoning on people of color, immigrants, and low-income people. This approach was affirmed in *Chinese Staff & Workers Association v. City of New York* (1986)<sup>48</sup>, where the Court of Appeals confirmed that

the impact that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis since the statute includes these concerns as elements of the environment. That these factors might generally be regarded as social or economic is irrelevant in view of this explicit definition. By their express terms, therefore, both SEQRA and CEQR require a lead agency to consider more than impacts upon the physical environment in determining whether to require the preparation of an EIS. In sum, population patterns and neighborhood character are physical conditions of the environment under SEQRA and CEQR regardless of whether there is any impact on the physical environment . . . ”<sup>49</sup>

Although New York courts have, in subsequent decisions, rejected several legal challenges that cited the *Chinese Staff & Workers* case in arguing that the agencies in question were required to give greater consideration to socio-economic issues in the CEQR review process,<sup>50</sup> none of these cases disturbed the

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44 Draft Scope of Work for an Environmental Impact Statement: Jerome Avenue Rezoning (CEQR No. 17DCP019X) at 56.

45 “Neighborhood Character,” CEQR Technical Manual (2014), Ch. 21 at Sec. 100.

46 *Id.*

47 *Id.* at 21-1. (Describing forces other than Proposed Actions that may shift a neighborhood’s character, including “shifts in demographic patterns”)

48 68 N.Y.2d 359 (N.Y. 1986).

49 *Chinese Staff & Workers*, 68 N.Y.2d at 366.

50 See, e.g., *Chinese Staff & Workers’ Association v. Burden*, 88 A.D. 3d 425, 428–30 (N.Y. App. Div. 2011) (rejecting petitioners’ argument that DCP’s EAS “failed to adequately analyze CEQR technical areas such as neighborhood character and

fundamental holding of that case: that review of socio-economic impacts, including “population patterns,” is required under CEQR.<sup>51</sup> In addition, these cases in no way limit DCP’s discretion to perform the specific sorts of analyses we are seeking – i.e. potential changes in the racial, ethnic, and socio-economic diversity of the community, and impacts on people of color, immigrants, and low-income people in particular.

### 10.3 Rent-Stabilized Housing, the Presence of the Auto Industry, and the Area’s Existing Racial, Ethnic, and Socio-Economic Diversity Must Be Considered “Defining Features” of the Neighborhood

- As part of its preliminary assessment, DCP is required to enumerate the “defining features” of the neighborhood. The Manual provides as an example “For instance, the analysis may consider whether a particular housing type, such as rent-stabilized housing, serves to define the socioeconomic character of an area. The displacement of a large amount of this type of housing from the area may potentially affect neighborhood character.”<sup>52</sup>
- The Coalition demands that (1) the presence of a significant amount of rent-stabilized housing, (2) the auto industry, and (3) our area’s existing racial, ethnic, and socio-economic diversity be considered “defining features” of the neighborhood and analyzed accordingly.
- Rent-Stabilized Housing: As we have described in the sections above, rent-stabilized housing forms the backbone of affordable housing in our community, and we do not want the City to disregard these homes in its rush to transform our neighborhood. Importantly, the *existing* rent-stabilized housing must be considered a “defining feature” of our neighborhood, and if the City anticipates a loss of *existing* rent-stabilized housing resulting from direct and indirect displacement pressures, it should consider that to be a negative impact on neighborhood and develop appropriate mitigation strategies to address that impact. Simply creating new affordable housing would not be enough to mitigate negative impacts on existing rent-stabilized housing, because it will not protect the individuals and families at risk of displacement, many of whom have lived in the community for decades or generations.
- The Auto Industry: As the Jerome Ave rezoning area is a well known and utilized commercial corridor, an analysis of neighborhood character must account for the businesses, who are the majority of tenants on the avenue, contribute to the personality and character of the area. As described in the comments related to business displacement, Jerome Ave is one of the densest clusters of auto businesses in the city and this unique characteristic must be included as a recognized defining feature of the area’s neighborhood character. As part of its analysis of impact on physical characteristics of the neighborhood, DCP should analyze effect of rezoning corridors from M and C8 to high-rise R. This will significantly shift character of those areas, to the detriment of the existing auto industry.
- Racial, Ethnic, and Socio-Economic Diversity: The areas impacted by this rezoning have high levels of racial and ethnic diversity today. The Census tracts along the Jerome Ave corridor are 1.5% White,

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socioeconomic impacts”), aff’d by 19 N.Y.3d 922 (N.Y. 2012).

51 See, e.g. *Wellsville Citizens for Responsible Development, Inc. v. Wal-Mart Stores, Inc.*, 140 A.D.3d 1767, 1770 (N.Y. App. Div. 2016) (granting environmental group’s petition to annul Town Board’s resolution adopting a negative declaration pursuant to SEQRA because the Town Board “failed to take a hard look” at the impact of a proposed retail store construction project on the community character of a neighboring village).

52 “Neighborhood Character,” CEQR Technical Manual (2014), Ch. 21 at Sec. 320.

26.1% Black, 2.4% Asian, 68.5% Latino, and 1.6% other. No census tract along the Jerome Ave corridor has over 90% any one race. In contrast, there are 133 census tracts in the City that are at least 90% 1 race.<sup>53</sup> We value the racial and ethnic diversity we enjoy in our community today and feel it is critical that the City consider the specific impacts of its actions on the diverse groups that call the Bronx home. The community is also socio-economically diverse. In numerous settings, the City has stated or implied that our neighborhoods are not economically “diverse” because they do not include enough high-income people. We disagree. The median income for a family of four in CBs 4 and 5 is about \$25,000, but close to 25 percent of households make above \$50,000 and 15 percent make above \$150,000.<sup>54</sup> Higher-income people can already afford to live in the community if they so choose, and it is not necessary for the City to socially engineer our neighborhoods to include wealthier people. Instead, it is critical that the rezoning plans for this area prioritize the creation of housing affordable to lower-income people, many of whom are overcrowded or severely rent-burdened today, to ensure that our neighborhoods remain socio-economically diverse in the long term.

#### 10.4 DCP Must Analyze and Disclose the True Impacts of the Proposed Rezoning on Neighborhood Features Addressed in the Socio-Economic Conditions Chapter in Order to Accurately Assess Impact of the Proposed Actions on Neighborhood Character

- If the City improperly limits its analysis with the relevant task areas, including socio-economic conditions, the neighborhood character assessment will also be off. Therefore, we demand that the City conduct the more rigorous analyses of each task area we have described in the relevant sections so as not to improperly downplay impacts on neighborhood character - especially the auto industry, existing rent-stabilized housing, socio-economic diversity, and racial and ethnic diversity, as described above.
- Rent-Stabilized Housing is a key component of the socio-economic conditions chapter. By improperly limiting the analysis of displacement from rent-stabilized housing in the socio-economic conditions chapter - including, as discussed more fully in our response to that chapter, by limiting the analysis of rent-stabilized housing to legal displacement tactics, and by excluding numerous potential soft sites in its analysis of direct displacement - the City is likely to conclude that the threat to rent-stabilized housing is less than we know to be true, which will also improperly limit the reported impact of loss of rent-stabilized housing on neighborhood character.
- The Auto Industry: Similarly, the city’s proposed analysis of the rezoning’s impact on the auto sector is insufficient as described thoroughly in the response to business displacement. Without an analysis of data sets that will accurately display the number of jobs and businesses represented by the auto cluster on Jerome the city’s findings will be a misrepresentation of the potential impact this rezoning will have on the community.
- Racial, Ethnic, and Socio-Economic Diversity: In our response to the Socio-Economic Conditions task, the Coalition has requested that the impact of the rezoning on certain vulnerable groups, including low-income populations, people of color, and immigrants be analyzed and disclosed. Performance of that analysis is also critical to inform the neighborhood character analysis.

53 U.S. Census Bureau; American Community Survey 3-Year Estimates, 2014.

54 Susanna Blankley, “Four Wrong Ideas Driving de Blasio’s Housing Plan,” *City Limits* (Fe. 25, 2016). Online at [citylimits.org/2016/02/25/cityviewsfour-wrong-ideas-driving-de-blasios-housing-plan/](http://citylimits.org/2016/02/25/cityviewsfour-wrong-ideas-driving-de-blasios-housing-plan/).

## Mitigation

### 10.5 DCP Must Take Into Account the Community's Strong Preferences for Deeply Affordable and Rent-Stabilized Housing, the Preservation of the Existing Auto Industry, and the Area's Existing Racial, Ethnic, and Socio-Economic Diversity in Assessing the Meaning of Potential Changes to Neighborhood Character

- The Technical Manual expressly acknowledges the question of whether changes to a neighborhood's character are negative or positive are extremely subjective. Per the manual, "As with other technical areas, significant impacts on neighborhood character may be either beneficial or adverse. Because a neighborhood's character is perceived and contextual, this judgment may be more subjective than in other technical areas. For example, a new and modern apartment building in an older neighborhood may be perceived as an improvement by some, but as out of context and adverse by others. The lead agency should consider comments made during public review in making such a determination as to which significant impacts are adverse and require mitigation."<sup>55</sup>
- Affordable Housing: Given the overwhelming support for deeply affordable housing and against luxury development expressed by those who testified at the Draft Scope hearing, DCP must regard any reduction in the amount of existing affordable (including rent-stabilized) housing, or creation of market rate or luxury housing, as significant *negative* impacts on the community. The City may believe that the introduction of luxury housing into our community would be a positive impact; we do not, and as the CEQR manual requires DCP to take the lead from the community on such matters, DCP should not substitute its own opinion about "what is best" for this community with the community's clearly expressed preferences.
- The Auto Industry: Community members at the Draft Scope hearing and other forums have made numerous comments in favor of the preservation of the auto industry along Jerome Avenue. Therefore, any threats to or reduction of the auto industry should also be regarded as negative impacts on neighborhood character.
- Racial, Ethnic, and Socio-Economic Diversity: The community has made clear its preference that our area remain accessible to lower-income and working-class people, people of color, and immigrants. Any threat of displacement of these populations must therefore be regarded as a negative impact.

### 10.6 DCP Must Disclose, Analyze and Adopt Mitigation Tactics to Address Negative Impacts on Neighborhood Character That May Not Be Adequately Addressed by Proposed Mitigations in Other Analysis Areas

- In developing mitigation tactics to address negative impacts on neighborhood character, the City should be mindful that mitigation tactics for the other impact areas do not necessarily reduce negative impacts on neighborhood character, and mitigation measures specifically to address such character may be required.
- Rent-Stabilized Housing: As described below, the creation of new affordable housing, though a critical goal, is not sufficient to mitigate the loss of existing rent-stabilized housing in the community today. Therefore, the City must adopt additional mitigation strategies for the specific purpose of preserving today's rent-stabilized housing.

- The Auto Industry: The City cannot include the so-called retention areas as designated in the Draft Scope of Work as adequate mitigation strategies to address the significant impacts the auto sector will be subject to as a result of the rezoning. As described in responses to both the business displacement and alternatives sections, these retention areas must be included in the Jerome Ave special district and assigned limited use groups, expanded to be sufficiently sized to protect a significant portion of the auto industry, and made continuous so as not to allow pockets of high density residential in between cluster areas.
- Racial, Ethnic, and Socio-Economic Diversity: As the CEQR Technical Manual explains, “In [some] situations ... mitigation measures may alleviate significant adverse impacts in other technical areas, but significant impacts on neighborhood character may remain ... [One] example is a project that may result in both significant adverse socioeconomic impacts related to secondary residential displacement and a related significant impact on neighborhood character because of the change in the area’s population profile. The socioeconomic impacts may be mitigated by finding affordable housing for displaced residents, but if the residents move out of the neighborhood, the significant impact on the neighborhood’s character still occurs. If mitigation measures presented for the project’s other significant adverse impacts, if any, would not mitigate neighborhood character impacts, other mitigation measures are to be identified where feasible.”<sup>56</sup> Even if the City manages to create affordable housing within the community that is sufficient in number to meet the needs of and reflective of the incomes of the residents most likely to be displaced - which nothing in the City’s current plans, programs, or term sheets suggests will be the case - the rezoning will *still* have a negative impact on the character of the community if residents are displaced from their current homes and are unable to get access to the new affordable units within the community. Therefore, the City must assess the extent to which *today’s* community residents will be able to remain, and develop appropriate mitigation strategies - including the adoption of a Certificate of No Harassment requirement, passage of Right to Counsel, and the creation of an Anti-Displacement Task Force to devise further solutions to prevent displacement and preserve the racial, ethnic, and socio-economic diversity of our community, including a significant share of low-income households.



## **XII. Construction**

Task 19 currently states that the areas of Transportation Systems, Air Quality, Noise, and Other Technical Areas will be assessed only if the preliminary assessment indicates the potential for significant impact during construction. Given the typically long duration of large construction projects and the impact they will have for pedestrian safety, access to public amenities, noise, and disruption for businesses and students/teachers in adjacent schools, the coalition requests that Task 19 be adjusted to require a construction impact analysis with a focus on resident satisfaction needs, environmental, and economic impacts.

Socioeconomic factors related to construction should be highlighted in the assessment. Topics should include, but not be limited to, existing business activity, the impact construction (especially large multi-site projects in the study area) will have on local business activity, the impact neighborhood disruptions will have on schools and outdoor recreational facilities, and provide an understanding of local resident training, business capacity building, and hiring requirements that contractors will be obligated to.

Given the health profile of the existing community, it is important that an assessment look at the impact construction will have on existing social service infrastructure. This includes disruptions to utilities, installation of new utilities (e.g. sewer and water mains), and ensuring that interagency coordination is a priority so that existing residents have a voice in long-term projects and their needs are met.

### **Analysis**

- An assessment of the impacts in study area that the proposed actions will have on pedestrian safety, access to public amenities, noise, and disruption for businesses and students/teachers in adjacent schools, outdoor recreational facilities, and provide an understanding of local resident training, business capacity building, and hiring requirements for contractors.
- A deeper study to tackle the impact of projected population growth on disruptions to existing utilities, the installation of new utilities (e.g. sewer and water mains), and ensuring that interagency coordination is a priority so that existing residents have a voice in long-term projects and their needs are met.

### **Mitigation**

- A set of interventions and strategies that will allow the neighborhood to function during the construction process. Also, the provision of the required infrastructure for the expected growth in the neighborhood.

NYC is in the midst of a construction boom and inadvertently there has been an increase in construction accidents and fatalities. Although there is a correlation between the rise in construction activity with an increase in construction accidents, these preventable accidents have outpaced construction activity



at an alarming rate. The administration has the responsibility of ensuring all workers and pedestrians are protected from low-road contractors who put profits over safety and proper training. To protect the workforce and the neighboring community, the City must act now to rectify the current rise in construction related fatalities and life changing injuries. We request that the City consider the following strategies as mitigations to construction-related impacts:

- HPD Procurement Reform. The city must attach standards to the procurement process to ensure taxpayer funded projects are awarded to contractors with a track record of labor law and OSHA requirement compliance. Details about our proposal are attached as Appendix C.
- Subsidy Reform. Recipients of economic development subsidies must be held accountable to ensure they are truly benefitting the public and not just the businesses and corporation who receive them. Safety, labor and wage requirements must be attached to all city subsidies.
- Department of Buildings (DOB) Reform.
  - *Improve DOB oversight and investigations of worker injuries and fatalities.* DOB's record keeping on construction related fatalities and injuries should mirror efforts by OSHA in order to collectively address safety violations.
  - *Increase DOB penalties for accidents and fatalities.* If a contractor is found to be responsible for a death on a construction site, the fine to the contractor is approximately \$7,600. Because the fines are significantly low, contractors see them as the price of doing business. The City must impose higher fines to deter contractors from not complying with OSHA and DOB requirements.

## **XIII. Mitigation**

DCP should disclose, analyze and adopt a broad range of mitigation strategies to address the impacts of the rezonings. We request that DCP analyze and adopt the full range of mitigation strategies we have proposed throughout this response, as well as the broader range of ideas we sent to DCP in our correspondence earlier this year (which reflects the full platform of the Bronx Coalition for a Community Vision).

The following are the mitigation strategies that the Coalition views as especially critical to the success of this rezoning:

- › Anti-Displacement and Anti-Harassment Policies for Residential Tenants:
  - Pass and Fund Intro 214, providing a right to counsel for all tenants facing the loss of their home in NYC
  - Pass and fund Intro 152-A, which would create citywide “Certificate of No Harassment” requirements, which must be in place before the Jerome Ave ULURP applies.
  - Create an Anti-Displacement Task Force, with regular meetings between local community organizations and HPD to discuss strategies for preservation.
- › Anti-Displacement for the Commercial Tenants and Auto Workers on Jerome Ave:
  - Select an area in the proposed rezoning area where auto-related businesses— including auto parts, security and audio stores—can remain and be protected.
- › Good Jobs and Local Hire:
  - Provide Job Training & Education to local residents, so that residents are eligible for the state approved apprenticeship programs.
  - Make local hire a requirement of all projects that the City subsidizes. As explained more fully in the sections above, the new term sheet developed by the Coalition accounts for construction costs reviewed and approved by the building and construction trades and would promote safe, career-oriented union jobs.
- › Real Affordable Housing:
  - The City should adopt the new term sheet proposed by the Coalition to ensure that new housing better reflects the needs of current neighborhood residents, including rent levels affordable to the current community and local jobs.
- › Real Community Engagement:
  - Give residents a seat at the decision-making table and a chance to vote.

- Create an affordable housing taskforce open to all local residents who want to work with officials to figure out how much affordable housing there should be, and at what rent levels. Those principles could then guide the plans.
- Create a formal opportunity for community oversight of the plan going forward. In order to ensure that the commitments that are made by the City are actually upheld, we believe that the City needs a comprehensive and coordinated approach to documenting, monitoring, overseeing and enforcing all public and private commitments made during the rezoning processes. This approach should include a citywide and a neighborhood-based, community-led component and should build off and fill the gaps of the various proposals put forth by the City, including Intro 1132. We believe that a specific mayoral office is needed to provide overall agency coordination, oversight and accountability for the implementation of commitments made to communities during the rezoning process. We also propose that neighborhood monitoring committees be established to ensure that any commitments made during a rezoning process are implemented, and support community priorities. Community members must be able to continue to participate in the monitoring and decision-making related to the changes in their neighborhood. We further propose that the new Mayoral office work in close coordination with neighborhood monitoring committees to create goals and benchmarks for each rezoned neighborhood, based on the community's stated priorities and commitments made in the zoning plan. The office should then conduct ongoing assessments for each rezoned neighborhood to track progress towards goals and benchmarks and neighborhood change over time. The office could also track the funding status for all commitments made during the rezoning process and ensure projects are completed on a clear timeline, and in consultation with neighborhood monitoring committees. This comprehensive oversight proposal, which was developed by a citywide coalition of groups from most of the rezoning communities, including stakeholders such as CASA, is attached as Appendix D.

## XIV. Alternatives

As described above, the proposed actions betray many of the community's clearly expressed goals for the areas.

At the same time, it is unclear whether the proposed land use actions will satisfactorily accomplish DCP's own stated goals<sup>57</sup> in the best way possible. For example, the goals for the area include "support auto-related businesses" and "promote and support small businesses and entrepreneurship." Similarly, the objectives of the proposed land use actions include "preserve zoning for heavy commercial and light industrial uses in areas to support mixed uses and jobs" and "establishing [zoning] controls...to ensure consistency with the goals and objectives of the rezoning."<sup>58</sup> The proposed actions in their current form will not accomplish these goals, for the reasons described in the business displacement section.

As already described in detail, the proposed actions do not meet the needs for housing in the surrounding neighborhoods.

For these reasons, we encourage DCP to analyze multiple alternatives that have the potential to better accomplish the stated goals or to achieve a more appropriate balance among the stated goals. Below we include a range of possible alternatives that DCP should analyze. To ensure a fair and genuine discussion, alternatives that encompass all the major concepts below should be analyzed.

To better achieve the stated goals the City should study a range of alternative versions of the retention zones and residential zoning coverage, including:

- 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. Restrictions on uses with regard to transient hotels are already being proposed as part of the Special District, so the introduction of additional controls to accomplish the stated goal of supporting auto businesses is consistent with

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57 The draft Scope cites the following goals for the JANP (page 5) of which the proposed land use actions are intended to support:

- Provide sustainable, high-quality, affordable housing with a range of options for residents at all income levels.
- Protect tenants and improve housing quality.
- Ensure every neighborhood has green streetscapes, quality parks and diverse recreation spaces.
- Create greater retail diversity to meet current and growing retail and service needs.
- Prepare residents for job and career growth through job training and skills development.
- Promote and support small businesses and entrepreneurship.
- Support auto-related businesses.
- Promote a safe, walkable area in and around the elevated train.

DCP's approach here. Use groups outside of 7,11,16,17 should be considered for exclusion from as of right development within the retention zones. Because including retention areas *inside* the proposed boundary would technically be an enlargement of the area (albeit resulting in a lesser environmental impact if included as above) this alternative must be included in the final scope of work and studied if it is to be eligible for consideration later in the process.

- 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. While not an exclusive list, potential alternatives for expansion of retention areas that should be studied might include any or all of the following:
  - Creating continuous retention areas on both sides of Jerome Avenue between 177<sup>th</sup> and the Cross Bronx Expressway
  - Including the area south the of the Cross Bronx Expressway to 168<sup>th</sup> Street in a retention area
  - Connecting the proposed two southernmost retention areas south of the Cross Bronx Expressway by extending them across 170<sup>th</sup> Street along EL Grant Highway, Inwood, and Cromwell Avenues
- Creating additional retention areas where significant numbers of auto businesses would be protected. While not an exclusive list, potential alternatives for expansion of retention that should be studied might include any or all of the following:
  - Creating a new retention area on the East side of Jerome Ave between 177<sup>th</sup> and the Cross Bronx Expressway.
  - Proposals for retention areas anywhere throughout the proposed zoning area that are linked with specific job or business retention goals
- Include more innovative land use proposals designed to strengthen the capacity of the area to generate quality blue-collar jobs. The proposed actions do not fully exploit the opportunity of land use actions to maintain and spur job growth in sectors that residents in the area sorely need.
  - A holistic vision for growth of the auto and manufacturing sectors in this area and ways that it might modernize and co-exist alongside residential uses through balanced mixed-use measures has not been offered. Land use proposals that advance a cohesive, employment- centered vision for the area would be a welcome response to the needs expressed by community members and workers in the area.
- Rezone a smaller area / fewer lots, but permit 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.
- Reduce 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.

Each of the alternatives described above could potentially do more to advance the goals of affordable housing preservation and protection of the existing auto industry than the current plans proposed by the

City. We request that the City analyze and disclose the impacts of these Alternatives to help the community better weigh the range of possible options for the future.

## **XV. Conclusion**

The City has made much of its efforts to engage community residents in the creation of the Jerome Avenue Neighborhood Plan and Proposed Actions. But on too many occasions, the City has cut short or discouraged community participation in this process and the formulation of its plans. For example, we are glad to see that DCP created a Spanish language copy of the Draft Scope of Work for monolingual Spanish speakers who might be interested in reading it. But in many early meetings in this process, interpretation and translated materials were not provided. In addition, even at the Draft Scope hearing, interpretation was provided from Spanish to English, but not English to Spanish. This meant that although monolingual Spanish speakers could testify in Spanish, they could not understand all of the testimony delivered in English or fully understand what was happening unless another community member interpreted for them. This is extremely disrespectful in any community, and especially one where for so many residents Spanish is their first or only language. The Draft Scope hearing was also held at an inaccessible venue that is up a steep hill, confusing to access and far from mass transit. Because of Bronx Community College's security restrictions, many community members were forced to wait outside of the venue for hours before they were able to come in and testify. Some ended up needing to leave before they could testify. When people arrived at the security checkpoint, they were also treated differently, with people who showed up in a group being subjected to more extensive security checks than those who appeared to have arrived alone. In addition, the heavy security and police presence at the event - which, in our opinion, far exceeded what was necessary - may well have deterred community members who feared negative interactions with the police. Although many of these restrictions may have been imposed by BCC rather than DCP, to make this an accessible process, the City should ensure that venues for future hearings are also accessible. For example, Rent Guidelines Board hearings are typically held at the Bronx Museum, a far more centrally located venue with fewer security restrictions that might deter participation at the outset.

Importantly, listening to residents also requires more than simply receiving their feedback on plans already created by the powers that be. As resident at the Draft Scope hearing said, "I don't want you to go back to your office tomorrow and say that you went to the hearing and did your job because you went to the community and listened to the people, then pass a rezoning that's not what this community wants. " Real community engagement means crafting plans that are responsive to residents' needs and inclusive of the ideas they have proposed.

At present, the Proposed Actions do not achieve these goals, and have left the hundreds of residents who participated in the formulation of platform the Bronx Coalition for a Community Vision with the sense that the City simply does not care what they think or need. CASA leader Fitzroy Christian spoke powerfully about this at the hearing:



*You deliberately dismissed our communities' ability to be full partners in the proposed upzoning and redevelopment of our neighborhoods. And even when you were presented with a community driven vision, showing how the redevelopment can happen without the painful and unnecessary displacements, dislocation of families, destruction of communities, you contemptuously disregarded it. And us...*

Another CASA member, Madeline Mendez, emphasized how the proposed affordability levels of new housing under the rezoning made it clear that the rezoning is not intended to benefit members of this community:

*This 'affordability' is for the middle class and for the upper class ... All this 'affordability' is not for me, and it's not for my people, and my neighborhood ... People need a place to live. They need an auto mechanic job. I don't need to tell you what our community needs, because I already told you what our community needs, so I don't need to repeat, and don't act like you don't know.*

By ignoring the goals the community has set forth, the City is missing out on a critical opportunity for collaboration and true partnership. As another woman at the hearing testified:

*Many of the people in this room have been going to meetings about this for 18 months. We've sent you recommendations based on 4 principles, and I don't really see them in the report ... Truly affordable housing, good jobs with local hire, protections against displacement, and real community engagement in figuring out what these plans should be. We're not really an 'against everything' kind of groups. There are a lot of people in this room who would be for the rezoning plan, if it were for the people in this room. We would work with you. But if it's not, we will do everything in our power to shut it down.*

At present, what the City has put forward is not a “neighborhood plan”—it runs through multiple different neighborhoods and does not address the needs of any of the neighborhoods impacted. It is not an affordable housing plan, since DCP can neither create affordable housing nor guarantee what developers will build and since the City's best tools to leverage the private market for affordable housing, leave out 78% of neighborhood residents. It is not a jobs plan, since there are no provisions for local hire, worker safety or wages for the close to 4,000 construction jobs the plan will create and since it will most surely displace the more than 1,000 largely Dominican and immigrant auto workers and business owners.

To City must create time and space for the formulation of a plan that meaningfully addresses the goals the community has created, refined, and advocated for in countless meetings, rallies, forums, and other events over the last 18 months. As Mr. Christian stated at the hearing, “You need to slow the process down, stop this mad rush to the deliberate destruction of families and communities, and work with us to develop a plan that will benefit those of us who are here now, and who intend to stay, as well as others who may come later ... You have to slow it down. And let us do it right. Together.” As part of this, the City must work to pass the numerous citywide reforms we have proposed - including Right to Counsel, a citywide Certificate of No Harassment Requirement, a new subsidy term sheet to create deeply affordable housing and local jobs, and passage of an oversight bill to guarantee that the commitments made in the rezoning

are kept. Without these broader reforms, both the members of our community and lower-income and working-class people in the many other neighborhoods the City is rezoning will continue to be at risk of displacement, homelessness, and chronic underemployment.

We urge the City to delay ULURP certification until these citywide reforms are passed and both the environmental review process and a revised Jerome Avenue Neighborhood Plan have been completed. It is inappropriate to consider such a large land use action in the absence of the a completed Jerome Avenue Neighborhood Plan. To fully understand and evaluate the combined impact of simultaneous actions, all the proposed actions and planning initiatives should be disclosed at the same time. For similar reasons, certification for ULURP for the proposed Jerome Avenue rezoning should not take place until the environmental review process has been *completed* for the revised plan we are proposing. Adopting this strategy will permit each entity involved in the review and approval process to understand the full and true impact of what they are voting in favor of, or against. Likewise, each entity can more adequately consider appropriate mitigating approaches to anticipated negative impacts.

We believe that development without displacement is not only possible but necessary. We created a set of policy recommendations for the city to implement, none of which have been implemented. We believe the current plan is about relocation, gentrification and displacement. We say no to the plan and yes to the Bronx.

# **Appendices**

**Appendix A: Right to Counsel**

**Appendix B: “Certificate of No Harassment” Legislation Summary**

**Appendix C: Ensuring Responsible Contracting: HPD Procurement Reform**

**Appendix D: Comprehensive Oversight Proposal**

**Appendix E: Coalition Zoning Text Proposals**

**Appendix F: Proposed Term Sheet for Deep Affordability**

**Appendix G: Bronx Coalition for a Community Vision Policy Platform**

**Appendix H: Miscellaneous Citation Issues in the Draft Scope of Work**



# HOUSING JUSTICE:

## *New Yorkers Should Have a Right to Counsel in Eviction Proceedings*

### **THE FACTS**

**New Yorkers do not now have a right to an attorney in eviction cases in housing court.**

- More than 90% of landlords who bring eviction cases are represented by lawyers.
- More than 90% of tenants aren't.
- When people get evicted, they often go into the shelter system
- Eviction cases are complicated, move fast and are highly technical; it is very difficult, if not impossible, to defend an eviction case without a lawyer.

#### **A Right to Counsel in eviction cases will legislate justice!**

- Landlords are aware of the unbalanced nature of the housing court. They often initiate legal proceedings knowing that low-income tenants will most likely not be able to afford counsel.
- Studies show that when tenants are represented by counsel, they are better able to protect their homes and effectively assert their rights around housing conditions, rent, and discrimination.
- The constitution guarantees *due process of law* (fair access to the legal system) to protect individual liberty and property interests. This means that a tenant should not have to defend a legal proceeding that could result in the loss of his or her home without a right to counsel.
- The constitution also guarantees *equal protection of the law*, which requires states to apply the law equally and not discriminate against people or groups of people. Low-income people who face eviction, most of whom are people of color in New York City, are denied equal protection when they are denied a right to counsel in eviction cases.

#### **Evictions are devastating for low-income tenants.**

- Nearly 25,000 families, including older adults, were evicted in New York City last year.
- Surveys of homeless families have identified eviction as an immediate, triggering cause of homelessness for thirty-seven percent of those admitted to the New York City shelter system.
- Homelessness in New York City has recently reached the highest rates since the Great Depression of the 1930s.
- In September 2014, there were an all-time record 58,056 homeless people, including 13,922 homeless families with 24,631 homeless children, sleeping in the New York City municipal shelter system each night. There are approximately 2,000 seniors in shelter every night.
- At least 3,200 homeless individuals, including seniors, also sleep on the streets and subways each night.
- The current number of homeless New Yorkers is 87% higher than it was in January 2002, when former Mayor Bloomberg took office.
- Even if tenants don't become homeless after an eviction, they face higher rents, disruption in their children's education, displacement from their communities and other traumatic consequences.

**A right to counsel in eviction proceedings will save the city money.**

- A report by a private financial firm shows that Right to Counsel *will not only pay for itself but in addition, it will save the city more than \$320 million per year!*
- Keeping families and older adults in their homes and avoiding homelessness will also avert long term costs associated with homelessness in health, education, employment and other areas.
- **The price of full legal representation in Housing Court is estimated at \$1,600- \$3,200 per case.**
- If we don't invest in lawyers for tenants, *it will cost us much more* to find housing for tenants who have been evicted: each bed in a New York City municipal shelter costs **\$36,000** per year; developing a single affordable housing unit costs over **\$250,000**.
- When households are evicted from rent-regulated units, landlords often exploit loopholes in the system to permanently raise the rent to market-rate for future tenants, thereby diminishing the number of affordable housing units and exacerbating the shortage of affordable housing.

**Why now?**

- With eviction and homelessness rates steadily rising, this is a critical issue in New York City right now.
- Elected City Council officials have introduced legislation that would provide legal counsel to low-income tenants facing eviction.
- The Mayor has made affordable housing and economic equity central themes of his administration.
- Every Community Board in Manhattan, Brooklyn and the Bronx have passed resolutions in support of Right to Counsel!
- Elected officials, community activists, academics, legal service providers, bar associations, public policy experts and others have all come together to advocate for the establishment of this important right.

**Let's make history! With your help, New York City will become the first City in the country to establish this critical right to counsel.**

## **\$320 Million Saved Every Year:** **Highlights of SRR's Cost/Benefit Analysis for Intro 214-A** By the Right to Counsel NYC Coalition

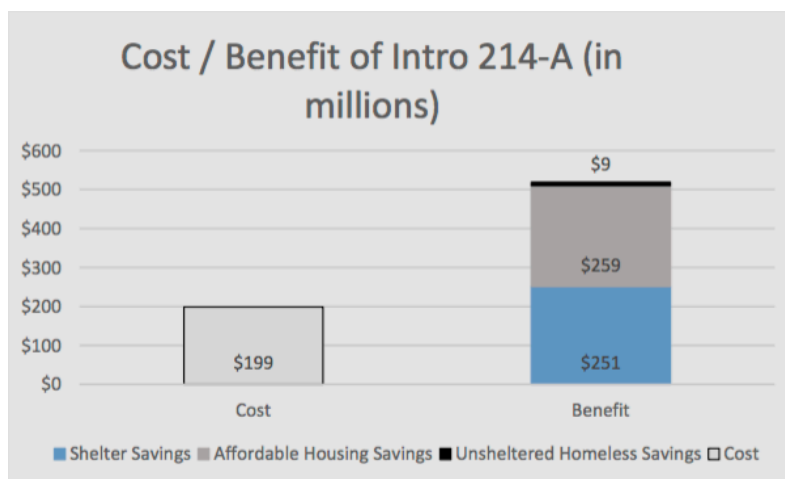
The New York City Bar Association asked Stout Risius Ross, Inc. (SRR), a global financial advisory firm, to project the costs and benefits of Intro 214-A, a bill filed with the New York City Council that would provide a right to counsel for low-income tenants. Below are highlights from SRR's report, which are compared to similar reports from the City's Independent Budget Office (IBO) and the City Council's Finance Division.

- **Intro 214-A will entirely offset the cost of counsel and save the City a total of \$320 million per year, even with income eligibility at 200% of the poverty level.** This is contrary to the findings in the IBO and City Council reports, which both estimated that the cost would outweigh the benefits.
- **Nearly 130,000 tenants will qualify for a right to counsel under Intro 214-A.** This is substantially more tenants than predicted by the City's Independent Budget Office or the City Council in their reports (which used the 125% of poverty level figure), yet the SRR report still determines there will be substantial savings.
- **5,237 fewer families and fewer 1,140 individuals will wind up in homeless shelters due to eviction.** The shelter money saved (even the money coming from the federal and state governments) can then be put to other City housing and homelessness services.
- **The City will save over \$250 million in avoided shelter costs.** It costs over \$43,000 to shelter a family and over \$22,000 to shelter an individual, and the report estimates that 5,237 families and 1,140 individuals will avoid homeless shelters due to eviction.
- **The City will save \$9 million through stemming of secondary costs when evicted tenants become homeless.** These include use of taxpayer-funded hospitals and law enforcement.
- **The City will save \$259 million through the retention of 3,414 affordable units.** Every time a tenant is evicted from rent-regulated housing, the unit becomes less affordable, requiring the City to spend money to establish a new affordable unit. Mayor de Blasio's Housing Plan already anticipates that the City has to build or preserve 200,000 units of affordable housing.
- **There are other possible savings from Intro 214-A that can't currently be estimated due to a lack of data, so Intro 214-A may generate an even bigger benefit.** These include:
  - The societal costs of homelessness on children (education, criminal justice, welfare, etc.);
  - The effect of evictions and/or homelessness on welfare applications;
  - The possibility that universal representation for tenants will lead to fewer frivolous eviction filings by landlords, which over time will help court budgets and bring down the number of tenants needing counsel.

- **The IBO and City Council's Finance Division reports have less accurate data and do not include some savings.** Specifically, these reports:
  - Underestimate the number of families entering shelter due to eviction;
  - Underestimate the cost of sheltering families;
  - Underestimate the amount already committed by the City for eviction defense;
  - Do not consider the loss of affordable housing units or the secondary costs of eviction (such as increased use of emergency rooms and law enforcement);
  - Subtract the money the federal/state government will save through Intro 214-A, even though that money will not be lost to the City.

**Table Summarizing Results from the SRR, IBO, and Finance Department Reports**

<b>Description</b>	<b>SRR</b>	<b>IBO</b>	<b>Finance</b>
Cost of providing counsel	(\$259 million)	(\$173 - \$276 million)	(\$117 million)
Offset for amount already spent on counsel by City	\$60 million	\$20 million	didn't offset
Total savings from reducing shelter use	\$251 million	\$143 million	\$171 million
Fed/state shelter savings not included	n/a	(\$90 million)	(\$120 million)
Savings from avoiding loss of affordable housing units due to eviction	\$259 million	didn't assess	didn't assess
Savings from avoiding other homelessness costs (hospitals, law enforcement, etc.)	\$9 million	didn't assess	didn't assess
<b>Total (cost) / benefit of providing counsel</b>	<b>\$320 million</b>	<b>(\$100-\$203 million)</b>	<b>(\$66 million)</b>





7-2016

# The Fight for Justice in Housing Court: From the Bronx to a Right to Counsel for all New York City Tenants

Susanna Blankley

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## JUSTICE, JUSTICE SHALL YE PURSUE

Honorable Jonathan Lippman

## SPECIFIC AREAS FOR REFORM

### HOUSING

Andrew Scherer  
Susanna Blankley

### IMMIGRATION

Claire Thomas & Lenni Benson  
Fidèle Menavanza

### PRISONERS' RIGHTS

Brett Dignam

### TORT LIABILITY

Joanne Doroshov

### WOMEN'S RIGHTS

Catherine Carr

## ALTERNATIVE MODELS

David Udell  
Randal Jeffrey  
Karen Simmons  
Amy Barasch  
Joan Vermeulen  
Raymond Brescia

## THE ROLE OF GOVERNMENT OFFICIALS

Paris Baldacci  
Lisa Grumet



## COLLECTED ESSAYS ON EXPANDING ACCESS TO JUSTICE



# The Fight for Justice in Housing Court: From the Bronx to a Right to Counsel for All New York City Tenants

Susanna Blankley<sup>1</sup>

## Introduction

We have a real housing crisis in New York City. Developers are clamoring to build luxury condos and international investors are buying up properties.<sup>2</sup> Meanwhile more than half of New York City renters pay more than 30 percent of their income in rent, and many households pay more than 50 percent of their income.<sup>3</sup> In February 2016, more than 60,000 individuals were in our city's shelter system each night.<sup>4</sup>

In May of 2014, New York City Mayor Bill de Blasio, who ran on a campaign to end the housing and homelessness crisis, released his housing plan, laying out the goal to build and preserve 200,000 units of affordable housing over 10 years.<sup>5</sup> Of the 200,000 units, the Mayor's goal is to construct 80,000 new units of affordable housing. To build new housing in New York, you either need to build taller buildings in places where you are allowed to build housing, or find land where you aren't currently allowed to build housing and get the laws that govern the use of that land changed. Either way, you need to go through a rezoning process. Upon releasing his plan, the Mayor also announced his plans to rezone 15 neighborhoods across New York City, with the explicit goal of changing the land use laws to facilitate the construction of new residential housing.

In New York City, the most lucrative form of real estate you can own is residential housing. Changing the use of land changes the value of land. Changing the value of land, changes landlords' and developers' behavior. Recognizing that the rezoning will increase land values and speculation as well as harassment of existing tenants, the de Blasio administration has dedicated tens of millions of dollars to increase the number of lawyers available to represent tenants in Housing Court in the neighborhoods being rezoned.<sup>6</sup> In addition to this, recognizing that many evicted

<sup>1</sup> Director, Community Action for Safe Apartments (CASA).

<sup>2</sup> See Louis Story & Stephanie Saul, *Stream of Foreign Wealth Flows to Elite New York Real Estate*, N.Y. TIMES, Feb. 7, 2015, [http://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?\\_r=0](http://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?_r=0).

<sup>3</sup> See *2014 New York City Affordable Rental Housing Landscape*, NYU FURMAN CENTER, Apr. 23, 2014, <http://furmancenter.org/NYCRentalLandscape>; UNIVERSITY NEIGHBORHOOD HOUSING PROGRAM, NOWHERE TO GO: A CRISIS OF AFFORDABILITY IN THE BRONX 11-12 (2013), available at <http://unhp.org/pdf/NowhereToGo.pdf>.

<sup>4</sup> See *Basic Facts About Homelessness: New York City*, COALITION FOR THE HOMELESS, <http://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/> (last visited April 7, 2016).

<sup>5</sup> See CITY OF NEW YORK, HOUSING NEW YORK: A FIVE-BOROUGH, TEN-YEAR PLAN (2014), available at [http://www.nyc.gov/html/housing/assets/downloads/pdf/housing\\_plan.pdf](http://www.nyc.gov/html/housing/assets/downloads/pdf/housing_plan.pdf).

<sup>6</sup> Press Release, Office of the Mayor, City of New York, De Blasio Administration to Help Prevent Homelessness by Adding Resources to Keep New Yorkers in Their Homes (Sept. 28, 2015), <http://www1.nyc.gov/office-of-the-mayor/news/653-15/de-blasio-administration-help-prevent-homelessness-adding-resources-keep-new-yorkers-in>; *Text of Mayor de Blasio's State of the City Address*, N.Y. TIMES, Feb. 3, 2015, <http://www.nytimes.com/2015/02/04/nyregion/new-york-mayor-bill-de-blasios-state-of-the-city-address.html>.

families go straight into the shelter system and that eviction prevention decreases homelessness, the Mayor identified neighborhoods where the highest number of people enter the shelter system directly from evictions, and allocated an additional \$12 million to provide legal services to prevent evictions in those neighborhoods.<sup>7</sup>

As more lawyers are hired to represent tenants, we are in the middle of an incredible moment in our city's history. New York City's Mayor has explicitly acknowledged that preventing tenant displacement through legal counsel is central to our expansion and growth as a city. For many years, advocates and tenants throughout New York City have been advocating for New York to establish a Right to Counsel—a right for New Yorkers facing the loss of their home to have an attorney to defend them even if they are too poor to pay for counsel. From a funding perspective, we are closer to a Right to Counsel than we've ever been. But a right is so much more than just funding.

### The High Stakes of Housing Court

To illustrate how a right is different than greater access to resources, allow me to use a recent experience that my husband Jon and I had with another one of the city's courts—Traffic Court. As part of the preparation for a three-week vacation, we parked our car in a part of the city that has no alternate side parking restrictions (yes, they do exist!). When we came back to get the car, it wasn't where we had parked it and it was nowhere to be found. We went online and found that we had racked up close to \$1,000 in parking tickets and that the car had been towed. Jon took time off work to investigate, went back to the neighborhood where we had parked the car and went door to door and business to business to find out what may have happened. He slowly pieced it together—the street had been repaved, and the city had moved our car to an avenue and parked it there. Obviously we weren't paying the meters we didn't know about and the car racked up tickets and eventually was towed. To get the car out of the lot where it had been towed, we had to pay the fines and fees. The women at the impound lot were very nice to Jon and encouraged him to fight the case and go to Traffic Court. They explained to him what he needed to bring to court and what and how he should argue. With their encouragement, he decided to go. The next day, armed with information he had gathered himself, he argued his case before a judge. The judge agreed and within a few weeks, we were fully reimbursed. It was a bizarre experience and cost us money, time and effort, but at the end of the day, we got justice in the court.

But we didn't get justice just because we were right. We got justice in part because of how privilege and power play out. We had the resources to pay the fines up front. Jon's boss was understanding and allowed him to take two days off work, with pay. He was able to walk through a neighborhood, investigate and be well received. He was received as a victim of a city's bureaucracy and not as a lazy person who wasn't following the rules or worse, as a criminal. He got the same treatment in the impound lot with the women who explained his rights and encouraged him. And he got the same treatment from the judge, whose language he spoke both in terms of English and class, and whose respect he instantly had. Jon is an exceedingly nice guy, but he is also white and middle class. And in this case, both his class and his whiteness gave him an advantage to argue his case and to navigate the court. And he learned that he can fight and win, which reinforces his place in society—as a white citizen with rights who gets a fair shot. He learned that the city's systems of justice work, at least for him.

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<sup>7</sup> See Press Release, *supra* note 6; Erin Durkin, *De Blasio Launches \$12.3M Plan to Help Tenants Fighting Off Evictions Get Legal Aide*, N.Y. DAILY NEWS, Sept. 28, 2015, <http://www.nydailynews.com/news/politics/de-blasio-launches-12m-plan-tenants-avoid-eviction-article-1.2377842>.

But he also got justice because Traffic Court is relatively easy to navigate. It sees a relatively small number of cases. The laws that govern traffic violations are relatively simple and straightforward and the stakes are low. Even with all of Jon's advantages, the complicated nature of housing laws in New York City, and the nature of the court itself with its high volume of cases and heavy traffic in the hallways, would have made it impossible for him to do in Housing Court what he did in Traffic Court. He can't investigate his own case, because he doesn't have access to the landlord's files and he certainly can't walk in to see a judge. Not to mention that he went into Traffic Court confident partly because losing would not have had a huge impact on our lives. Contrast this with the weight of losing your home, of making your children homeless, of needing to pack and store all of your belongings in a matter of days, rearrange your mail and your bills and find a new place to live. Even with all of his advantages, Jon would never just walk into Housing Court like he walked into Traffic Court. He would get an attorney.

The more than 200,000 New Yorkers who go through our city's Housing Courts every year<sup>8</sup> learn quite a different lesson about justice, their rights and roles than Jon did in Traffic Court. Right to Counsel isn't just about evictions, displacement and affordable housing—though it is about all of those things. It is about how we treat our mostly Black, Brown, poor and female members of this city as they face the loss of one of their most important necessities—their home.

### CASA's Housing Court Reform Campaign

In New York City, over 200,000 families are sued in Housing Court every year by their landlords. In the Bronx alone, 2,000 people are in the Bronx Housing Court every day.<sup>9</sup> Twenty to thirty thousand families lose their homes every year in New York City through a formal eviction process, with about a third of evictions occurring in the Bronx.<sup>10</sup> Almost all of them are Black or Brown, many of them are women and almost all of them make less than \$48,000 a year for a family of four (200 percent of the poverty line and below). And for almost everyone, housing court is a humiliating, degrading and horrific experience. Thousands more never brave the housing court but lose their homes through an informal eviction process, moving out when an eviction is looming or threatened, when papers are served, when basic services like heat and hot water are denied.

For those who make it to court, here is what a typical day looks like:<sup>11</sup>

8:30 a.m.: Two tenants arrive at Bronx Housing Court. Tenant #1 has been to Housing Court before. Tenant #2 is at Housing Court for the first time. They both wait in the security line in the rain to get into the Housing Court building.

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<sup>8</sup> See Housing Court Answers, Inc., Eviction Trends (1998-2015), <http://cwtfhc.org/wp-content/uploads/2009/06/EvictionTrends1998to20151.pdf>.

<sup>9</sup> NEW SETTLEMENT APARTMENTS' COMMUNITY ACTION FOR SAFE APARTMENTS (CASA) & COMMUNITY DEVELOPMENT PROJECT (CDP) AT THE URBAN JUSTICE CENTER, TIPPING THE SCALES: A REPORT OF TENANT EXPERIENCES IN BRONX HOUSING COURT 1 (2013), available at [http://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc\\_Report\\_CASA-TippingScales-full\\_201303.pdf](http://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_CASA-TippingScales-full_201303.pdf).

<sup>10</sup> See Housing Court Answers, Inc., Eviction Trends (1998-2015), <http://cwtfhc.org/wp-content/uploads/2009/06/EvictionTrends1998to20151.pdf>. For annual eviction data for the Bronx and other counties in New York City, see *Marshals Evictions*, HOUSING COURT ANSWERS, <http://cwtfhc.org/evictions-marshals-documents/>.

<sup>11</sup> This segment about a "typical day" is excerpted from NEW SETTLEMENT APARTMENTS' COMMUNITY ACTION FOR SAFE APARTMENTS (CASA) & COMMUNITY DEVELOPMENT PROJECT (CDP) AT THE URBAN JUSTICE CENTER, TIPPING THE SCALES: A REPORT OF TENANT EXPERIENCES IN BRONX HOUSING COURT (2013), available at [http://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc\\_Report\\_CASA-TippingScales-full\\_201303.pdf](http://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_CASA-TippingScales-full_201303.pdf). A survey and the methodology used to obtain the data reported here are described *infra* and in the report, and the survey appears as an appendix to the report.

9:00 a.m.: After going through the long security line, both tenants finally get into the Housing Court building. Tenant #1, who has been to Housing Court before, goes directly to the courtroom to wait for it to open at 9:30 a.m. Tenant #2 doesn't know where to go specifically so she wanders around and then stands in the wrong line before learning of the correct courtroom.

- 22% of tenants don't know where in the court building they need to go.
- 54% of tenants were NOT helped by court personnel to find the correct room.

9:30 a.m.: The courtroom opens but the Judge doesn't immediately take the bench. Tenant #1 has checked in with the court clerk using the calendar number and is waiting for the landlord's attorney to arrive. Tenant #2 hasn't checked in with the court clerk because she did not know she needed to.

- 32% didn't know they needed their calendar number before going into the courtroom.
- 24% didn't know they needed to check in with the court clerk.

10:00a.m.: Tenant #2 isn't sure what is going on, and so talks to the court clerk to find out what she should be doing. The court clerk tells her to get her calendar number so the court clerk can mark that the tenant is in court. Both tenants sit and wait in the courtroom.

11:30a.m.: Tenant #1 finally hears the landlord's lawyer call out her name. They step out into the noisy hallway. Tenant #1 knows her rights, so after some conversation, she tells the landlord's attorney that she wants to speak to the court attorney or judge about her case. The landlord's attorney agrees, but tells Tenant #1 that he is going to "take care" of all his other cases first, and then leaves. Tenant #1 goes back into the courtroom to sit down and wait.

12:00 p.m.: Tenant #2 finally hears someone calling her name. This person asks Tenant #2 to step into the hallway, and then begins to talk to Tenant #2 about her case. After several minutes of conversation, Tenant #2 realizes that she is talking to the landlord's attorney. Tenant #2 is scared, so she agrees to sign the agreement suggested by the landlord's lawyer, even though she doesn't understand it.

12:30 p.m.: Tenant #2 waits until the court attorney calls her case. The court attorney reviews and approves the case in a quick, perfunctory manner, so Tenant #2 leaves court without fully understanding the stipulation that she signed.

- 27% of tenants reported that no one explained the stipulation to them.

1:00 p.m.: Court adjourns for lunch, but Tenant #1 is still waiting for her landlord's attorney to return. There isn't any food available in court, so Tenant #1 just waits in the hallway.

2:15 p.m.: The courtroom reopens, so Tenant #1 goes back to the courtroom to sit and wait.

2:30 p.m.: The landlord's attorney finally comes back. The judge calls Tenant #1's case. Tenant #1 and the landlord's attorney go before the judge. An adjournment is issued for Tenant #1's case. A new court date is set.

- 41% of tenants never spoke to a judge about their case.

3:00 p.m.: After spending the entire day in Housing Court, Tenant #1 finally leaves.

This day in court is based on an average day for two single, English-speaking people who can easily get around. There are many other factors that would make this day look different.

- If a tenant has a child:
  - If the child is in a stroller, the tenant waits an additional 10 minutes once inside Housing Court to use the elevator. If the child makes any noise in the courtroom, the court clerk asks the tenant to leave, so the tenant misses the first time the landlord's attorney calls out their name to negotiate.
- If the tenant is in a wheelchair or is unable to walk up the many stairs:
  - The tenant must wait an additional 10 minutes once inside Housing Court to use the elevator.
- If the tenant is a non-English speaker:
  - Since all the signs are in English it takes the tenant an extra 20 minutes to figure out where to go in court. If the tenant is Spanish-speaking, an additional 30 to 60 minute wait is necessary for an interpreter to be available at the same time as the landlord's attorney. If the tenant speaks a language other than English or Spanish, they must get an adjournment for another court date so that the court can arrange for an interpreter. The tenant will lose another day of work and much-needed income.

If someone is nice to you and explains your rights and options and encourages you to fight in the court, you are one of the lucky ones. If you have a lawyer, you are one of the lucky ones. If you speak to a judge, you are one of the lucky ones. And if you resolve your case in one day and you win, you are the luckiest.

It really would feel like that—like luck, like an exception, a miracle, like all of the pieces came together in the right way—it wouldn't feel like justice. How could it when close to 2,000 people next to you, who look like you, don't have the same outcome?

In 2012, members of Community Action for Safe Apartments (CASA), a tenants' rights organizing project in the Southwest Bronx, voted to start a campaign to reform the Bronx housing court out of concern about the lack of justice in housing court and the high rate of evictions.<sup>12</sup> While there have been many reports about housing court reform and access to justice, there had never before been a report from the perspective of the people who go through housing court every day. CASA members decided to take on this task.

In partnership with the Community Development Project (CDP) at the Urban Justice Center, we spent a year doing participatory action research. Members created a survey of tenants' experiences and were trained on how to collect surveys. In a few months, we collected 1,055

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<sup>12</sup> See *Campaign For Justice in Housing Court*, COMMUNITY ACTION FOR SAFE APARTMENTS, <http://casapower.org/campaign-to-reform-housing-court-2/> (last visited April 8, 2016).



surveys. Upon analyzing the data, members concluded that we lacked two things: a description of the courtroom experience itself and narratives from tenants. Members therefore created focus group questions and an observation survey. After being trained in both courtroom observation protocol and facilitating focus groups, members conducted 15 judge observations and facilitated three focus groups with 25 participants.

Our data revealed four main findings:

1. Housing Court is confusing and difficult to navigate for most tenants.
2. The vast majority of Bronx tenants do not have legal representation to help them navigate the system.
3. Pro se tenants are at a huge disadvantage in housing court.
4. Judges have the ability to do more to even the playing field for tenants.

### Policy Recommendations

Initially, as members began to outline what they would change in housing court if they could, almost everything centered on how they were treated. People described being yelled at, being talked to like they were less than human, not being able to find anyone who could speak their language in a dialect and form that make them feel comfortable (not all Spanish is the same), being threatened by their landlord's attorney with immigration, with eviction, and so much more. Members felt like if they were just treated better, their outcomes would have been different.

As we began to analyze how decisions are made in the housing court and who has control over how it functions, we began to focus on the systems of power within the court, instead of individual people's behavior. We understood that individual court personnel's attitudes and behavior would be hard to change unless the conditions change. The people who work at housing court, who are mostly people of color themselves, have an overwhelming caseload and work under incredibly stressful conditions. As tenants pour out their hearts, tell their stories, voice frustration and anger, it's the court personnel, not the landlords, who hear and receive all of this. Tellingly, when we were talking to the union that represents the court staff about one of our demands—to require the court personnel to wear visible identification as a court employee so that tenants don't mistakenly think the landlord's attorney they are negotiating with works for the courts (which happens more often than you would think)—the union said court staff didn't want the tenants to know their names for fear that they would follow them out of court, and attack them. We were able to compromise to get the employees to wear IDs that don't state their names, but this is an incredible reflection of how inhumane and dire the relations are in housing court. Anyone who can come to work on a daily basis under these conditions and be compassionate, patient and kind for years on end, is a remarkable person. Eventually the most kind-hearted, well-intentioned people will lose their patience. Changing systems and structures that create such a hostile environment, would benefit the people who work in the courts as well as the tenants who are facing eviction.

CASA members worked with an Advisory Committee of attorneys, policy experts and advocates to help turn our findings into concrete policy recommendations to change these systems and structures. After an intense process of analysis and prioritization, members narrowed it down to 23 recommendations and released our report in March of 2013.<sup>13</sup>

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<sup>13</sup> See NEW SETTLEMENT APARTMENTS' COMMUNITY ACTION FOR SAFE APARTMENTS (CASA) & COMMUNITY DEVELOPMENT PROJECT (CDP) AT THE URBAN JUSTICE CENTER, *supra* note 9.

In the Bronx, CASA is leading a campaign to ensure that these recommendations are implemented, and we've had some success. In the year after the report was released we saw three of our recommendations implemented: a bilingual PowerPoint plays in every courtroom explaining tenants' rights and basic court procedures; all court personnel are required to wear visible identification so that tenants know when they are talking to someone who works for the court and when they aren't (like a landlord attorney); and when judges take the bench every morning, they give an overview of what to expect during the day and review some basic rights, as well as where tenants can go for more in-depth help. The changes the court implemented as a result of our campaign weren't just implemented in the Bronx, but in all of the housing courts throughout the city.

We are proud of this progress and believe that these recommendations, implemented alongside other administrative changes that the court can make as outlined in our report, will go a long way towards changing unrepresented tenants' experiences in housing court and reducing evictions. However, the court cannot and should not shoulder the responsibility of the incredible lack of equity in the court system.

One of our main recommendations, passing a law making it a right for tenants to have an attorney in housing court, is at the core of changing the nature of what housing court is and could be. Currently, housing court is the center of displacement for tenants. It could be the place where tenants go to find justice. That's what housing court reform and Right to Counsel are all about.

### Right to Counsel NYC Coalition

In March of 2014, we were excited to learn that New York City Councilmember Mark Levine was working on introducing Intro 214, a piece of local legislation that would make the city responsible to make it a right for tenants to have an attorney in Housing Court. Because the court system in New York City is part of the state court system, we had always thought that any law changing the nature of how the court worked, would have to be done on the state level. Pro-tenant legislation has been almost impossible to pass in New York State for the last 30 years. The prospect of a city council bill meant we might actually win. Intro 214 does not challenge the power of the state; instead it places the obligation on the city to provide counsel. If the city fails to do so, a tenant has the right to sue the city.

As we rallied to support this important and critical bill, we recognized the need to form a new coalition, independent of the legislature, that would build a citywide movement not for increased funding for representation, but for New York City to be the first city in the nation to establish a RIGHT to counsel for tenants in housing court. We formed a coalition rooted in principles of equity, humanity, diversity and justice. We are working to develop and champion a new legal services model that can be implemented when a comprehensive bill passes. We are working towards a bill that will be fully funded and that will do justice to those facing eviction in housing court so that tenants have qualified, dedicated and experienced housing attorneys who can devote the time they need to their cases.

The Right to Counsel NYC Coalition is made up of advocates, tenants, academics and legal services providers in support of a Right to Counsel for low-income tenants who face eviction in

New York City.<sup>14</sup> Many of us have been working on issues of affordable housing, tenant power and housing court reform for decades.

As a Coalition, our main goal is to make sure that people stay in their homes and communities with dignity and respect and for housing court to be a place where justice is applied equitably. We believe that a Right to Counsel for tenants is a key piece in making that goal a reality.

For over a year and a half, the Coalition has been working to educate tenants, advocates and allies about the issue. In December of 2014, we put together a day-long conference that drew over 450 people and featured prominent speakers such as then Chief Judge Jonathan Lippman, New York City Human Resources Administration Commissioner Steven Banks and many more. We subsequently released a report citing the findings of this conference.<sup>15</sup> We put together a compelling video citing the statistics that support a Right to Counsel.<sup>16</sup> We've held four town halls in four different boroughs, which educated and engaged over 500 tenants and dozens of elected officials. We've developed a 3-year phase-in plan for Right to Counsel, taking into consideration the time it will take to develop the infrastructure to support such a critical change in how housing court works. We've developed a logistical plan, thinking through how Right to Counsel would be implemented at every step in the process. There has been a great amount of press that connects Right to Counsel to the crisis of homelessness in our city and how cost effective it is.<sup>17</sup>

In just a year and a half, we've made incredible progress. While money was initially a significant concern, those concerns have lessened as funding has increased and the gap from what we currently fund to what we'd need to fund to have a full right, continues to close. In regards to funding, no one will be thinking about the cost of Right to Counsel in 10 years, it will just be the way we operate, just the cost of providing justice and due process for close to half a million people every year.

### Conclusion

A detriment of having increased funding levels is that it presents a danger that we will stop there. Not only does dependence on funding make us vulnerable to the funding priorities of a future administration, but increased funding alone does not address the fundamental question of how we value the lives of the people who not only go to housing court, but who see housing court as a very real threat to their ability to stay in their homes.

People are afraid of their landlords precisely because their home is such a valuable, intimate cornerstone of their lives that they must protect and also because they know that landlords have more power in the court system than they do. With almost all of the cases in court initiated by landlords and with most of the landlords represented by counsel while most of the tenants are not, how could anyone draw any other conclusion?

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<sup>14</sup> See *Home*, RIGHT TO COUNSEL NYC COALITION, <http://www.righttocounselnyc.org/> (last visited Apr. 7, 2016).

<sup>15</sup> See RIGHT TO COUNSEL NYC COALITION, HOUSING JUSTICE: WHAT THE EXPERTS ARE SAYING ON NEW YORKERS' RIGHT TO COUNSEL IN EVICTION PROCEEDINGS (2015), available at [https://d3n8a8pro7vnm.cloudfront.net/righttocounselnyc/pages/23/attachments/original/1433269447/FINAL\\_expert\\_report.pdf?1433269447](https://d3n8a8pro7vnm.cloudfront.net/righttocounselnyc/pages/23/attachments/original/1433269447/FINAL_expert_report.pdf?1433269447).

<sup>16</sup> See *Right to Counsel-The Facts! New Settlement Apartments Community Action for Safe Apartments* (Dec. 6, 2014), available at <https://www.youtube.com/watch?v=IrlsSrRCuyg>.

<sup>17</sup> See, e.g., Mark D. Levine & Mary Brosnahan, *How to Fight Homelessness*, N.Y. TIMES, Oct. 19, 2015, [http://www.nytimes.com/2015/10/19/opinion/how-to-fight-homelessness.html?\\_r=1](http://www.nytimes.com/2015/10/19/opinion/how-to-fight-homelessness.html?_r=1).

People's relationship with eviction isn't just in the courts. The very real threat of eviction looms every time they think about calling the city to report housing code violations, withholding rent for lack of repairs, forming a tenants' association or exercising their rights. Having rights and knowing those rights enables people to take action. If tenants knew that housing court was a place to find justice, if they knew they'd have an attorney to represent them, they'd be more likely to report housing code violations, form a tenants' association, file an overcharge complaint and even take their landlord to court. We would see an incredible change in the primary function of housing court as well as a change in tenant organizing and activism. This new balance of power would make our city safer—it was tenant organizing that helped and continues to help shape laws about code violations that keep all New Yorkers safe. Every time a tenant doesn't report a maintenance or building code violation, like a gas leak, because they are afraid of being evicted, we are all at risk.

As New York City gets closer to the levels of funding needed to provide a full Right to Counsel, how we do it is just as important as what we do. The earlier example of Traffic Court presents us with a challenge. How do we institutionalize justice? How do we make it so that all tenants leave court feeling like their voices were heard and their rights were protected? If we implement Right to Counsel, will we do it in a way that respects the full dignity of everyone who is faced with the challenge of going to housing court? Will we do it in a way that teaches people that our city's courts are a place of justice, dignity, fairness and respect? Will we teach tenants that they are equal citizens under the law? Will we teach them that they have rights that our courts and our city respect and uphold? Will we teach them that they have a place in our society to fight for their rights?

If so, then Right to Counsel needs to be fully funded. It needs to be phased in so that the providers have the capacity they need and so that tenants are well informed. It needs to be done in consultation with an incredible and diverse coalition of academics, tenant organizers, activists and attorneys who have been working on these issues for the better part of a generation—the Right to Counsel NYC Coalition.

If we don't do it this way, if we throw money at the problem without a comprehensive strategy and plan, outcomes might be better for some tenants, but they will still learn that they are second class citizens as they navigate one new bureaucracy to access free legal services after the other. Many tenants won't be affected at all, because they will never make it to court.

Right to Counsel cannot just be about meeting numbers—numbers of cases represented, numbers of people served, numbers of homes protected, numbers of dollars saved for every dollar invested, numbers of shelter residents reduced. Those are important numbers, but they cannot be the goal of this initiative. How people are treated must be at the foundation of this—as it is at the foundation of the movement for a Right to Counsel.

Increased funding increases the pool of people who get lucky. By contrast, a fully funded and a well implemented Right to Counsel, is a strong step forward in the path towards institutionalizing justice. •

**Protecting Tenants from Harassment:  
Creating a Citywide Certificate of No Harassment Requirement**

**I. What's the basic idea behind a Certificate of No Harassment program?**

1. With market rents increasing across the City, there is a growing incentive for landlords to dramatically raise rents in both rent-stabilized and unregulated housing. In rent-regulated housing, loopholes in the law mean landlords profit financially from turnover much more than they can from keeping long-standing tenants in place. Most landlords follow the law, but too many do not, and communities are seeing landlords use harassment to push out low-rent-paying tenants with growing frequency. This problem is displacing low income tenants from their communities, and diminishing the City's supply of affordable rental housing.
2. We need stronger tools to proactively discourage landlords from harassing their tenants in increase their profits. The Certificate of No Harassment program is intended to create a financial disincentive to harassment that will hopefully help to cut down dramatically on the number of landlords that see harassing out long-term tenants as a smart business move. Though the City does not control the rent laws, it does have real leverage that can be used to effectively disincentivize at a city-wide level.
3. When an apartment is vacant, it is often necessary for a landlord to apply for a Department of Buildings construction permit in order to do the work in the apartment (an Alt 2 Permit) and the building (an Alt 1 Permit) that will attract higher paying tenants, and allow dramatic rent increases under rent stabilization laws.
4. The Certificate of No Harassment program will create a process that will allow the City to closely scrutinize Alt 2 and Alt 1 permit applicants whose records raise red flags suggestive of tenant harassment. That initial determination would be based on a variety of available data.
5. The great majority of landlords who do not raise any flag would go through the ordinary permitting process that exists today, with no additional delay. But landlords whose buildings are flagged would have to apply for a Certificate of No Harassment – verification that the building does not have a history of tenant harassment – before their building or alteration permits could move forward.
6. If there is a finding of harassment and the Certificate is denied, the Department of Buildings *would not grant building or alteration permits* for that building *unless* those landlords agreed to a "cure" that includes creating new permanently affordable housing.
7. Building owners readying for a sale could also, if they chose, apply for a Certificate of No Harassment before transferring the building to a new

owner. This would enable owners to sell buildings with "clean" titles, easing the minds of potential purchasers by removing any doubt about future roadblocks.

**II. How would it work for landlords applying for construction or renovation permits?**

1. HPD would be required to keep a city-wide database of buildings with indications of possible harassment. The database would include such records such as:
  - i. HPD and DOB violations
  - ii. Complaints:
    1. All complaints to DOB on any construction-related matters, and the results of any investigations undertaken in response to such complaints
    2. All complaints of harassment filed with DHCR with accompanying documentation, including outcome of all complaints
    3. All 311 complaints made by tenants pertaining to heat and hot water or reduction in services complaints, and the results of any investigations undertaken in response to such complaints.
    4. Reports of harassment submitted by community groups
  - iii. Notices, inspections, and repairs of lead paint hazards
  - iv. Total # of permits applied for within a specified time period
  - v. # of times building has changed hands w/in a specified time period
  - vi. # of vacancy bonuses taken within a specified time period
  - vii. Court cases
    1. Tenant Protection Act fillings and outcomes
    2. Housing court cases initiated against tenants
2. Landlords who did *not* raise red flags could go through the current process to get their permits from DOB.
3. Landlords who raise "red flags" would go through a rigorous screening process before receiving Alt 1 or Alt 2 permits to renovate or demolish and rebuild their buildings.
  - i. Either HPD, or one third or more of the rent-regulated tenants in occupancy could move to initiate the administrative hearing to consider claims of harassment.
  - ii. This structure would mirror the process that governs 7(a) hearings, which can be brought by the City, HPD, or one third of the tenants in occupancy.
4. Steps of that review process:

## Appendix B: "Certificate of No Harassment" Legislation Summary

### *i. Notification*

1. Notice would be sent to tenants, the community board, the council member, and local community organizations, which could sign up to receive notices via email.
2. Notice would be in plain language easy for tenants to understand.
3. Notices to tenants would include information on the type of work the landlord is applying to do, and define harassment through a list of possible harassment tactics. Tenants could review the list, check off any forms of harassment they may have experienced, and return the form to HPD. The notice would also include info on contacting a local org or legal service provider for assistance.
4. Notice would take language access issues into account.

### *ii. Responses*

1. Tenants would have 60 days to respond to the notice, and could request an extension if necessary.
2. Landlord would then have 30 days to respond. Among other information, the landlord would be required to return:
  - a. Rent registration history of all units
  - b. Copies of all leases signed in the last 15 years
  - c. Annual lease renewals for all rent-stabilized units
3. The hearing would take place within 60 days of the landlord's response, and HPD would rule within 30 days after the hearing.
4. Total timeline = 6 months from date notice is first sent to tenants (could be slightly more if tenants request an extension for initial response, or slightly less if LL and/or HPD moves quickly)

### *iii. At the hearing, tenants and community groups would have an opportunity to testify, and HPD would be required to consider the information found in the Harassment Indicators Database and:*

1. Testimony or affidavits from tenants, former tenants, and organizers, including any forms returned by tenants through the process described above
2. Court records
  - a. If any tenants have won harassment claims against the LL, the CONH should automatically be denied
3. Pattern of frivolous lawsuits

### *iv. If HPD found that no harassment had occurred, the landlord would receive a CONH and could proceed to DOB to get a building*



*permit. But if HPD found that harassment had occurred, the landlord would have 2 choices:*

1. Leave the building as is and not receive DOB permits.
2. Take a "cure" by entering into a legally binding agreement that a certain share of the floor space in the new building would be permanently affordable housing.
  - a. "Cure" would be 30% of units in the building, with 7.5% of units affordable to people at or below 20%, 30%, 50%, and 60% AML.
    - i. This would not include any affordable housing the LL might already be required to build under Mandatory Inclusionary Housing, under tax abatement programs, etc.
    - ii. Landlords would not be permitted to use any HPD subsidies to build "cure" units.
  - b. The distribution of unit sizes for "cure" units would be required to be the same as that for non-"cure" units (i.e. if half of the market-rate units in the building are 2 BRs, half of the cure units would also have to be 2 BRs). "Cure" units would also have to be distributed evenly throughout the building, not on separate floors or wings.
  - c. Landlords found guilty of harassment would also be prohibited from selling the building's unused air rights.
5. In general, the Certificate would be good for a period of 3 years following the hearing.
6. However, if a building receives a CONH and the owner is later found to have lied in the process and/or engaged in harassment during the period that was reviewed, the CONH would be revoked and the LL would be barred from applying for a new CONH for 5 years. Similarly, if a landlord is found to have engaged in tenant harassment within 3 years after receiving a CONH, both the Certificate and the permits issued on the basis of the Certificate can be revoked. As with the initial hearing, a hearing to challenge the issuance of a CONH could be initiated by HPD, or by one third or more of the rent-regulated tenants in occupancy.

III. **How would it work for owners hoping to get a CONH in advance of a building sale, to transfer the building "clean"?**

1. Instead of first going to DOB for permits, owners in this situation could apply directly to HPD for a CONH.
2. Otherwise, the process would be the same.

**Ensuring Responsible Contracting: HPD Procurement Reform**

*Fair and Level Playing Field • Quality Oversight • Wage Theft Protections*

During the Bloomberg era, Housing Preservation and Development (HPD) built or preserved the target goal of 165,000 units of affordable housing. Though the agency was able to carry out the desired number of units, the lack of oversight and an obscure procurement process lead to criminal corruption of agency officials, worker exploitation, closed door contracting, systemic quality issues, and rampant wage theft. Now, Mayor Bill de Blasio has put this issue at the forefront of his policies by again tasking HPD with the creation and preservation of 200,000 units of affordable housing over the next 10 years. But with no comprehensive reform to the agency's currently broken system, the future of affordable housing will be tainted by the same disreputable practices as the past.

The New York City Council is currently reviewing Intro. 967, legislation that will create an ombudsman position within HPD to track quality complaints and constitutes a preferred contractors list to weed out low-road contractors.

Intro. 967 is a well-intentioned policy, but flawed to the point of causing harm to low-income workers and tenants. The current bill provides no new oversight mechanism and in fact, will functionally legitimize HPD's broken affordable housing procurement and contracting system.

Although Intro. 967 is a good start, more needs to be done to ensure the affordable housing industry in this city does not continue to exploit our most vulnerable workers and we are not creating substandard construction with our tax dollars.

Intro. 967 must be changed to:

1. Create an independent and empowered ombudsperson with the authority to proactively investigate labor and housing quality issues,
2. Eliminate the de facto system of awarding preferred contractor status and replace it with a process that ensures serious due diligence by HPD,
3. Protect the integrity of the preferred contractor system by requiring contractors certify the accuracy of data provided to HPD and regulating civil and criminal penalties for providing false, inaccurate or incomplete information,
4. Broaden the criteria of consideration for preferred contractor status to include indicators of labor violations on all types of jobsites, not just prevailing wage projects,
5. Make all materials considered when awarding preferred contractor status available to the public on HPD's website.

**MEMORANDUM**

**To:** *City Council Speaker Melissa Mark-Viverito; Public Advocate Leticia James; Deputy Mayor Alicia Glen; Council Member Rafael Espinal; Council Member Debi Rose; Council Member David Greenfield, Chair of Land Use Committee and City Council Land Use Committee Members: Vincent Gentile; Annabel Palma; Inez Dickens; Daniel Garodnick; Darlene Mealy; Rosie Mendez; Ydanis Rodriguez; Peter Koo; Brad Lander; Stephen Levin; Jumaane Williams; Ruben Wills; Donovan Richards; Inez Barron; Andrew Cohen; Ben Kallos; Antonio Reynoso; Ritchie Torres and Mark Treyger*

**From:** *Association for Neighborhood and Housing Development (ANHD); Center for Urban Pedagogy; Coalition for Community Advancement: Progress for East New York; Community Action for Safe Apartments (CASA); Community Development Project at the Urban Justice Center; Community Voices Heard; Fifth Avenue Committee; Flushing Rezoning Community Alliance; Hester Street Collaborative; Neighbors Helping Neighbors; Pratt Center for Community Development*

**Subject:** ***Proposal for Citywide & Local Monitoring & Oversight for Rezoned Neighborhoods***

**Date:** ***June 6, 2016***

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As the City continues to roll out the plan to rezone multiple neighborhoods across New York City in order to build more housing, community members are working hard to ensure that their voices are heard and priorities are included in their neighborhood's rezoning plans. Several communities, including those in East New York in Brooklyn, East Harlem in Manhattan, Jerome Avenue in the Bronx and Flushing West in Queens, have embarked on deeply participatory processes that have engaged tens of thousands of neighborhood stakeholders to create community-based plans and policy platforms to articulate their priorities.

**Accordingly, we are calling for a comprehensive and coordinated approach to documenting, monitoring, overseeing and enforcing all public and private commitments made during the rezoning processes. This approach, outlined below, should include a citywide and a neighborhood-based, community-led component and should build off and fill the gaps of the various proposals put forth by the City.**

While we continue to organize and push for our communities' priorities to be adopted as part of the various rezoning processes, we have seen too often that the commitments made during a rezoning are not kept or enforced. We also know that some commitments are not enforceable, such as promised expenditures in future years. We are deeply concerned about what this means for our communities and neighborhoods and hope to work with the City to ensure that the community's priorities are implemented and enforced.

### The City's Proposals

To address the need for oversight and enforcement of commitments and agreements made during rezoning processes, the City (including the City Council and Mayor's office) have put forth several proposals. While we are encouraged that the City is thinking about the need to record and monitor commitments, we have some outstanding questions and concerns about these proposals.

- **Intro 1132**, a bill co-sponsored by City Council Speaker Melissa Mark-Viverito, Public Advocate Letitia James, Council Members Rafael Espinal and Debi Rose. The bill would require an agency of the Mayor's choosing to maintain a publicly accessible online database tracking all written commitments made by the mayor or any mayoral agency as part of any City-sponsored application subject to ULURP.
  - *Outstanding questions/concerns: This is limited to public commitments and does not include commitments made by private developers. It is also not clear from the legislation how "commitment" is being defined and in what format the database will be maintained. It is also unclear how accessible this database will be to local residents. It is not clear which mayoral agency will monitor the commitments or how these commitments will be monitored or enforced. It is also unclear which entity in power will oversee the fiscal decisions related to rezoning.*
- **Role of Mayor's Office of Operations:** As part of the Mandatory Inclusionary Housing (MIH) agreement, the Administration committed to develop an approach to report annually its commitments for City-initiated neighborhood rezonings through the Mayor's Office of Operations. All Neighborhood Development Funds will be incorporated in these reports.
  - *Outstanding questions/concerns: It is unclear how the Mayor's Office of Operations will publicly report out on progress made on commitments and whether this office will have any interaction with community-based stakeholders. It is also unclear if this office will coordinate all the agencies taking part in implementing the commitments made. If this office is not responsible for making sure the commitments are actually implemented, then who is?*
- **Department of City Planning's Division of Capital Planning and Infrastructure:** Cited in a memo from Mayor de Blasio, this new unit would work with budget officials on implementing rezoning plans.
  - *Outstanding questions/concerns: We do not have any further information about this unit or whether it is currently operational. It is also unclear how this unit will interact with Intro 1132, the monitoring function of the Mayor's Office of Operations and Housing Preservation and Development's enforcement function of MIH. We would like to know more about this unit, how it will be staffed and resourced, what its mandate will be and how it will coordinate with other City agencies and with local stakeholders and residents.*

- **Local Law to Permit Department of Housing Preservation and Development (HPD) to enforce Mandatory Inclusionary Housing requirements:** As part of the MIH agreement, the Mayor's office committed to enacting a local law to empower HPD to enforce MIH.
  - *Outstanding questions/concerns: MIH is just one aspect of the many agreements made during rezoning. How will HPD interact with other agencies that are also responsible for implementing commitments to make sure that holistic neighborhood plans are being implemented and enforced? What are the accountability mechanisms in place to ensure HPD is transparent in its enforcement of MIH?*

### **Our Approach**

We propose that a specific mayoral office work with local neighborhood monitoring committees in each rezoned neighborhood in order to uphold the commitments made during the rezoning process and coordinate the many stakeholders and agencies that are part of the process. This approach builds off of and fills the gaps of the various proposals already put forth by City officials for monitoring and enforcement of rezoning commitments. Below we lay out a proposed structure, role and powers of the mayoral (citywide) and neighborhood bodies. We look forward to working with the Mayor's Office, the Speaker and the City Council to further develop this proposal.

#### **1.□ Mayoral Office: Providing Citywide Oversight, Data Sharing and Agency Coordination for Rezoned Neighborhoods**

Overseeing the large public investment of subsidies associated with Housing NY and the Neighborhood Development Fund while supporting the ongoing, equitable growth and development in rezoned neighborhoods will require an integrated approach absent from previous rezonings. The proposed tasks below reach beyond the purview of any one agency or existing Mayoral office and will require a high level of interagency coordination.

**Accordingly, we believe that a specific mayoral office is needed to provide overall agency coordination, oversight and accountability for the implementation of commitments made to communities during the rezoning process.** This office could also oversee the spending of zoning-related investments, direct spending to fulfill community priorities, and implement commitments on a clear and measurable timetable. This Mayoral office could also absorb the zoning-related reporting tasks that the City's proposals have assigned to the Mayor's Office of Operations, as well as fill roles envisioned in the City's proposals that do not yet have an office to execute them, such as maintaining the database proposed in Intro 1132. While this Mayoral office could be a new office established via citywide

legislation, it could also be housed within an existing office with the resources, staff and flexibility to take on the following roles.<sup>1</sup>

**We propose that a coordinating Mayoral office do the following:**

- **Coordinate Agencies:** The office should convene regular meetings both on the citywide and neighborhood level and mandate the attendance of relevant city agency representatives including (but not limited to) HPD, SBS, EDC, DOE, DEP, DCP, DOT, SCA and DOB to ensure inter-agency coordination and cooperation in implementing commitments. The Mayoral office should also coordinate communication between agencies and respective neighborhood monitoring committees. For example, if a new school is included in a “commitment plan” this office will coordinate all the agencies that would be involved in making sure the school is built and operationalized.
- **Support Neighborhood Monitoring Committees:** The office should ensure the establishment and operation of local monitoring committees and provide funding to those committees to support operating expenses for areas such as language access, outreach and engagement, materials creation and meeting facilitation. Local monitoring committees will be composed of neighborhood residents as well as agency representatives and other stakeholders (see pg. 5-6 for more information on the proposed committees).
- **Report on Progress:** Building off of Intro 1132, in coordination with the neighborhood monitoring committee, the office should create goals and benchmarks for each rezoned neighborhood, based on the community’s stated priorities and commitments made in the zoning plan. The office should then conduct ongoing assessments for each rezoned neighborhood and compile an annual report to track progress towards goals and benchmarks. The office could also track the funding status for all commitments made during the rezoning process and ensure projects are completed on a clear timeline, and, in consultation with neighborhood monitoring committees, propose solutions and alternatives to problems that may arise. Local neighborhood monitoring committees should be the direct recipients of the assessments and annual progress reports.
- **Manage and Share Data:** In addition to maintaining a publicly accessible online database and producing annual progress reports on commitments per Intro 1132, the office should regularly update key metrics related to the implementation of the rezoning plan. This information should be available on the office’s website and should also be regularly shared with each community.

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<sup>1</sup> This approach builds off of various models for cross-agency coordination and government accountability for major investment, including the Mayor’s Office of Recovery and Resiliency (ORR) as well as the Mayor’s Office of Criminal Justice Public Housing Neighborhoodstat program.

The office should also ensure that community members receive the appropriate training and education so that they can understand and process the data.<sup>2</sup>

Housing these various roles in a single, specialized, mayoral office would ensure that sufficient capacity and focus can be dedicated to overseeing the many moving parts of implementing rezoning commitments, and establish a clear responsible party with the authority to direct agency actions. Coupled with the below local monitoring component, this approach would also enable participation from local residents and stakeholders who are needed to maintain strong communities.

## **2. □ Local Neighborhood Monitoring Committees: Providing Real Participation and Oversight to Local Residents**

Community members work tirelessly to ensure their voices are heard and priorities incorporated into the rezoning processes in each neighborhood. Accordingly, these community members must be able to continue to participate in the monitoring and decision-making related to the changes in their neighborhood. Neighborhood monitoring committees should be established via citywide legislation to ensure that any commitments made during a rezoning process (of a certain size) are implemented, and that implementation decisions are made in a way that supports community priorities. We propose that funding is made available for operating expenses and staffing for the committees.<sup>3</sup>

A. While each neighborhood should decide on their own scope of work and structure, we offer some proposed roles for the committee.

- ✓ **Monitor Neighborhood Commitments** that will be documented in the online public database established via Intro 1132. Neighborhood committees will work with the coordinating mayoral office to identify a timeline and implementation plan for commitments in each neighborhood that are in line with each community's priorities. The committee will then meet regularly with City officials to track progress on these commitments.
- ✓ **Problem-solve and Advocate:** Work with the Mayor's office and various City agencies to ensure that the commitments and communities' priorities are being fulfilled.

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<sup>2</sup> This data sharing and community education can be based on the model of the Office of Criminal Justice Neighborhoodstat program.

<sup>3</sup> A model of a successful local oversight body is the Hunts Point Monitoring Committee, which grew out of the expansion of the Wastewater Treatment Plant. In that case, DEP funded an agency liaison, a Committee coordinator, and a consultant to support the research and writing needs of the Committee.



- ✓ **Inform:** Create opportunities for regular updates to the larger community and for feedback on the implementation of various public and private commitments made during the rezoning.
  - ✓ **Agency Collaboration:** Agencies should be mandated to attend regular meetings of the neighborhood monitoring committees. These agencies should provide information and data to ensure that the committee is informed about the implementation of all zoning-related agreements and projects.
  - ✓ **Evaluate:** Work with the coordinating mayoral office to establish a set of metrics by which to evaluate the impact of rezoning actions – both before and after implementation. Some metrics to consider might be changes in employment rates/fields to assess promised job creation, high-road business development, changes in demographics (including racial demographics, changes in local incomes, share of non-English speakers, share of rent-burdened households, etc), and change in/loss of affordable housing units.<sup>4</sup>
- B. These committees may take different forms depending on the neighborhood. Each will be composed of neighborhood residents and other local stakeholders; will develop their own scope of work; type of committee composition, selection systems for committee members, voting powers, committee leadership, and the role of agency representatives, amongst other things.

### 3.□ Moving Forward

While we are encouraged by the proposals put forth by the City Council and the Mayor’s office to monitor commitments made during the rezoning, we believe a stronger, more coordinated approach is needed to ensure that commitments made during the rezoning process are implemented and operationalized. This approach includes both a centralized mayoral office and local neighborhood monitoring committees working together. We believe this approach will go further in ensuring that our long term residents are protected from displacement and that our communities are able to participate in the changes that are taking place. We look forward to working with you on implementing this critical proposal.

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<sup>4</sup> This is modeled off of the Portland Plan, created by the City of Portland, Oregon, which works to evaluate and better manage potential gentrification impacts of policies and programs in changing neighborhoods. An assessment tool created for the Plan includes three components: 1) a Vulnerability Analysis; 2) Gentrification + Displacement Study, and; 3) Gentrification Risk Assessment Maps. The Portland Plan “sets an expectation that an equitable city should be proactive about the inequitable impacts that neighborhood change and gentrification can have on vulnerable households.”

## BRONX COALITION FOR A COMMUNITY VISION ZONING TEXT ASKS

### DEEP AFFORDABILITY OPTION IN MANDATORY INCLUSIONARY HOUSING

**What It Does:** Creates a new “deep affordability” Option within the proposed Mandatory Inclusionary Housing policy that requires 30% affordable housing at 30% AML. Adopting this Option for the Jerome Avenue rezoning would guarantee that all new residential construction creates a significant share of deeply affordable housing that matches the needs of current residents.

**How It Works:** The City’s current MIH proposal includes only three Options, which would require developers to set aside 25-30% of all construction as housing permanently affordable at an average of 60-120% AML. Although a policy that requires the creation of permanently affordable housing is a big step in the right direction, 60-120% AML is way above what most current residents of the Southwest Bronx can afford to pay. This means that once developers stop taking City subsidies that require greater affordability, *all* of the new housing that’s built in the community will be beyond the reach of current residents.

To address this, the City should add an MIH Deep Affordability option of 30% affordable housing at 30% AML, and implement that Option for this rezoning. MIH must include at least one Option that addresses the needs of the NYC households that make less than 30% AML, or \$25,000 a year – households that represent a quarter of the City and a huge share of the residents of the Southwest Bronx, but are completely left out by the City’s existing housing programs. In order to truly meet the needs of the Southwest Bronx, additional tools will be needed to get even more deeply affordable housing, but a stronger MIH program would provide a significant part of the solution.

Adopting this Deep Affordability option for the Jerome Avenue rezoning would require additional subsidy, but the same is true for the MIH Options already proposed by the City. And additional investment is worth it to ensure that the Southwest Bronx remains a community accessible to low-income and working-class people, long into the future.

### Floor Area Affordability Bonus: AFFORDABLE HOUSING & GOOD, LOCAL JOBS

**What It Does:** Ensures that the community has real affordable housing and high quality local jobs.

**How It Works:** Create a special district and grant developers a floor area bonus only if they commit to building deeply affordable housing (a minimum of 50% of total units) reflective of the neighborhood median income, hiring 30% of the workers from the local community, and utilizing state-certified apprenticeship programs to ensure well trained and safe workers. To make sure that developers would take the deal, the City should limit the amount of new residential construction that’s permitted as-of-right, creating more incentive to take a density bonus option.

**What's the Model?** This floor area bonus system would essentially be a variation of the existing Voluntary Inclusionary Housing (VIH) program, with some new twists. First, instead of giving away significant density and then offering a bonus with strings attached, as the City often did in past neighborhood rezonings where VIH was implemented, the City should limit the amount of density that is granted as-of-right under the Jerome Avenue rezoning. That way, developers will be more likely to take the bonus with the FAAB conditions attached. Second, the FAAB model would not only require mandatory affordability levels – similar to VIH, but with deeper and greater affordability – but would also add the requirement of good, local jobs.

Like VIH, the FAAB model does not pose legal problems because developers don't have to take the deal if they don't want to – they can just stick with their existing building rights. Although the City has never previously inserted hiring-related requirements into the zoning text, we believe that doing so is within the City's broad zoning powers and that the FAAB model would be an important way of ensuring that the rezoning actually benefits the community and that construction creates high-quality jobs for local New York residents.

**Sample Text for Floor Area Affordability Bonus:**

**PURPOSE AND NEED FOR THE PROPOSED ACTION**

The proposed action seeks to facilitate vibrant, inclusive residential neighborhoods with a wide variety of local and regional commercial options, job opportunities for local residents, safe working conditions at construction sites and well-trained construction workers, and attractive streets that are safe and inviting for residents, workers, and visitors.

The Proposed Actions reflect DCP's on-going engagement with Community Boards 5 and 16, local elected officials and community residents and stakeholders to achieve the following land use objectives:

- Create opportunities for new residential development with up to 100% permanently affordable housing
- Create opportunities for local job creation for disadvantaged local residents. Local job creation ensures that people are going to be able to afford to continue to stay in the community even if it changes.
- Create opportunities for safe working conditions for construction workers and the surrounding community through state-certified apprenticeship training programs

**Create opportunities for new residential development with up to 100% permanently affordable housing**

Changing the zoning to allow for up to 100% affordability at the neighborhood median income at higher densities is intended to significantly expand the supply of housing, particularly at a rent level that the majority of the existing residents can afford. The Proposed Actions would promote the development of affordable housing by requiring at least half of new housing units in high-density residential developments to be permanently and deeply affordable at local AMI levels, which is not required by current zoning or the proposed Mandatory Inclusionary Housing (MIH) policy.

***Create opportunities for local job creation for disadvantaged local residents***

Creating an optional density bonus program to allow for local job creation is intended to significantly increase the job opportunities available for disadvantaged local residents and forestall displacement that might otherwise occur as a result of high unemployment rates and rising rent pressures. The Proposed Actions would promote the job opportunities available to local residents by requiring 30% of hours worked on each project to be done by disadvantaged local residents.

***Create opportunities for safe working conditions for construction workers and the surrounding community through state-certified apprenticeship training programs***

Creating an optional density bonus program to allow for apprenticeship utilization for construction workers is intended to significantly increase the level of training and the safety of worksites in the rezoned area. The Proposed Actions would promote the training opportunities for new construction workers by ensuring they are trained through state-certified apprenticeship programs, leading to improved safe working conditions. It will also promote the safety of the surrounding community, which will be subject to significant amounts of redevelopment.

## **COMMUNITY FACILITY ZONING**

**What It Does:** Ensures that the community has the schools, health centers, community centers, parks, and other spaces that it needs to support new and current residents. Ties the development of such facilities to new housing construction to make sure that increases in population are matched by increases in essential services.

**How It Works:** The population in the Southwest Bronx will increase dramatically after the rezoning, placing additional strain on our schools, transportation, roads, parks, community centers, and other community facilities. It's important that there be a plan to create more capacity as the neighborhood's population grows, but since new residents won't flood in all at once, it's difficult to know now exactly how much of each of these things the community will need, and when. But, if the City waits until after the rezoning to acquire the land and buildings that will be needed to create more community spaces, prices may have gone up a lot – making it difficult or impossible to build the facility.

To address this, the City should put a rule in the zoning plan that will make community facility space a required part of new construction. One way to do this would be to link the square footage of a certain use to a requirement for an equal or greater amount of square footage for the desired community facility. This model was used in the Special Harlem Waterfront District to tie the development of commercial space to an equal or greater amount of space for desired uses in the district, including community facilities. Another option would be to include a zoning text provision that requires developments in the area to provide easements for certain public amenities, the way the City's Special Transit Land Use District requires a set-aside for subway-related uses.

A third model the City could put in the zoning text is a requirement that obligates the Department of Buildings to assess whether there are adequate community facilities in

the area before giving building permits to developers who want to add more housing in the community. If the community has enough of what it needs, the developer can get the permit and go ahead with construction. If something is lacking, the developer will need to set aside space in the new development for a community facility. Alternatively, special requirements can be attached to development in an area that has infrastructure needs, as was done through Lower Density Growth Management Areas in Staten Island in the Bronx.

Finally, the zoning text can provide that community facility space will not count against all of the buildable space the developer has – so the developer will be able to build as much as he would have otherwise – but the community facility space will be *added* to help meet the community's needs. The city agency that wants to use the space – for example, the Department of Education, if a school needs to be built – could then pay for the construction costs related to building the community space, and will pay the developer reasonable rent for the space afterward. This was done in the Hudson Square Special District.

**What's the Model?** Special Harlem River Waterfront District, Special Transit Land Use District, Lower Density Growth Management Areas, Hudson Square Special District.

**Sample Text:**

<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art08c07.pdf>

<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art09c05.pdf>

<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art08c08.pdf>

[http://www1.nyc.gov/assets/planning/download/pdf/plans/ldgma-si/ldgma\\_si.pdf](http://www1.nyc.gov/assets/planning/download/pdf/plans/ldgma-si/ldgma_si.pdf)

### **PAYMENT IN LIEU OF TAXES (PILOT) FUND**

**What It Does:** Guarantees that revenues generated by development stay in the community instead of going to the City's general coffers.

**How It Works:** Create a special district and a PILOT fund to keep revenues generated by development in the community.

**What's the Model?** In New York, PILOTs are usually offered as incentives to companies to induce them to locate their business in New York City. But they can also be used to keep the profits from development in a neighborhood that is facing rapid change. Either way, the basic idea is the same: companies enter into agreements to receive exemptions from property taxes and instead make PILOT payments, which are lower than the tax payments would have been.

On Manhattan's Far West Side, the City created a PILOT to harness private funding to finance the extension of the 7 subway line and the construction of new streets and parks, part of an ambitious plan that also included significant new office space and

housing. A new local development corporation, the Hudson Yards Infrastructure Corporation (HYIC), was created to issue bonds for infrastructure construction. The bonds were backed by the revenue the project would create – most significantly, PILOT payments made by private developers building within the area.

The rezoning of the area allowed for significantly more building and offered the prospect of huge profits for developers; the PILOT structure aimed to ensure that some of the revenue generated by these new buildings stayed in the area and supported public services and amenities. Any PILOT funds in excess of what was needed to repay the bonds would flow back to the City. To date, \$3 billion in bonds have been issued to support subway construction and parks in the area, and debt payments now run over \$150 million a year. Until recently, PILOT revenues were not sufficient to cover the bond payments, and since 2006, the City has been forced to spend more than \$350 million of its budget to make payments on the bonds. However, development in the area has increased, and this year, for the first time in a decade, the PILOT funds will be enough to cover the bond payment without any additional funding from the City.

There are two basic ways that PILOTs can be structured to generate revenue for an area. Under the first option, the City takes out bonds and then uses the PILOT funds to pay back those bonds. The advantage of this structure is that it enables the City to plan in advance for the infrastructure or services it wants to fund through the PILOT money, and then secure the project funding before the PILOTs are collected. The other way that cities can structure PILOTs is through a pay-as-you-go set-up. Under this structure, the City will not take out loans to fund infrastructure or services, but it will apply whatever PILOT funds it receives toward the designated uses.

Although it's important to recognize the practical concerns about PILOT funds – for one thing, buildings that receive tax abatements like 421(a) are not subject to taxation for many years, so they will not generate revenue for a PILOT – PILOTs can do what no other financing mechanism can: keep revenues generated from development in the community where that development is taking place. This is critical for all communities facing rezonings, since absent a PILOT, each rezoned neighborhood may wait years for necessary infrastructure to be developed, while developers grow rich off of their new development rights and the City turns its attention elsewhere.

### **CERTIFICATION OF NO HARASSMENT REQUIREMENT**

**What It Does:** Prevents landlords from harassing rent-stabilized tenants by creating serious disincentives for harassment.

**How It Works:** This zoning text provision would create a rule barring landlords from receiving certain building and construction permits on sites where harassment is found to have occurred – *unless* the landlord agrees to set aside part of the building as permanently affordable housing.

**What's the Model?** A requirement that landlords receive a Certification of No Harassment or take the affordable housing "cure" is already in place in Hell's Kitchen in

the Special Clinton District. A similar requirement could be adopted in the text for the Jerome Ave rezoning, or as citywide legislation.

The basic idea is that the Department of Buildings *should not give building or alteration permits* to landlords who have harassed tenants – unless those landlords agree to build new affordable housing. Landlords *should not be able to profit* from pushing tenants out or making their lives so miserable that they leave. If landlords know they cannot make a lot of money by harassing tenants, they won't do it as often. This new rule would help prevent harassment because landlords will not want to have to make parts of their buildings permanently affordable. And if landlords harass tenants *despite* the new rule, they will have to build affordable housing to pay for what they've done. Either way, this rule would help ensure that low-income people can stay in the neighborhood, even as it changes.

These new rules would require the City to keep a list of suspicious landlords who have many maintenance code violations, housing court cases against tenants, reports of bad behavior from community groups, and other factors suggesting that the landlord might be harassing tenants. If a landlord from this list applied for a building permit from the Department of Buildings, the landlord could not get the permit right away – first, there would have to be a *hearing* to figure out whether the landlord had harassed tenants. Building residents and other people in the community would have the chance to testify at this hearing. If the landlord is found to have harassed tenants, the landlord would *not* be able to get the building permit from DOB unless they agreed to set aside part of the building as new, permanently affordable housing.

**Sample Zoning Text:** <http://www.nyc.gov/html/dcp/pdf/zone/art09c06.pdf>

## PROTECT SMALL LOCAL BUSINESSES

### SELECT AN AREA WHERE AUTO BUSINESSES CAN REMAIN & BE PROTECTED

**What It Does:** Manipulates market conditions by maintaining the existing zoning where businesses are located to prevent competition from new competing uses and may further limit existing competing uses in the protected area.

**How It Works:** Specifications for limitations on uses can be written in through a Special Enhanced Zoning District

**What's the Model?** See the section below on prescribing and/or limiting uses.

**Sample Zoning Text – Special Enhanced Commercial District:**  
<http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

## CREATE OPPORTUNITIES FOR SMALL LOCAL BUSINESSES, NOT JUST LARGE CORPORATE CHAINS

Multiple mechanisms are needed to accomplish this. Three methods that operate through zoning include:



### **Size caps**

**What It Does:** Limit the size of new commercial spaces in order to create opportunities for local small businesses and not just large (often corporate chain stores) that can out-compete for rents and drive up prices in the overall area. These limits: a) make the area less attractive to large foot-print chain stores which often operate on a formula for required square footage and also b) can contribute to limiting the escalation of commercial rents that often follows when multiple chain stores site in a neighborhood.

**How It Works:** When the real estate market picks up (often facilitated by a rezoning), small local businesses may be displaced by an influx of larger businesses seeking to capitalize on the new market and newly created spaces in new construction. These businesses can pay higher rents than long-standing businesses and may conflict with the needs or character of the neighborhood. A Special Enhanced Zoning District can shape the nature of a commercial district by limiting the size of new commercial spaces in order to support smaller storefronts.

**What's the Model?** Some cities have adopted size caps to limit big-box stores. One way to do this locally is through "frontage requirements" in zoning. These can require a minimum number of storefronts in an area (effectively reducing the size of the establishments) and can limit the size of the storefront for certain uses, like banks.

#### **Sample Zoning Text – Special Enhanced Commercial District:**

<http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

### **Zoning for Businesses that Serve Local Needs**

**What it does:** Certain designations in the Commercial Zoning Code (C1 and C2) limit the commercial uses to neighborhood serving retail. Within those categories, further restrictions could be applied through a Special Enhanced Commercial District.

**How It Works:** The zoning designation of a commercial overlay defines the allowable uses for ground floor commercial establishments in mixed-use buildings, as well as parking requirements. There are standard categories for neighborhood-serving retail that could be further limited through language in a Special District.

**What's the Model?:** The Special Enhanced Commercial District on Amsterdam and Columbus Avenues in Manhattan sets aside a minimum percentage of ground floor space that *must* be used for the sale of fresh food and ties these to size of the establishment.

**Sample Zoning Text:** <http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

### **Set-Asides for Small Businesses**

**What it does:** Compel developers to devote space to local retail establishments

**How it works:** Creates a preference for locally-owned businesses and attaches a requirement for new construction over a certain size to set aside a portion of its retail space for that retail. In the model described below, “qualified locally-owned” businesses were identified by DSBS and the Community Board, with leasing preferences given to businesses within that Board and secondary preferences to those in surrounding Community Boards.

**What’s the Model?** This idea was proposed by community as part of 125th Street Rezoning. It was not ultimately not adopted through the zoning, but the concept eventually made it into the East 125 Street Development RFP.

**Sample Text:**

<http://www1.nyc.gov/assets/hpd/downloads/pdf/125thRFPFinal.pdf> (page 10)

<https://www.nycedc.com/sites/default/files/files/rfp/qadocuments/A%20West%20RFP%20Info%20Session%201.14.16.pdf>

**ADOPT SPECIAL ENHANCED ZONING DISTRICTS THAT LIMIT COMMERCIAL USES TO THE TYPES COMMONLY USED BY LOCAL RESIDENTS**

This can be accomplished by at least two different approaches to a Special Enhanced Zoning District a) prescribing uses or b) limiting uses.

**Prescribe uses**

**What It Does:** Narrows the allowable uses in a local-serving district by specifically naming the uses that are allowed in the vision for retail in the area.

**How It Works:** As part of a Special Enhanced Zoning District that can accomplish various goals simultaneously, it spells out the specific eligible commercial uses for an area and prohibits uses that are not part of the community vision for retail in the area.

**What’s the Model?** Special Madison Avenue Preservation District protected specialty shops by mandating that the ground floor of buildings on Madison Avenue be occupied by selected uses, such as barber shops, beauty shops, food stores, laundromats, and hardware stores.

**Sample Zoning Text:** <http://www.nyc.gov/html/dcp/pdf/zone/art09c09.pdf>

**Limit uses**

**What It Does:** Narrows the allowable uses in a local-serving district by prohibiting them outright or places restrictions uses that are not desired in the vision for retail in the area.

**How It Works:** As part of a Special Enhanced Zoning District that can accomplish various goals simultaneously, it spells out excluded commercial uses for an area and/or uses that are subject to specific requirements (such as limited size storefronts for banks on the Upper West Side or occupation of second floors).

### **What's the Model?**

The Special Enhanced Commercial District on the Upper West Side (6/28/2012) and the 125<sup>th</sup> Street Corridor (4/30/2008). Branches of major banks were beginning to dominate the commercial space on Amsterdam, Columbus, and Broadway at the expense of retail diversity and accessibility to goods and services. The area's new zoning limits the width of new banks to 25 ft. (less than a third of the width of bank branches opened in recent years), and protects small business by requiring a minimum of two non-residential establishments for every 50 ft. of street frontage. In East Harlem, banks were similarly restricted along with office, hotel, and other "non-active" uses. Arts uses were encouraged by the creation of an arts category and the requirement that developments with more than a certain size of floor area (60,000 sq ft) must include 5% of that floor area for arts uses.

### **Sample Zoning Text:**

*Special Enhanced Commercial District:*

<http://www.nyc.gov/html/dcp/pdf/zone/art13c02.pdf>

*Special 125<sup>th</sup> Street District:*

[http://www.nyc.gov/html/dcp/pdf/125th/125thstreet\\_proposed\\_text\\_amendment\\_sept24.07\\_legal.pdf](http://www.nyc.gov/html/dcp/pdf/125th/125thstreet_proposed_text_amendment_sept24.07_legal.pdf)

April 18, 2016

Carol J. Samol  
Bronx Borough Director  
NYC Department of City Planning  
1 Fordham Plaza, 5<sup>th</sup> Floor, Bronx NY 10458

**RE: Jerome Ave Rezoning**

Dear Carol Samol,

The Bronx Coalition for a Community Vision has been working in the Southwest Bronx for over a year to gather feedback from residents about how the Jerome Avenue rezoning plan can benefit the local community and help our neighborhoods thrive. We have engaged thousands of residents over the course of dozens of meetings and hundreds of surveys, and collectively, the group has identified several key principles that should guide the rezoning:

1. **Anti-displacement strategies for current residential and commercial tenants.** Current tenants and small business owners will not benefit from the rezoning if the rezoning increases rents, speculation, and the forces of displacement. The City should take steps to ensure that the people and businesses that are here now are protected and are able to stay.
2. **Real affordable housing.** All of the new housing built in the community should be at rent levels that reflect the need in the community.
3. **Good jobs & local hire.** New construction and businesses will mean a lot of new jobs in the area and the City should guarantee that those jobs create career opportunities for local residents. Also, developers should not be allowed to build unless they commit to using contractors that are part of State Department of Labor Registered and Approved Apprenticeship programs.
  - a. **Safety and training.** There recently has been an alarming increase in construction worker fatalities and life changing injuries in New York City. 18 construction workers died in the field from the beginning of 2015 to date. The City must mandate provisions for worker safety and training to ensure our most vulnerable workers are protected.
4. **Real community engagement.** Residents need to have a say over what happens in the community, and the City should have long-term tools to ensure accountability for implementing commitments made during rezoning approval process, including a role for community in overseeing progress. The community needs this to ensure that the rezoning is actually part of a community plan that is effective and fully implemented.

On March 9, 2016, we sent you a detailed letter outlining the recommendations from our report that can be incorporated into the zoning text and accompanying neighborhood plan for Jerome Ave. In the attached letter, we describe the analyses we believe the Department of City Planning

(DCP) must perform to adequately assess the neighborhood need, the impacts of the proposed plan, and the feasibility of the coalition's policy proposals.

As the City prepares to release its proposal, we urge the City to perform these analyses to accurately measure impacts in the environmental review, recommend these mitigations as part of the ULURP process, and adopt these recommendations as part of crafting a plan that meaningfully advances the community's goals. Above all, we urge the City to examine not just the extent to which the proposed Jerome Ave rezoning may advance the City's overall policy goals, including the Housing New York plan, but also how much the rezoning advances the local goals community members have identified. The rezoning of Jerome Ave should not just be thought of as a means to the end of advancing the Mayor's affordable housing plan - the stakes for longtime community residents are high and they should not be an afterthought. Instead, the plan should also be crafted and assessed based on the how much the rezoning will benefit current residents.

We are asking that what appears in the draft scope and is proposed to be studied in the EIS include our recommendations for what should be written into the zoning text. This will be a sign that the administration is willing to look at the needs that community residents have identified.

In addition, between the time the draft scope is released and before ULURP starts, we want the following recommendations to be implemented (the policies are explained in more detail in the attached letter):

**Anti-Displacement and Anti-Harassment Policies for Residential Tenants:**

- Pass and Fund Intro 214, providing a right to counsel for all tenants facing the loss of their home in NYC
- Pass legislation enacting a citywide certificate of no harassment that will be in place before the Jerome Ave ULURP applies.

**Anti-Displacement for the Commercial Tenants and Auto Workers on Jerome Ave:**

- The City should ensure that the auto workers do not lose their livelihoods. This can be done by enhancing the retention areas, identifying relocation locations, as well as ensuring that all businesses are in compliance.

**Good Jobs, Local Hire, Safety and Training:**

Public funds come with public responsibility. Tax payer funded subsidies used by developers and contractors to build affordable housing should provide good wages to help the community create more middle class jobs; require utilization of the State Department of Labor Registered and Approved Apprenticeship Program and demand the highest level of safety training available to ensure safe working site and communities.

- The City should provide funding for programs to ensure that local residents are eligible and prepared for the state certified apprenticeship programs, including GED programs, stipends and childcare.
- The City must also adopt local hiring requirements for the rezoned area. This can be done either through the creation of special purpose districts that mandate local hire and/or through an executive action that mandates local hiring for all projects using city subsidies.
- The City must mandate provisions for worker safety and training to ensure our most vulnerable workers are protected. Developers should not be allowed to build unless they commit to using contractors that are part of a NYS approved apprenticeship program.

**Real Affordable Housing:**

- The City should ensure that new housing reflects the needs of current neighborhood residents, including rent levels affordable to the current community. This should be done through the creation of a special purpose district that mandates real affordable housing and local hire, and/or through the creation of a new HPD term sheet that will match the AMI levels prevalent in the community.
- The City should create new requirements for developers seeking public subsidies (see attached for more info).

**Real Community Engagement:**

- Create a formal opportunity for community oversight of the plan's implementation.

We believe that we are at a moment where we face a challenge to do zoning in a different way. We believe that our plan lays out a roadmap to achieve progress and change without exploitation, harassment and displacement.

While we have yet to see the specific plan for Jerome Avenue, the draft framework that DCP has presented foresees a Jerome Ave of increased density and an 83% loss of districts zoned for manufacturing and heavy commercial uses.

If our recommendations are not incorporated into the plan before ULURP starts, we believe that the displacement pressures will be so great that the negative consequences of the rezoning will greatly outweigh any benefits or progress it might bring. We will have no choice but to urge our elected officials to vote no to any plan that doesn't secure housing, jobs and security for those who need it the most. We expect that you will take our recommendations as seriously as we do.

Please feel free to reach out with any questions you may have. You can call Carmen Vega-Rivera at 718-665-5907 or 917-864-2224 or [cvegarivera1@aol.com](mailto:cvegarivera1@aol.com).

Sincerely,

The Bronx Coalition for a Community Vision

*The Bronx Coalition for A Community Vision consists of 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, New York State Iron Workers District Council, Insulators Local Number 12....list in formation.*

*The Coalition is supported by: The Community Development Project at the Urban Justice Center, Pratt Center for Community Development, Hester Street Collaborative, The Association for Neighborhood and Housing Development, The Center for Urban Pedagogy, and the Real Affordability for All Coalition...list in formation.*

cc: Council Member Vanessa Gibson, Council Member Fernando Cabrera, Council Member Donovan Richards, Council Member Jumaane Williams, Council Member David Greenfield, Bronx Borough President Ruben Diaz Jr., NYC Comptroller Scott Stringer, Speaker of NYC City Council Melissa Mark-Viverito, Mayor Bill de Blasio, Deputy Mayor Alicia Glen, Vicki Been, Commissioner of HPD, Carl Weisbrod, Commissioner of DCP, Gregg Bishop, Commissioner of Small Business Services, Maria Torres-Springer, President and CEO of NYCEDC.



## **JEROME AVE ASKS FOR THE REZONING PLAN AND DRAFT SCOPE OF ENVIRONMENTAL REVIEW**

The Bronx Coalition for a Community Vision has been working in the Southwest Bronx for over a year to gather feedback from residents about how the Jerome Avenue rezoning plan can benefit the local community and help our neighborhoods thrive. We have engaged thousands of residents over the course of dozens of meetings and hundreds of surveys, and collectively, we have identified several key principles that should guide the rezoning:

1. **Anti-displacement strategies for current residential and commercial tenants.** Current tenants and small business owners will not benefit from the rezoning if the rezoning increases rents, speculation, and the forces of displacement. The City should take steps to ensure that the people and businesses that are here now are protected and are able to stay.
2. **Real affordable housing.** All of the new housing built in the community should be at rent levels that reflect the need in the community.
3. **Good jobs, local hire & worker safety.**
  - New construction and businesses will mean a lot of new jobs in the area and the City should guarantee that those jobs create career opportunities for local residents. Developers should not be allowed to build unless they commit to using contractors that are part of a NYS certified apprenticeship program.
  - The City should ensure that worker safety is a top priority. There has been an alarming increase in construction worker fatalities and life changing injuries across New York City. 18 construction workers died in the field from the beginning of 2015 to date. The City must mandate provisions for worker safety and training to ensure our most vulnerable workers are protected.
4. **Real community engagement.** Residents need to have a say over what happens in the community, and the City should have long-term tools to ensure accountability for implementing commitments made during rezoning approval process, including a role for community in overseeing progress. The community needs this to ensure that the rezoning is actually part of a community plan that is effective and fully implemented.

As the City prepares to release its proposal for the Jerome Avenue rezoning, we urge the City to craft a plan that meaningfully advances the community's goals. Above all, we urge the City to examine not just the extent to which the proposed Jerome Ave rezoning may advance the City's *overall policy goals*, including the Housing New York plan, but also how much the rezoning advances these *local goals*. The rezoning of Jerome Ave should not just be thought of as a means to the end of advancing the Mayor's

affordable housing plan - the stakes for longtime community residents are high, and they should not be an afterthought. Instead, the plan should also be crafted and assessed based on the how much the rezoning will benefit *current residents*.

The City must also conduct its analysis in a manner that reflects the reality that the proposed rezoning will affect multiple neighborhoods, not just the “rezoning corridor” of Jerome Avenue. In general, to ensure that residents can understand the full impact of the rezoning on their community, the Department of City Planning (DCP) and related agencies should analyze each of the *neighborhoods* that will be affected by the rezoning, and

- Create a profile for each impacted neighborhood that shows the existing needs and capacity for the preservation and development of affordable housing, high-quality jobs, school seats, park space, transportation, sewage infrastructure, and other facilities and services
- Craft a rezoning plan based around meeting these existing needs, and heightened needs that will arise as a result of increased populations following the rezoning
- Include clear proposals, both in the zoning text and as proposed mitigation strategies, explaining how and when each neighborhood’s existing and future needs will be addressed

We believe that it is possible for rezonings to benefit local communities - but only if the City places the needs of current residents front and center at the beginning of the planning process, and long afterward. Below, we provide suggestions for specific analyses the City must conduct to assess the true impact of the rezoning, mitigation strategies we would like the City to disclose, analyze, and adopt to ensure that local residents are protected from potential residential displacement pressures, business displacement pressures, and overburdening of community facilities, and provisions we believe must be included in the zoning plan for the Jerome Avenue area.

In addition to creating a zoning plan that addresses the needs of the community and supports long-term development in line with those needs, the City should adopt a broad range of mitigation strategies to combat residential displacement and business displacement and mitigate the impact on local community facilities. These tactics are described more fully in the sections below.

We understand that different parts of the environmental review process and the land-use review process contribute in specific ways to the development of a neighborhood plan. From the community perspective, however, we understand that what happens to our neighborhood in the future is shaped by a Mayor and City Council that have multiple tools at their disposal to work in concert with land-use planning. Our recommendations call on the Mayor and the City Council not to advance land-use actions in isolation, and to only advance land-use actions that are accompanied by all the tools necessary to advance community goals.

Where possible we have done our best to try to sequence and highlight which actions can be specifically addressed through the Scoping process of the EIS and the drafting of the EIS, and which actions should be in the eventual zoning text. There are other recommendations that speak to the broader set of tools that the City can employ, such as citywide policy and legislation. We are calling for these tools to be recommended as strategies to mitigate impacts, where appropriate, and otherwise incorporated into the final plans and associated actions that will impact the area.

## **I. ☐ RESIDENTIAL DISPLACEMENT**

### **A. ☐ ANALYZE**

- **DCP should separately analyze *preservation and creation of affordable housing*.** Creation of new affordable housing does not protect existing residents of the community, many of whom will be displaced by the time the new housing is created.
- **In its analysis of potential displacement, the City should present both best- and worst-case scenarios for the direct displacement** that may be caused by the actions of private landowners who may seek to redevelop their sites after the rezoning. Although CEQR [City Environmental Quality Review] typically requires an analysis that illustrates a “conservative assessment of the potential effects of the proposed project on sites likely to be redeveloped,” we are concerned that for an area-wide rezoning of this magnitude, a “conservative assessment” will paint an inaccurately mild picture of potential displacement. Therefore, the City should present both best- and worst-case scenarios so the community can have a better understanding of the full range of possible outcomes in terms of direct displacement.
- **DCP should conduct a detailed analysis of direct residential displacement, even if DCP’s initial assessment suggests that the amount of direct displacement falls below the threshold that *requires a detailed analysis*.** This detailed analysis would require DCP to examine prevailing trends in vacancies and rental and sale prices in the area... DCP should also conduct a detailed analysis of indirect residential displacement.
- **The City must analyze both the extent to which the rezoning may *cause* indirect residential displacement, and the degree to which it may *accelerate* displacement** that is already occurring.
- **The City’s analysis should expressly address the potential displacement risk of vulnerable populations in the area,** including:

- Tenants in unregulated apartments
  - Tenants in rent stabilized apartments
  - Tenants who are rent burdened
  - Tenants in apartments where regulatory agreements for affordability are expiring
  - Shelter, halfway house, and three quarter house residents
  - Residents of cluster site housing
  - Section 8 voucher holders
  - People of color
- **The City should analyze and disclose the impacts of past rezonings of similar magnitude as the proposed Jerome Ave rezoning.** As part of this, the City should disclose and analyze demographic information suggestive of displacement, including changes (pre and post rezoning) in:
    - Racial demographics
    - Local area median income
    - Educational attainment level of residents
    - Average rent levels in market-rate units
    - Number of rent-stabilized units
    - Percentage of non-English speaking populations
- **The City should *not* assume that developers will continue to accept HPD subsidies throughout the 15-year period following a rezoning.** Instead, the City should analyze and disclose the impacts of the rezoning based on
    - A scenario in which developers accept HPD subsidies for the entire period
    - A scenario in which developers accept HPD subsidies for only 5 years
    - A scenario in which developers accept HPD subsidies for only 10 years
    - The zoning text alone
- **The City should also look into past rezonings and examine housing market shifts after these rezonings,** for the purpose of determining the length of time during which developers are likely to seek HPD subsidies and the point at which interest in such subsidies will cease due to improved market conditions
- **The City should analyze and disclose the income levels of the households that stand to be displaced, then compare those figures to the amount of affordable housing expected to be made available at those income levels under the rezoning,** in order to net loss or gain of affordable housing for current residents. The City should consider scenarios both with and without the 50% community preference. If the City's analysis demonstrates that new construction will be inadequate to address the needs of current residents, the City should alter its plans.

- **The City should disclose the amount of affordable housing that could be created on public sites and through the zoning text alone**, since HPD subsidies may not always be available and developers may not always take them.

## **B. □ MITIGATE**

The City should analyze, disclose, and adopt a broad range of mitigation strategies for residential anti-displacement, including:

- **Ensure that 100% of new housing reflects the needs of current neighborhood residents**. This includes:
  - *Subsidies and a programmatic commitment to build housing at affordability levels and apartment sizes that reflect the need of the existing residents of the neighborhood.* As part of this, HPD should create a new term sheet to ensure that HPD-subsidized projects are affordable at levels reflective of the current community. The more closely new housing matches the current income and rent levels, the less likely it is that new development will trigger gentrification and displacement.
  - *Requirements that new housing prioritize people with disabilities, single parents, veterans, youth, and people who are currently homeless.*
  - *Conversion of “cluster-site” shelter units back to permanent housing to help significantly reduce the number of homeless families*
  - *Adjust City and State rent subsidies to allow families in “cluster-site” units that meet Section 8 quality standards to secure leases for the same apartments in which they already live.*
- **Create new requirements for developers seeking public subsidies**. Public funds come with public responsibility. Tax payer funded subsidies used by developers and contractors to build affordable housing should provide good wages to help the community create more middle class jobs; require utilization of the State Department of Labor Registered and Approved Apprenticeship Program and demand the highest level of safety training available to ensure safe working site and communities. The City should establish criteria for which landlords/developers are allowed to use public subsidies (HPD-administered subsidies), based on their:
  - Track record of maintaining buildings;
  - Track record of building affordable housing;
  - Track record of local community engagement;
  - Track record of working with contractors with a proven record of safety for 5 years, who don’t have a record of wage theft, job misclassification or any other labor law violations, including all subcontractors, going back 5 years;

- Track record of working with contractors who don't have a record of construction quality complaints or determinations, including all subcontractors, going back 5 years.
- **Reduce barriers to tenant eligibility for affordable units.** The City should pass legislation limiting the requirements that HPD uses to determine which tenants qualify to be able to move into affordable housing. For example, people should not be turned away from affordable housing because of credit checks.
- **Enact policies that create incentives that prevent speculation and displacement and promote affordable housing development.**
  - *Pass and fund Intro 214*, providing a right to a lawyer for tenants facing the loss of their homes.
  - *Pass and fund Intro 152-A*, which would create citywide "Certificate of No Harassment" requirements, preventing landlords who have harassed tenants from getting certain permits from the Department of Buildings unless they agree to set aside part of the building as permanently affordable housing. Landlords often do renovations on apartments and buildings in order to raise rents for new tenants. This law would prevent landlords who have a history of harassment from getting the permits they need to do those renovations unless they agree to set aside a certain share of the floor space in the building as permanently affordable housing (above what might be required by Mandatory Inclusionary Housing or as a condition of receipt of any tax abatement). This model has been locally effective in the Special Clinton District, and should be expanded by requiring that DOB and HPD put a similar policy in place across the city. In addition, the policy should apply to a larger set of DOB permits.
  - *Require "landlord licenses,"* creating strict rules for which landlords or developers are allowed to operate in NYC. HPD or another city agency would determine whether a landlord can get a license based on a set of qualifications (e.g.: number of violations in other buildings they own, unpaid taxes and fees owed to the city, other buildings in foreclosure). The license would enable landlords to acquire property. If a landlord is not in compliance, the landlord would not be eligible to receive another permit and therefore unable to purchase more buildings.
  - *Publicly grade landlords and publicly display that grade in their building lobby.*
  - *Amend the Alternative Enforcement Program (AEP) to allow tenants to get a rent reduction and use a City-run escrow account when their building is in bad repair.* This is modeled on a program in LA, called the Rent Escrow Account Program. When there are violations that haven't been fixed, the city would be able to reduce tenants' rent and allow them to pay their rent into an escrow account, monitored by the city. The Landlord would not get the money until the City verifies that repairs have been done.
  - *Create a disincentive for landlords to buy buildings with the intent of selling them quickly (speculative flipping) by applying a graduated flip fee, structured like the mortgage recording fee.* The City should also help facilitate stable long-term New York City homeownership by

increasing the New York City Real Estate Transfer Taxes on all transfers to non-owner occupied (investor purchased) 1-4 family homes.

- *Fully assess a development or redevelopment project's potential displacement impact and require associated mitigation plans and fees.* The City can model this off of the California Environmental Quality Act, which currently requires an assessment of displacement related impacts for development projects above a certain threshold.
- *Track public investment at the neighborhood level and use this information to improve equity in budgeting decisions.* This can be modeled off of Portland's budget mapping initiative.
- *Strengthen the obligations of marshals in avoiding eviction of "at-risk tenants."* Right now there are provisions for elderly, sick, and disabled tenants. These provisions should be extended to include families with children under 3 and families with 2 or more children.
- *Pass Intro 3-2014, which allows the City to sue landlords for relocation expenses.* If a building is vacated by DOB, the landlord should be required to pay relocation costs.
- *Implement a "No Net Loss" policy at the City level.*
  - 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. A moratorium on demolition, conversion, etc. should be in place until this assessment is complete and a plan to address the city's need is in place.
  - Based on the inventory, neighborhoods should set goals for preservation within each bracket by neighborhood and for the city as a whole.
- *Advocate at the state level for the creation of a good neighbor tax credit* to stabilize the hidden supply of affordable housing in our small-homes neighborhoods by offering a real estate tax abatement to owners of owner-occupied small homes who rent an apartment at below-market rates because of longstanding community ties.
- **Increase oversight of landlords and be more proactive in identifying and targeting bad acting landlords.**
  - *Monitor housing court cases, particularly in high risk displacement areas* and refer to community organizations and/or legal aid/legal services who will do additional outreach to help determine if the case is part of a larger harassment pattern.
  - *HPD should notify all owners of "zero tolerance" for harassment and poor building conditions* (meaning that the City will take legal action against the owner for either). This includes, but is not limited to:
    - HPD should send a letter to all landlords informing them of the zero tolerance policy.
    - HPD should ensure that oversight is in place so that owners of rent stabilized apartments properly register the rent, do not charge more than the legal amount, do not harass tenants

or encourage tenant turnover as a way to increase rents, and properly maintain the building.

- HPD should aggressively follow up once a determination is made that a building is physically distressed and/or tenants are being harassed – this includes aggressive and effectively targeted litigation against bad owners as well as effective use of the emergency repair program. (agency rules and regulations)
- HPD should not negotiate with landlords to reduce fines in HP or 7A cases, unless there is an equivalent monetary benefit to tenants. (agency rules and regulations)
- **Support outreach and ‘know your rights’ education by community groups to local residents.**
  - *Fund community groups to develop and carry out an outreach and information campaign to all neighborhoods, teaching tenants how to organize and form tenants associations. The funds should focus on neighborhoods currently at highest risk of harassment and displacement.*
  - *Develop materials so tenants know their rights and understand what is available to them in terms of assistance and recourse.* These materials include but are not limited to:
    - Information about 311 and the process to call regarding harassment and building conditions
    - A “what is harassment” fact sheet
    - Explanation of what rent histories are and how tenants can get them
    - Information on rent regulation and tenant’s rights
    - Information on “right to counsel”
- **Improve communication with tenants about their rights.**
  - HPD and DOB should notify residents when inspectors will be out to inspect their buildings.
  - These agencies should notify residents when HPD is taking legal action against a landlord.
- **Improve the various building inspection systems.**
  - Require building inspectors to respond to calls within 24 hours.
  - Ensure that 311 calls, particularly if multiple calls are documented, lead to a comprehensive inspection of the property by an inspector (not just isolated visit regarding the individual complaint).
  - The City should create protocol and systems for tenants to evaluate individual inspectors.
  - Implement stronger emergency repair protocol to prevent serious violations from lingering. For instance, if an inspector finds that a “C” violation still exists when they return to re-inspect, HPD should automatically send a repair team to fix the condition and should bill the repairs to the building owner.



- **Make key neighborhood data publicly available and easily accessible.**
  - Create a comprehensive list of evictions. Eviction rates should be tracked by building and by owner.
  - Track housing-related 311 calls and identify patterns by building, neighborhood, and owner;
  - Develop a referral process from 311 calls, similar to the Legal Aid/Legal Services hotline, where tenants reporting concerns are referred to community organizations in their neighborhood for follow up service.
  - Create a comprehensive list of distressed buildings by neighborhood, with all public information such as building ownership, management, and most recent sale date.
  
- **Ensure local hiring, because no apartment is affordable without a job.**
  - *The City should adopt the Floor Area Affordability Bonus* described in the last section of this document.
  - *City agencies (such as HPD) and the Economic Development Corporation (EDC) should make local hiring a requirement of projects they fund.* The City should pass legislation to require this citywide, or at minimum adopt it as a policy in the rezoning communities, where the City is investing a lot of money, where the risk of displacement is high because of increased development interest, and where the existing need for jobs is great. The City currently has local hiring requirements for projects backed by the City in Sandy-impacted neighborhoods; they should do the same for the neighborhoods they are rezoning.
    - When City agencies or the EDC start projects, they put out Requests for Proposal (RFPs) for developers who want to build the projects. These RFPs must include specific local hiring standards and state that developers who are prepared to meet those requirements will be given preference in the selection process.
    - These standards should build on the standards and requirements set in the Build It Back Sandy recovery RFP:
      - *Targeted hire standards:*
        - 30% of work hours conducted by local residents
        - 15% of work hours conducted by disadvantaged local residents
        - 10% of work hours conducted by women
      - *Local Hiring Plan.* Requirement that the Contractor develop a plan that
        - Clearly demonstrates the proposer's plan and capacity for ensuring compliance with the hiring requirements, and
        - Identifies local organizations that the Contractor will work with to establish job pipelines and career opportunities on each project.

- *Dedicated Staff.* The Contractor must provide at least one full-time staff member dedicated to tracking daily hiring at the job sites and ensuring implementation of the requirements of the Plan.
  - *Reporting Requirements.* The Contractor must comply with, in the least, monthly reporting requirements in line with Local Law 140 of 2013, known as the Sandy Tracker Bill.
- **Guarantee good wages for jobs created by the rezoning.**
  - *Pass a Community Benefits Ordinance requiring developers who receive a certain amount of subsidy or public land to negotiate a Community Benefits Agreements (CBA) with local community groups,* and condition receipt of the subsidy or land on successful negotiation of a CBA. These CBAs could be used to secure a range of community benefits, including local prevailing wage jobs.
  - *Provide real transparency on prevailing rate jobs.* When prevailing wage jobs are available, signs should be posted throughout the neighborhood, and especially in front of the job site. The notices should explain what prevailing wage is, and should be in the top 6 languages spoken in the community.
- **Provide Job Training & Education to local residents.**
  - Fund GED programs in rezoned neighborhoods to ensure local residents are eligible for NYS certified apprenticeship programs. The city must also conduct outreach so people know about training programs.
  - Provide stipends, childcare and other support to residents so they can access NYS certified apprenticeship programs.
  - Allocate funding to enable community-based organizations to provide sector-specific workforce training. The city should fund local Bronx organizations to provide training for industries with a strong presence in the Bronx. Focus trainings on fields that offer high-quality, highly skilled jobs.
  - HRA and SBS should also have job training programs and transitional job programs that train residents for jobs in the sectors where new jobs are being created.
- **Assist with job placement for local residents in need of employment by creating and funding a Local Employment Network.**
  - The City should provide funding to local community-based organizations to develop a network and hire a local coordinator to engage with developers in the neighborhood, provide trainings for local residents, screen candidates for positions in upcoming projects,

and make referrals. This would be similar to the Lower East Side Employment Network, which emerged as a result of a development boom on the LES.

- The City should list Jerome Ave Local Employment Network as the preferred hiring source for its projects.

## II. □ BUSINESS DISPLACEMENT

The proposed rezoning corridor is a complex economic ecosystem that includes tenant businesses, subtenant businesses, and a large workforce with high percentages of immigrants who derive their livelihoods in a variety of arrangements, including full time, part time, and “per job” commissions. These conditions are poorly captured by traditional data sets. When considering the analysis of business and worker displacement, it will be essential for the scope of the DEIS and the DEIS not to rely on standard methods of “behind the desk” data sets and to instead incorporate field data that is reflective of the reality of businesses and workers in the rezoning corridor.

### A. □ ANALYZE

- **The City should work with the Bronx Coalition for a Community Vision to identify the appropriate data methods to use** when assessing the number of businesses and associated jobs within the Jerome Avenue corridor and how to measure impacts on them.
- **The Scope of the DEIS should explicitly include that its commercial analysis will incorporate the data, findings and key takeaways from the currently underway Commercial District Needs Assessment** (funded by Department of Small Business Services).
- **The Scope and DEIS should reference surveys conducted of actual businesses when conducting analysis on numbers of firms and jobs within rezoning area.** Surveys conducted by organizations such as CASA, UAMA, WHEDco, and Davidson that have been conducted as part of the Commercial District Needs Assessment should be utilized by DCP.
- **The Scope and the DEIS should include an explicit quantitative analysis of the number of auto-related businesses and jobs that are currently located in the “retention areas” and the number and of auto-related businesses and jobs that are currently located in the corridor outside of those retention areas.**
- **The DEIS should analyze the *change* in the number of auto-related businesses and workers in the corridor since DCP’s initial field study** and incorporate those trends into its displacement analysis.

- **To the extent that the City references datasets, the City cannot rely solely on QCEW data to base its analysis regarding numbers of firms and numbers of jobs.** Due to large amounts of data suppression at small geographies, the City's use of QCEW data at such a small geography may present a large margin of error and is likely to undercount both jobs and businesses in the area to be rezoned.
- When assessing displacement:
  - *The City should conduct a business displacement analysis for each of the sub areas identified by DCP.* These sub areas should include a buffer zone that is reviewed and accepted by the community as an accurate representation of breaks in commercial catchment zones.
  - *The City should conduct a soft site analysis that would show current land value in existing building conditions versus anticipated land value under fully built out conditions as determined by area rezoning.* This analysis should also provide an estimated price per square foot for renters under existing and future conditions since the cost of space is likely to determine what kind of business can exist in the new development.
  - *The City should take into account a full range of variables when assessing which businesses could be indirectly displaced by rezoning.* These variables should include business tenure and whether the business owns or rents.
  - *The EIS should evaluate the impacts of displacement of auto workers in the context of citywide trends and the shrinking availability of, and increased competition in, land that is zoned appropriately for auto uses.* It should evaluate prospects for relocation by considering actual vacancy rates and the competitive disadvantages that auto related businesses face against other uses that are allowed in C8, M1, M2, or M3 zones that can pay much higher rents.
  - *The City should disclose real job numbers for any businesses identified as being likely to be directly displaced by rezoning.*
    - *The City should explicitly disclose which businesses would be directly or indirectly displaced from rezoning are family-owned and operated versus which are chain store businesses.*

## **B. □ MITIGATE**

Given the strong presence of factors that could lead to indirect business displacement, the City should analyze, disclose, and adopt additional strategies to mitigate the business displacement that the rezoning will induce, including:

- **The City should consider changes to its zoning plan to minimize the amount of displacement that businesses and workers experience.**
  - The DEIS should include a detailed description of the specific, quantitative goals of the "retention areas" in the plan and a breakdown by sector of number and types of businesses

- that are located there now, number of workers, as well as a description of the range of uses that will be allowed to locate there as-of-right under the existing zoning
- The DEIS should include a detailed description of the as-of-right uses allowed in the designated retention areas, the typical rent levels that those uses can generate, and recommendations to how retention area zoning could be strengthened to achieve stated goals of retention areas.
- **The City should provide relocation support for those businesses that are displaced through the rezoning.** To do this the City should:
    - Include in the Scope of the EIS and the DEIS an analysis of City-owned, vacant, appropriately zoned, and otherwise suitable potentially viable sites for potential relocation, at various sizes, ranging from individual business level to sites that could accommodate a cluster of businesses and/or a vertical arrangement. These should be actual sites in the Bronx and/or Upper Manhattan and the analysis should include an evaluation of factors that rank the locations' viability.
      - Input from auto merchants in the area should be incorporated to identify criteria for collective relocation (such as size, distance from original location, building type, distance from transit).
    - Identify a suitable location based on mutually agreed upon criteria and sufficiently fund investments in the site and costs of business relocation.
    - Relocate businesses to nearby areas where housing is not being considered and manufacturing businesses have more protections, such as Industrial Business Zones in the Bronx (for example, Bathgate, Zerega, and Hunts Point).
    - Provide financial and technical assistance, including up front business loans, 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.
    - Communicate with businesses in collective forums and groupings, recognizing cooperative structures.
  - **The City should ensure that local, small businesses can be physically located in and thrive in the new, rezoned area.** To do this, the City should adopt the zoning text provisions described at the end of this document, and:
    - Limit increases in rents to no more than 5% in the rezoning area through all legal mechanisms, including requirements on developments that receive public subsidy, and throughout the City through citywide legislation.
    - Advocate with NYS to pass legislation that requires all property owners to give mandatory lease renewals for expiring leases.

- **The City should give preference for return to local businesses.** To do this, the City should create a system to offer existing, interested businesses in the proposed rezoning area a “right of first return” or preference in occupying new space(s) created by development. To support this policy, the City must consult with existing small local businesses and craft its zoning plan accordingly, as described at the beginning of this document.
- **The City should provide training for workers and owners of local businesses.** To do this, the City should:
  - Increase funding for outreach and training programs that help auto businesses in the area obtain the necessary licenses and meet environmental standards. The City should partner with NYS Department of Environmental Conservation and build on existing pilots programs to accomplish the goal of environmental compliance and improved environmental performance.
  - Offer trainings in the dominant language of the workers and support the development English language skills.
  - Provide training in business planning and development, as well as trainings that will equip workers to adjust to changes in auto repair technology.
  - Provide training in the development of worker cooperatives, which are a legal way for undocumented immigrants to earn a living.
- **The City should develop a citywide policy approach that adopts best practices to support the auto sector as a whole.**
  - 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. The study should be advised by a Steering Committee that includes auto business owners and workers, and conducted by an entity that can fairly value the contributions of the sector to the city as a whole, including the necessary service it provides to consumers and as part of the city’s infrastructure system, the entrepreneurship and employment pathways it creates, and economic contribution.
  - 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.
  - This study should take into account citywide trends and the shrinking availability of, and increased competition in, land that is zoned appropriately for auto uses.
- **The City should pass legislation making it illegal to harass small businesses and other non-residential tenants.**

### III. □ COMMUNITY FACILITIES

#### A. □ ANALYZE

- **The City should evaluate future impact of proposed changes on each *neighborhood*.** For each neighborhood that will be affected by the rezoning, DCP and related agencies should create a profile that analyzes and addresses increased demand for community facilities and services that the rezoning will create. Each neighborhood profile should:
  - Explain the impact of a proposed zoning change on housing, schools, parks, transportation, and other facilities and services in the area.
  - Include clear proposals of how and when the future needs will be addressed, with details specific to each neighborhood.
- **Schools: the City should carefully analyze the impact of the rezoning on schools.**
  - *The City should not take into account school seat capacity within the DEIS for projects under the DOE five year capital plan unless site preparation or construction has commenced for those projects.*
  - *The City should account for the space being consumed by charter schools within public school buildings and increased need for charter school space due to proposed rezoning project and should adjust estimates.*
  - *The City should take into account input from the CSD Superintendent, local Community Education Council, community education activists and socials service and health providers operating in school buildings on the growth patterns in the impacted schools in the study area.*
- **General Facilities:**
  - *The City should take into account space needs of neighborhood anchors that operate within schools in addition to the school seats themselves (i.e., Beacon, school based health clinics, etc.).*
- **Libraries:**
  - *The City should expand its library analysis beyond the current holdings-to-population ratio as the only measure of analysis to be used in determining a library's utility.*
  - *The City should incorporate metrics into its analysis that display the services libraries provide in terms of community space and educational access.*
- **Child Care:**

- *In assessing significant impact on childcare facilities, the City should review waitlist information to better understand to what degree which childcare facilities are already seeing more demand than they can accommodate.*

#### **B. ☐ MITIGATE**

The City should analyze, disclose, and adopt mitigation strategies to ensure that community facilities are properly developed and funded, including:

- **Community facility zoning**, as described more fully in the next section of this document.
- **Subsidies and programmatic commitment** to support the development of new community facilities and neighborhood amenities.
- **PILOT fund**, as described more fully in the next section of this document.
- **A Community Benefits Ordinance** that would require developers who receive a certain amount of subsidy or public land to negotiate a Community Benefits Agreements (CBA) with local community groups, and condition receipt of the subsidy or land on successful negotiation of a CBA. These CBAs could be used to secure a range of community benefits, including additional amenities, open spaces, schools, and local jobs.

#### **IV. ☐ PROVISIONS TO BE INCLUDED IN THE ZONING TEXT**

The Scope of the EIS and the EIS itself are a part of the land use review process that contributes to developing the ultimate plan and zoning text for the neighborhoods that will be affected by City action. To the greatest extent possible, the City should include provisions to advance community interests within the zoning text, to ensure that the needs of current residents, low-income tenants, and small local businesses are protected long into the future. The Bronx Coalition has already submitted its Zoning Text Asks to the Department of City Planning, and we ask that the City's plan for this area include the following critical provisions:

- **Choose the MIH Option that best meets the need of the current community.** The City should choose the MIH Option that provides for 25% of new construction units at 60% AMI, as this is the only Option that mandates a deeper affordability band (10% of units at 40% AMI). The City should also make available the 20% of units at 40% AMI alternate, and require that the developers of any sites subsidized by HPD elect this MIH option.
- **Create a special purpose district that:**
  - Offers developers a Floor Area Affordability Bonus in exchange for building deeply affordable housing - a minimum of 50% of total units - that reflects the specific rent needs of our



communities and requires developers to hire 30% of workers from the local community, utilizing state-certified apprenticeship programs to ensure well-trained and safe workers. To make sure that developers will take the deal, the City should limit the amount of additional residential density permitted as-of-right, which will leave developers with a greater incentive to take a density bonus option. Implementing the FAAB bonus for the Jerome Avenue rezoning is especially important given the fact that MIH will not reach income levels reflective of the current community needs - even 40% AMI is above our neighborhood median income - and HPD subsidies, though a critical way of reaching deeper affordability in the years immediately after a rezoning, are voluntary, and developers are unlikely to take them as the local housing market shifts.

- Creates a Certificate of No Harassment requirement to curb harassment of rent-stabilized tenants. This should be incorporated into the zoning text, as it is in the Special Clinton District in Hell's Kitchen, if a strong citywide anti-harassment policy has not been passed by the time the Jerome Avenue zoning text is finalized. To effectively counter the profit motive behind harassment, this CONH requirement must include an affordable housing "cure" that requires developers who are found to have harassed tenants to build deeply (below 30% AMI) and permanently affordable housing, above what they are required to build by MIH or as a condition of receipt of tax abatements or City subsidies. If a future citywide policy does not include a "cure" provision, such a provision must be included in the Jerome Avenue zoning text.
- Ties the creation of necessary community facilities to increases in residential density. The City should require developers who want to build additional housing to set aside space for schools, community space, senior centers, open space, and other necessary community facilities to ensure that the neighborhood has enough of what it needs when new residents come in. This type of zoning has been adopted in other communities before, and it would help ensure that the City's funds for community facilities go further by eliminating the City's costs to purchase new sites for necessary facilities (see attachment).
- Establishes a Payment in Lieu of Taxes (PILOT) fund to ensure that the economic benefits of development stay within the rezoning area, rather than going to the City's general coffers. This fund will help address local needs, including the need for anti-displacement initiatives, deeply affordable housing, and community facilities (see attachment).
- **Ensure that local, small businesses can be physically located in and thrive in the new, rezoned area.** To do this, the City should consider a variety of zoning tools, including:

- Identify existing interested business tenants and document their needs to shape the design and implementation of a small business “right of return” system. Having a strong understanding of the space needs of current local businesses will help the City craft zoning text provisions that ensure that appropriate spaces are incorporated as part of the new zoning text.
- Adopt Special Enhanced Zoning Districts that limit commercial uses to the types commonly used by local residents, such as grocery stores.
- Limit the size of new commercial spaces in order to create opportunities for local small businesses and not just large, corporate chain stores. This can be achieved through frontage requirements, which can require a minimum number of storefronts in an area (effectively reducing the size of the establishments) and can limit the size of the storefront for certain uses, like banks.
- Create a preference for locally-owned businesses and attach a requirement for new construction over a certain size to set aside a portion of its retail space for that retail.
- **Select an area in the proposed rezoning area where auto-related businesses—including auto parts, security and audio stores—can remain and be protected.** To do this the City should, in consultation with the community:
  - Develop the reasoning and criteria for selecting the size and location for this protected area.
  - Identify the best mechanism for protecting and strengthening this area, considering a Special District designation, and taller heights for commercial buildings.
  - Clearly define the total amount of commercial space that should take place in this area.
  - 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).

Thank you for your consideration of our suggestions, which we feel are vital to adequately assess the full impact of the proposed rezoning and ensure that the current community benefits from the changes to come. If you have any questions about our suggestions, we are happy to provide additional information upon request.

**DOCUMENTS ATTACHED TO THIS LETTER:**

- **Zoning Text Asks document (previously sent to DCP)**
- **Document Describing Community Facility Zoning**
- **Document Describing Proposed Community Benefits Ordinance**
- **Document Describing Use of PILOT Fund**

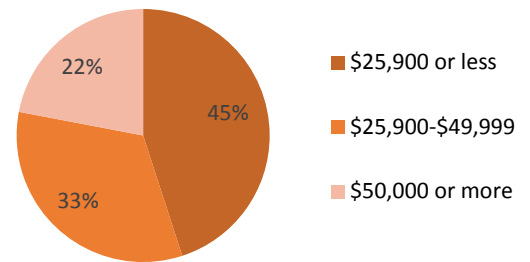
## WHAT SHOULD REAL AFFORDABLE HOUSING LOOK LIKE?

### How does the government define affordable housing?

The government says housing is affordable if tenants pay no more than **30% of their income towards rent**. *But 30% of \$30,000 is very different than 30% of \$250,000!* So when the government talks about creating affordable housing, we have to ask, **affordable for who?**

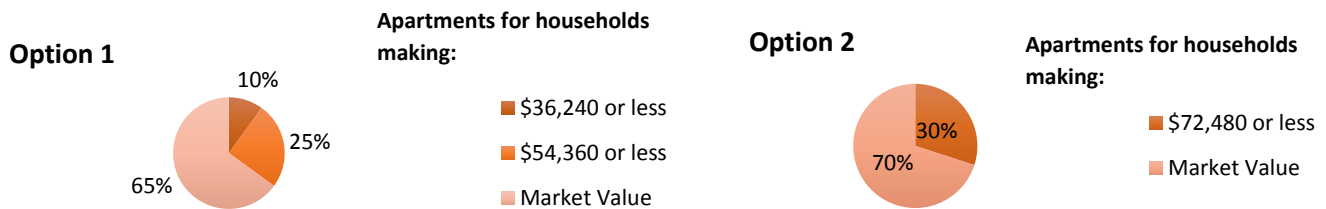
The government uses “area median income” (AMI), to create affordable housing programs. The AMI for the New York City area is \$90,600 for a family of four. The average income for a family of 4 in the neighborhoods around Jerome Ave is about \$25,000 – about 30% AMI. So when the government talks about subsidizing affordable housing—we should ask, will it be affordable to Bronx residents?

Income of Residents in CB 4 & 5



### So how will the government create this “affordable housing”?

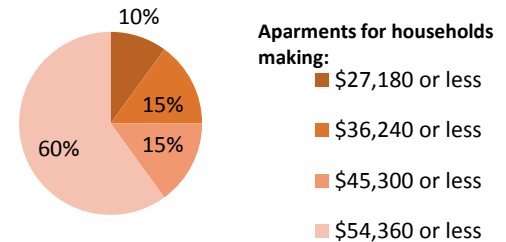
The City’s newest policy is called Mandatory Inclusionary Housing (MIH). MIH requires developers to set aside 25-30% of units in a new development as “affordable housing”. MIH sets the levels of affordability. There are two main options that Bronx developers will use:



### MIH won’t be affordable to most Bronx tenants! What else can the government do?

The government can offer more subsidies to developers and require them to build housing that is affordable to people with lower incomes. These requirements are set in a document called a “term sheet.” Right now, the term sheet that creates the most affordable housing for low income people is called ELLA (Extremely Low and Low-Income Affordability). It breaks down like this:

Distribution Of Apartments



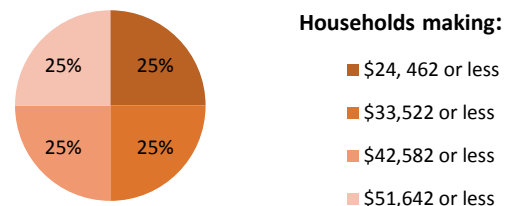
### **BUT ELLA IS STILL NOT ENOUGH!!!**

78% of local residents don’t make enough to apply for the affordable housing. Plus local hire and worker safety aren’t guaranteed.

### What SHOULD affordable housing look like?

ELLA and MIH won’t create affordable housing for Bronx residents affected by the Jerome Ave Rezoning. Unless we create something new, there is currently no mechanism to create affordable housing that reflects the needs local residents! We have been working with non-profit developers to create a better term sheet, one that will achieve **REAL AFFORDABLE HOUSING!!** Our new term sheet will make housing affordable for local residents!

Distribution of Apartments



## WE NEED TO ORGANIZE TO GET WHAT WE DESERVE!

For more information, call: **Susanna at 718-716-8000 x125; s.blankley@newsettlement.org**  
[www.bronxcommunityvision.org](http://www.bronxcommunityvision.org)

# **NOTHING ABOUT US, WITHOUT US, IS FOR US!**

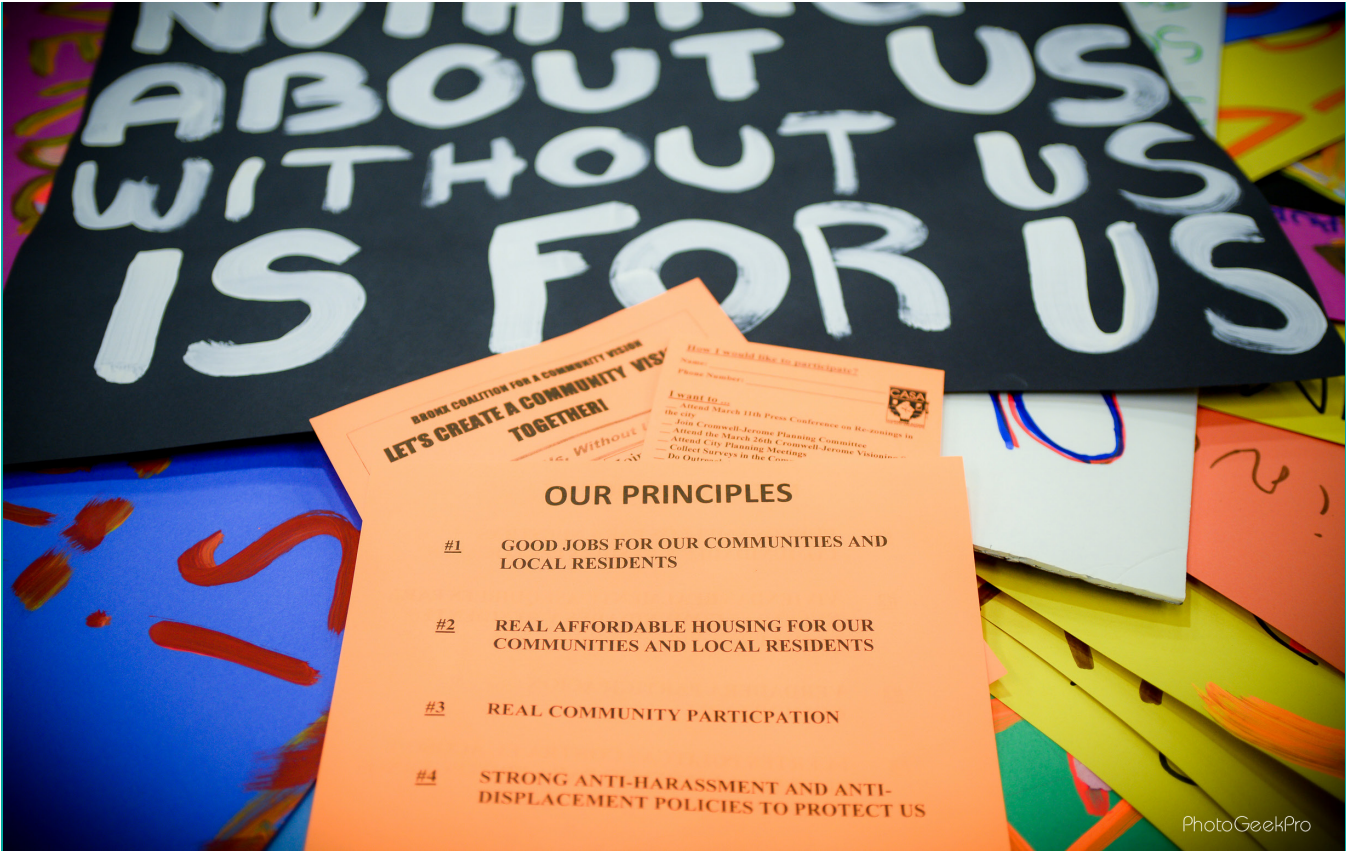
# **BRONX COALITION FOR A COMMUNITY VISION**



## **POLICY PLATFORM**

**OCTOBER 2015**





# TABLE OF CONTENTS

**1. INTRODUCTION ..... 1**

    Background ..... 1

    Our Community Engagement Process..... 2

    How Our Community Developed This Platform..... 3

**2. POLICY PLATFORM ..... 5**

    Real Affordable Housing For All ..... 6

    Anti-Displacement and Anti-Harassment Policies for *Residential Tenants* ..... 9

    Anti-Displacement and Anti-Harassment Policies for *Commercial Tenants* ..... 13

    Good Jobs and Local Hire ..... 16

    Real Community Participation ..... 18

**3. CALL TO ACTION ..... 21**

# INTRODUCTION

## BACKGROUND

In May of 2014, the Mayor's Housing Plan was released, laying out the goal to build and preserve 200,000 units of affordable housing over 10 years. Central to the success of the plan is the rezoning of 15 neighborhoods in order to facilitate the construction of new residential housing. In September of 2014, we learned that 73 blocks along Jerome Avenue in the Bronx, from 167th to 183rd streets, were being studied by the City to see how the current regulations of the mostly industrial and commercially zoned land could be changed to allow for the building of residential housing.

Most of the land in the Jerome Avenue study lies in the poorest urban congressional district in the country, where the average income for a family of four is \$25,000<sup>1</sup>, almost 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.<sup>2</sup> A substantial portion of the more than 3,000 workers that run the businesses along Jerome Avenue are immigrants, many are not officially counted.<sup>3</sup>

Over the last few decades, the history of the neighborhood for many South Bronx residents is one of disinvestment and displacement. Many have lived through years of fire, where the South Bronx lost 80% of its housing stock, entire neighborhoods were redlined and fire departments were defunded and closed. Many others have moved to the Bronx in the last few years because they could no longer afford the neighborhoods where they grew up, like the Lower East Side and East Harlem.

These South Bronx residents are informed by history and determined to ensure that the rezoning of Jerome Avenue does not repeat the mistakes of the past. The Mayoral administration has promised a new way forward, where development will be led by community needs instead of developers' profits.<sup>4</sup> Community groups and residents from across the South Bronx have come together to make that promise a reality.



<sup>1</sup>"State of the City's Housing and Neighborhoods," NYU Furman Center, 2013

<sup>2</sup>"State of the City's Housing and Neighborhoods," NYU Furman Center, 2013

<sup>3</sup>Jerome Avenue Study Neighborhood Profile – Employment Profile," Department of City Planning

<sup>4</sup> "Text of Mayor de Blasio's State of the City Address," The New York Times, February 3, 2015.

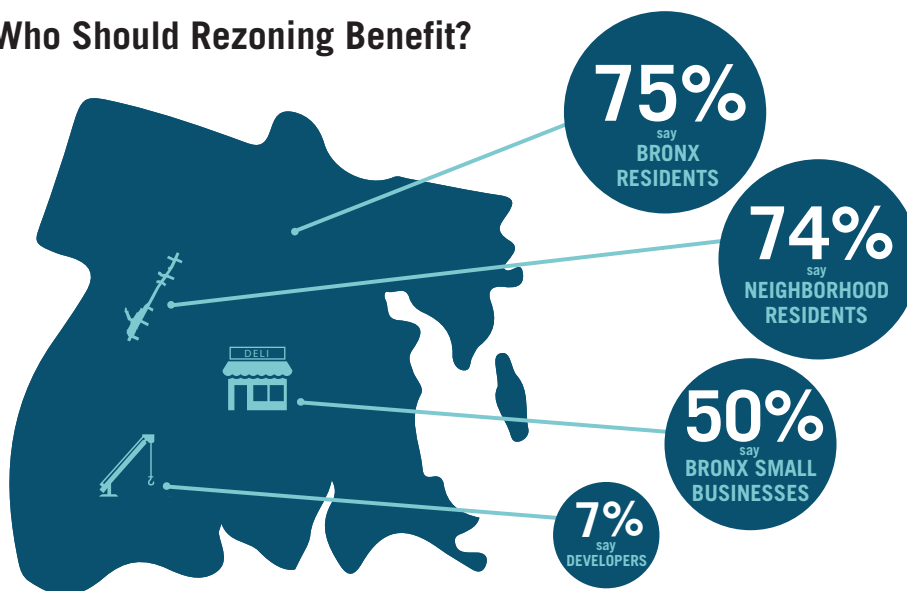
## OUR COMMUNITY ENGAGEMENT PROCESS

From October 2014 to February 2015, the Department of City Planning convened a series of invite-only stakeholder meetings to discuss plans for the rezoning. Concerned about the lack of community involvement in the planning process, a group of community members began to meet and lay plans for genuine community engagement. Grounded in the belief that community members are the experts, we decided that our first act must be to hold a forum educating community members about the City's plans, about the study area and about the need to get involved. On March 5th, in the middle of a snow storm, more than 450 community residents came to learn about the Jerome Avenue study area, the process of rezoning and how they could get involved. At the forum, we asked community members to sign up to take leadership roles and to help plan and facilitate a series of visioning sessions that would lead to the creation of a policy platform. The steering committee, made up of faith leaders, tenants, neighborhood union members, auto workers and members of tenant organizing groups adopted a series of principles to guide the visioning process.

### PRINCIPLES GUIDING THE REZONING PROCESS

1. **STRONG ANTI-HARASSMENT & ANTI-DISPLACEMENT POLICIES FOR RESIDENTIAL AND COMMERCIAL TENANTS**
2. **REAL AFFORDABLE HOUSING**
3. **GOOD JOBS & LOCAL HIRE**
4. **REAL COMMUNITY PARTICIPATION**

### Who Should Rezoning Benefit?



*From community survey*

We have not set out to develop a proposal for how the 73 blocks along Jerome Ave should best be used. Rather, our task was to develop a set of policy recommendations that would translate these principles into action.

If we cannot solve the dilemma of how to achieve change and progress without displacement, exploitation and harassment in the South Bronx, we risk losing one of the last neighborhoods where poor new Yorkers can afford to live. We risk losing the diversity and vibrancy of our City.

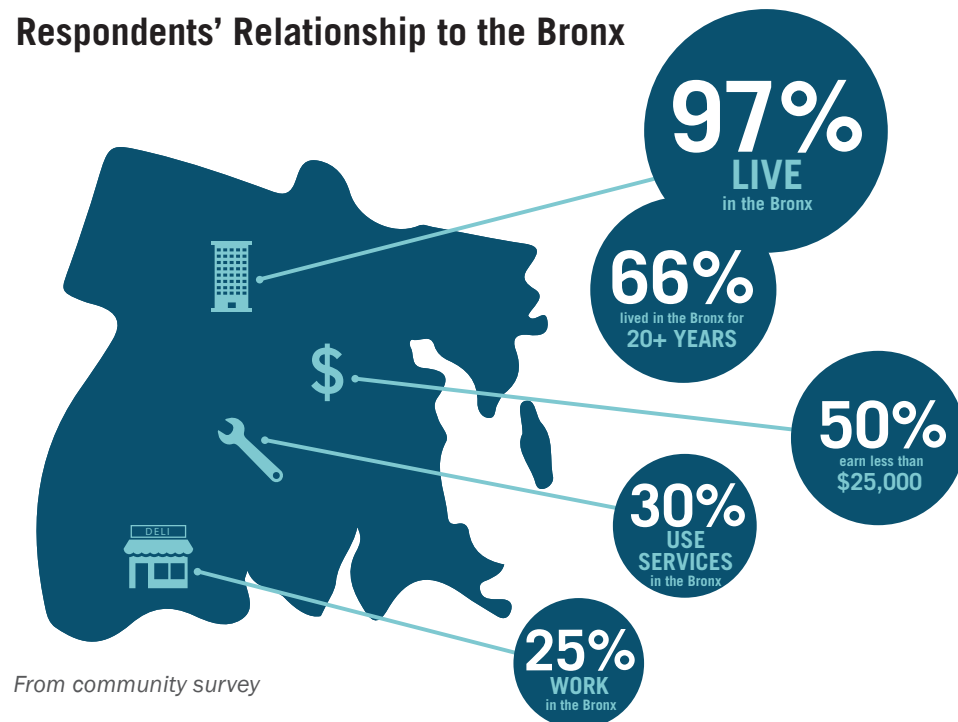
This report outlines a series of recommendations, ranging from administrative, to budgetary and legislative changes that we believe will turn our four principles into action and facilitate a process for change that will truly benefit the Bronx and all of New York City.

## HOW OUR COMMUNITY DEVELOPED THIS PLATFORM

After the community forum convened on March 5th, the steering committee met and created a structure for community engagement. From March to June, we held four visioning sessions. At each session, we gave an overview of the community engagement process, of our coalition, and presented and shared data and information on the current status of jobs and employment, affordable housing, community involvement, commercial industries and tenant harassment. Grounded in this data and in our shared experiences, we worked in groups at each visioning session to brainstorm a list of solutions. Each session was attended by **100-150** community residents.

We also collected over **500** surveys about people's concerns and hopes for the rezoning. This data is used throughout the platform to document the needs identified by community members. And we conducted extensive community outreach to ensure as many residents and workers as possible knew about this process.

### Respondents' Relationship to the Bronx



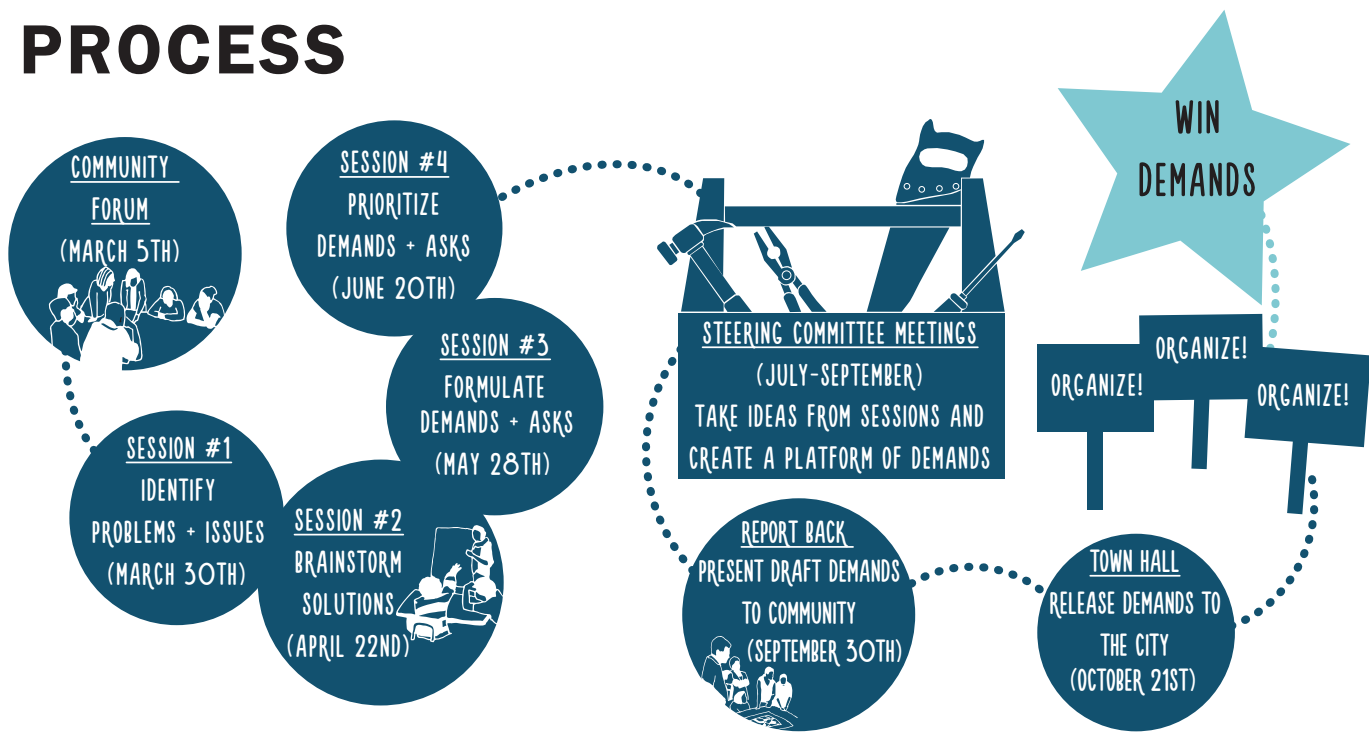


On September 30th, we held a forum where we presented a draft of these policy recommendations to over **150** community residents to gain their insight, feedback and priorities.

**In total, more than 1,500 community members attended the forums and visioning sessions.**

More than **6,500** doors were knocked to tell tenants about the rezoning process and to let them know about the visioning session. More than **322** business owners had conversations with members of the coalition about the rezoning, while all businesses got information and flyers and more than **2,000** community residents were called.

## PROCESS



# POLICY PLATFORM

Through the visioning and community engagement process, community residents identified problems and issues, brainstormed the possible solutions and created the following series of recommendations for each of the 4 principles: Strong anti-harassment and anti-displacement policies for residential and commercial tenants; real affordable housing; good jobs and local hire and real community participation.

## POLICY MECHANISMS

There are different policy mechanisms that the City could use to implement our recommendations. In the following platform, each recommendation will have an icon to indicate the specific mechanism that the City could use to achieve that recommendation. The legend explains the mechanisms that will be referred to as icons throughout the platform.



**Citywide Legislation** refers to laws passed in New York City. Any NYC Council member can introduce a bill, which proposes a new law or a change to an existing one. A bill is then brought to a vote and will become a local law if a majority of Council members support it and the Mayor signs off.



**Zoning Text** sets requirements for every piece of land in the city. Land is divided into different types, or “zones.” Each type of area (each “zone”) has a specific set of rules that say how the land can be used – for example, for commercial, manufacturing, or residential building – and how much can be built.



**City Budget:** The budget guides how the City spends money on many kinds of services, programs, operations, activities, and physical infrastructure, ranging from education to policing to the building of parks or bridges. Putting a “line item” in the City budget means that the City agrees to set aside money for that expense.



**Requirements in Requests for Proposal (RFPs) for City-Funded Projects:** RFPs are the public invitations City agencies put out when they are selling or leasing City controlled land to a developer. An RFP can include specific requirements developers should meet. The City selects a winning proposal and the requirements that were in the RFP become part of the contract between the City and the winning bidder.



**Requirements Attached to City Funding:** When a City agency provides funding for a project, the agency can require the recipients of the funds to follow certain rules, or conditions. For example, certain City-funded development projects have to hire locally or pay a living wage.



**Community Benefits Agreements (CBA):** CBAs are legally enforceable private contracts between a developer and local community organizations. In exchange for community support of the project, the developer agrees to provide certain benefits such as local hiring, dedicated community space in a new facility, or anything else the community wants and is able to negotiate for.



**PILOT (‘Payment in Lieu of Taxes’) Fund:** Within a certain area, the City can give developers exemptions from property taxes if the developer agrees to make PILOT payments instead (which are lower than taxes). PILOT payments can be put into a specific fund so that the money generated by development within a neighborhood is set aside for local use, rather than having tax dollars go to the City’s general fund.



**Changes to the Rules and Regulations of City Agencies:** The City has many administrative agencies that are responsible for providing services and carrying out specific responsibilities. An “administrative” or “regulatory” change is where a City agency changes its own rules (or “regulations”) in some way, which impacts the practices of the agency and the population that it serves.



## REAL AFFORDABLE HOUSING FOR ALL

### WHY IS THIS IMPORTANT TO THE COMMUNITY?

While the City plans to build more affordable housing in our neighborhood through the rezoning process, we need to be sure that this new housing will actually meet the needs of current residents. Because of soaring rent increases across the City and lack of protection against these rising costs, many people who live and work in our neighborhood can no longer afford to live here. Community members fear that this will be an even bigger problem because of the rezoning.

49% also cite homelessness as a pressing neighborhood issue and 50% report that limited housing for seniors is a major issue. In addition, many community members are unable to access permanently affordable housing due to barriers such as credit history and criminal background checks. To address this, the city should adopt the following policy proposals to ensure that new affordable housing is truly affordable and meets the needs of the existing community.

**87% of survey respondents said that at least 50% of new housing built should be set aside for families earning under \$27,000/year.**

#### Housing Affordability

**86%**

say **HIGH RENT** is one of the most important issues in the Bronx



**88%**

had a **RENT INCREASE** in the past 3 years



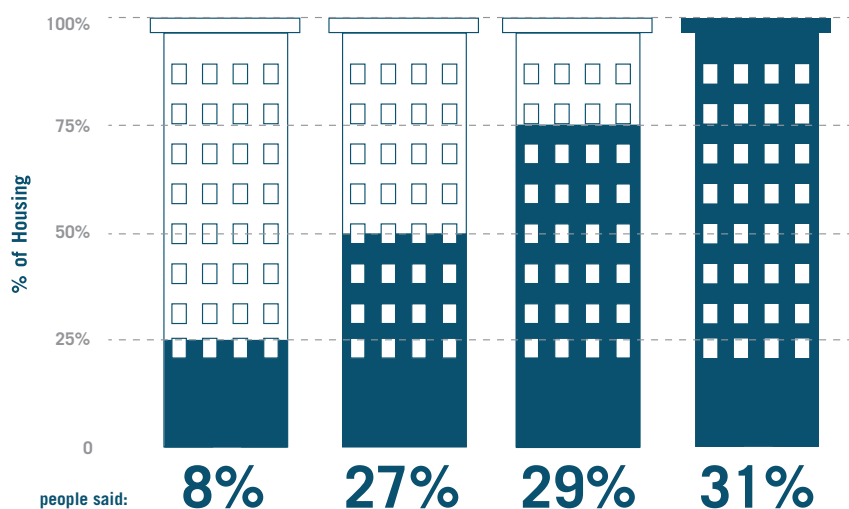
**90%**

worry rezoning will **INCREASE RENT** even more



From community survey

#### How Much Housing Should Be Set Aside for Households Earning Under \$27,000/Year?



From community survey

**94% of survey respondents said that at least 50% of all new housing should be set aside for local residents.**



### How Much Housing Should Be Set Aside for Local Residents?



*From community survey*

## POLICY PLATFORM

**The City should ensure that new housing reflects the needs of current neighborhood residents.**



*To do this the City should:*

- Ensure that 100% of new construction reflects the needs of current neighborhood residents.
- Create a special purpose district so that the zoning is tailored to the specific needs of our communities and require any developer who wants to add residential buildings on Jerome Avenue to build apartments that meet the needs of current residents.
- Provide subsidies and a programmatic commitment to build housing at affordability levels and apartment sizes that reflect the need of the existing residents of the neighborhood. New housing should also prioritize people with disabilities, single parents, veterans, youth, and people who are currently homeless.
- Convert “cluster-site” shelter units back to permanent housing to help significantly reduce the number of homeless families and provide City and State rent subsidies to allow families in “cluster-site” units that meet Section 8 quality standards to secure leases for the same apartments in which they already live.

**The City should reduce barriers to tenant eligibility for affordable housing.**



*To do this the City should:*

- Pass legislation limiting the criteria that HPD uses to determine which tenants qualify to be able to move into affordable housing. For example, people should not be turned away from affordable housing because of credit checks.

**The City should create new requirements for developers seeking public subsidies.**



*To do this the City should:*

- Establish criteria for which landlords/developers are allowed to use public subsidies (HPD-administered subsidies), based on their:
  - Track record of maintaining buildings;
  - Track record of building affordable housing;
  - Track record of local community engagement;
  - Track record of working with contractors with a proven record of safety for 5 years, who don't have a record of wage theft or job misclassification, including all subcontractors, going back 5 years.



**The City should ensure that community benefits are linked to new construction.**



*To do this the City should:*

- Require developers to provide community benefits, like green roofs and beautifying the community.
- Require developers who want to build additional housing to set aside space for schools, community space, senior centers, open space, and other necessary community facilities to ensure that the neighborhood has enough of what it needs when new residents come in.
- Provide subsidies and programmatic commitment to support the development of new community facilities and neighborhood amenities and have developers sign enforceable agreements to provide additional amenities such as open spaces and schools.



*Community visioning session*



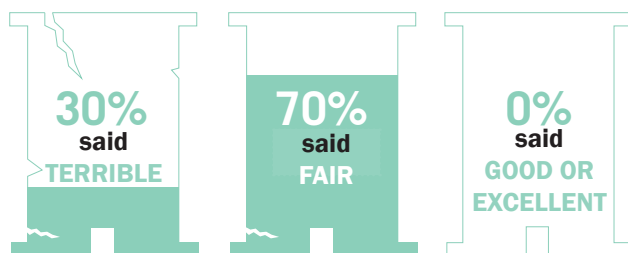
# ANTI-DISPLACEMENT & ANTI-HARASSMENT POLICIES FOR RESIDENTIAL TENANTS

## WHY IS THIS IMPORTANT TO THE COMMUNITY?

As the City plans to create new affordable housing through the rezoning of Jerome Avenue, they must ensure that current residents are not being harassed by their landlords or displaced from their homes. This is particularly important because our community has one of the highest rates of rent stabilized apartments in the city, and displacement leads to increased rents and loss of affordable housing.

In addition, tenant harassment is directly related to the availability of affordable housing. For rent stabilized tenants, every time they move out of their apartment, landlords are legally allowed to increase rents by at least 20%. This means not only do tenants lose a rent stabilized apartment but that over time the apartment itself is made less affordable and eventually deregulated.

### How People Rated Their Housing Conditions

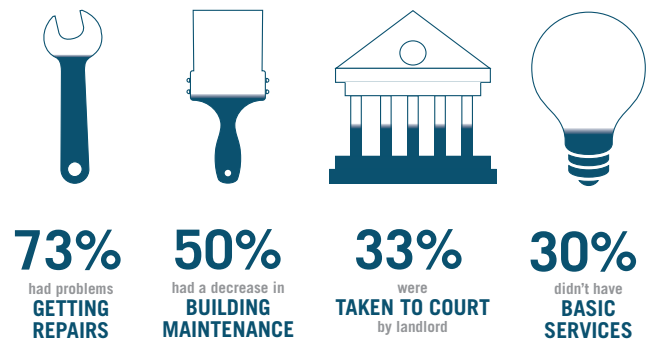


From community survey

Harassment can take many forms: lack of services (heat, hot water, etc.); threats from landlords, frivolous legal action, non-rent fees, pressuring tenants to take buyouts, taking advantage of loopholes in the rent stabilization laws, and pitting tenants against one another. Even before the rezoning, Bronx tenants are already experiencing many of these conditions. 68% of tenants surveyed reported that their current housing conditions are terrible or fair; 57% report that they have problems getting repairs done, 27% have

been taken to court by their landlord; 27% have lived without basic services and 33% have seen a decrease in maintenance services in their building. People surveyed fear that this harassment will become worse with the rezoning: 80% report being concerned that rent will no longer be affordable after the rezoning and 59% report concerns about being displaced from the neighborhood. Because tenants often are not aware of their rights, they are particularly vulnerable to harassment.

### Housing Problems in Past 3 Years



From community survey

While we are encouraged by the City's recent funding for eviction prevention services, we know that most of the work to keep tenants in their homes comes before court papers are served.

Accordingly, the City and State must adopt the following policy proposals to create a comprehensive, neighborhood-specific approach to prevent harassment and displacement of current residents.



## POLICY PLATFORM

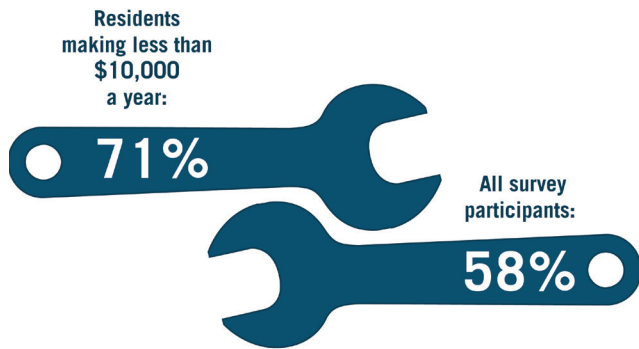
**The City should enact a set of policies that create incentives that prevent speculation and displacement and promote affordable housing development.**



*To do this the City should:*

- Require “landlord licenses,” creating strict rules for which landlords or developers are allowed to operate in NYC.
  - HPD or another city agency would determine whether a landlord can get a license based on a set of qualifications (e.g.: number of violations in other buildings they own, unpaid taxes and fees owed to the city, other buildings in foreclosure). The license would enable landlords to acquire property. If a landlord is not in compliance, the landlord would not be eligible to receive another license and therefore unable to purchase more buildings.
- Publicly grade landlords and publicly display that grade in their building lobby.
- Pass and fund Intro 214, providing a right to a lawyer for tenants facing the loss of their homes.
- Amend the Alternative Enforcement Program (AEP) to allow tenants to get a rent reduction and use a City-run escrow account when their building is in bad repair.
  - This is modeled on a program in LA, called the Rent Escrow Account Program. When there are violations that haven’t been fixed, the city would be able to reduce tenants’ rent and allow them to pay their rent into an escrow account, monitored by the city. The Landlord would not get the money until the City verifies that repairs have been done.
- Create citywide “Certificate of No Harassment” requirements, preventing landlords who have harassed tenants from getting certain permits from the Department of Buildings
  - In order to raise rents for new tenants, landlords often do renovations on apartments and buildings. This law would prevent landlords who have a history of harassment from getting the permits they need to do those renovations. This model has been locally effective in the Clinton special district, and should be expanded by requiring that DOB and HPD put a similar policy in place across the city. In addition, the policy should apply to a larger set of DOB permits.
- Pass legislation to allow for the City to take ownership of buildings as a result of landlord harassment, failure to pay code violations and the criminal use of property. The City should also use its authority to take ownership of individual abandoned buildings, even where there are no tax arrears.
- Create a disincentive for landlords to buy buildings with the intent of selling them quickly (speculative flipping) by applying a graduated flip fee, structured like the mortgage recording fee. The City should also help facilitate stable long-term New York City homeownership by increasing the New York City Real Estate Transfer Taxes on all transfers to non-owner occupied (investor purchased) 1-4 family homes.
- Fully assess a development or redevelopment project’s potential displacement impact and require associated mitigation plans and fees. The City can model this off of the California Environmental Quality Act, which currently requires an assessment of displacement related impacts for development projects above a certain threshold.
- Track public investment at the neighborhood level and use this information to improve equity in budgeting decisions. This can be modeled off of Portland’s budget mapping initiative.
- Strengthen the obligations of marshals in avoiding eviction of “at-risk tenants.” Right now there are provisions for elderly, sick, and disabled tenants. These provisions should be extended to include families with children under 3 and families with 2 or more children.
- Pass Intro 3-2014, which allows the City to sue landlords for relocation expenses. If a building is vacated by DOB, the landlord should be required to pay relocation costs.
- Implement a “No Net Loss” policy at the City level.
  - 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. A moratorium on demolition, conversion, etc. should be in place until this assessment is complete and a plan to address the city’s need is in place.
  - Based on the inventory, neighborhoods should set goals for preservation within each bracket by neighborhood and for the city as a whole.
- Create a good neighbor tax credit to stabilize the hidden supply of affordable housing in our small homes neighborhoods. Offer a real estate tax abatement to owners of owner-occupied small homes who rent an apartment at below-market rates because of longstanding community ties.

### Extremely low income residents had MORE DIFFICULTY GETTING REPAIRS DONE.



From community survey

### The City should increase oversight of landlords and be more proactive in identifying and targeting bad acting landlords.



To do this the City should:

- Monitor housing court cases, particularly in high risk displacement areas and refer to community organizations and/or legal aid/legal services who will do additional outreach to help determine if the case is part of a larger harassment pattern.
- HPD should create a “zero tolerance” policy for harassment and poor building conditions (meaning the city will take legal action against the owner). This includes but is not limited to :
  - HPD should send a letter to all landlords informing them of the zero tolerance policy.
  - HPD should ensure that oversight is in place so that owners of rent stabilized apartments properly register the rent, do not charge more than the legal amount, do not harass tenants or encourage tenant turnover as a way to increase rents, and properly maintain the building.
  - HPD should aggressively follow up once a determination is made that a building is physically distressed and/or tenants are being harassed – this includes aggressive and effectively targeted litigation against bad owners as well as effective use of the emergency repair program.
  - HPD should not negotiate with landlords to reduce fines in HP or 7A cases, unless there is an equivalent monetary benefit to tenants.

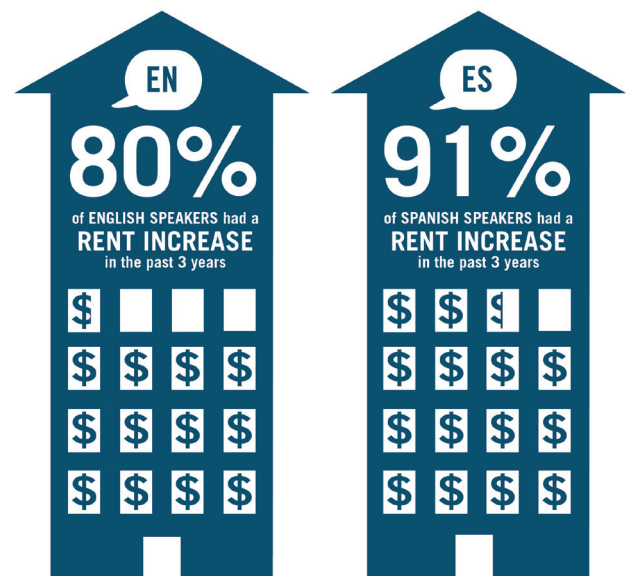
### The City should support outreach and ‘know your rights’ education by community groups to local residents.



To do this the City should:

- Fund community groups to develop and carry out an outreach and information campaign, teaching tenants how to organize and form tenants associations. The funds should focus on neighborhoods currently at highest risk of harassment and displacement.
- Develop materials so tenants know their rights and understand what is available to them in terms of assistance and recourse. These materials include but are not limited to:
  - Information about 311 and the process to call regarding harassment and building conditions;
  - A “what is harassment” fact sheet ;
  - Explanation of what rent histories are and how tenants can get them;
  - Information on rent regulation and tenant rights;

### Housing Affordability and Language



From community survey





**The City should improve communication with tenants about their rights.**



*To do this the City (HPD and DOB) should:*

- Notify residents when inspectors will be out to inspect their buildings.
- Notify residents when HPD or DOB is taking legal action against a landlord.

**The City should improve the various building inspection systems.**



*To do this the City should:*

- Require building inspectors to respond to calls within 24 hours.
- Ensure that 311 calls, particularly if multiple calls are documented, lead to a comprehensive inspection of the property by an inspector (not just isolated visit regarding the individual complaint).
- The City should create protocol and systems for tenants to evaluate individual inspectors.
- Implement stronger emergency repair protocol to prevent serious violations from lingering. For instance, if an inspector finds that a “C” violation still exists when they return to reinspect, HPD should automatically send a repair team to fix the condition and should bill the repairs to the building owner.

\*Note: State level demands for this section are not included in this document but are available.



**The City should make key neighborhood data easily available for public review.**



*To do this the City should:*

- Make the following data publicly available and easily accessible:
  - Create a comprehensive list of evictions. Eviction rates should be tracked by building and by owner.
  - Track housing related 311 calls and identify patterns by building, neighborhood, and owner;
  - Develop a referral process from 311 calls, similar to the Legal Aid/Legal Services hotline, where tenants reporting concerns are referred to community organizations in their neighborhood for follow up service.
  - Create a comprehensive list of distressed buildings by neighborhood, with all public information such as building ownership, management, and most recent sale date.

**Developers should contribute resources to prevent displacement of current residents.**



*To do this the City should:*

- Require developers to pay into an anti-displacement fund. This fund should fund community organizing initiatives in neighborhoods where the developers are building. The City could do this through the rezoning process by establishing a PILOT fund in the zoning text. The money collected should fund community organizing initiatives in neighborhoods where developers are building. The funding would be dedicated to anti-displacement initiatives, and could also be used for affordable housing construction and other community needs.



## ANTI-DISPLACEMENT & ANTI-HARASSMENT POLICIES FOR COMMERCIAL TENANTS

### WHY IS THIS IMPORTANT TO THE COMMUNITY?

As the City changes the rules about how land in the Jerome Corridor can be used, community members want to ensure that current businesses and workers in the neighborhood are protected and strengthened, with the opportunity to continue to serve the area in the future. Community members want to ensure that new business activity will serve the needs of current residents, and provide pathways for quality jobs for workers who face barriers to employment.

The neighborhood is home to a vibrant auto repair industry as well as other small businesses, especially local groceries and restaurants. Residents and business owners fear that the zoning changes will lead to displacement of these existing businesses and subsequently to a lack of affordable goods and services: 45% of survey respondents fear they will no longer be able to shop in the neighborhood after the rezoning. These fears are well founded: nearly all the auto repair shops in the corridor lease their locations and are dependent on their co-location alongside other auto businesses in the corridor for their success. More than 90% of merchants interviewed indicated that they purchase essential equipment, materials and other products nearby. Survey respondents also issued a strong call for local ownership, with 87% wanting local Bronx residents to own the businesses in the neighborhood. The following policy proposals will allow the City to create a comprehensive, neighborhood-specific commercial anti-displacement strategy for Jerome Avenue.

### POLICY PLATFORM

**The City should provide relocation support for those businesses that are displaced through the rezoning.**



*To do this the City should:*

- Provide financial and technical assistance, including business loans, 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
- Collaboratively with the auto merchants in the area, identify criteria for collective relocation (such as size, distance from original location, building type, and distance from transit).
- Identify a suitable location based on mutually agreed upon criteria and sufficiently fund investments in the site and costs of business relocation.
- Relocate businesses to nearby areas where housing is not being considered and manufacturing businesses have more protections, such as Industrial Business Zones in the Bronx (for example, Bathgate, Zerega, and Hunts Point).
- Communicate with businesses in collective forums and groupings, recognizing cooperative structures.



**The City should select an area in the proposed rezoning area where auto-related businesses—including auto parts, security and audio stores—can remain and be protected.**



*To do this the City should:*

- In consultation with the community, develop the reasoning and criteria for selecting the size and location for this protected area.
- In consultation with the community, identify the best mechanism for protecting and strengthening this area, considering a Special District designation, and taller heights for commercial buildings.
- Clearly define the total amount of commercial space that should take place in this area.
- 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).

**The City should give preference for return to local businesses.**



*To do this the City should:*

- Create a system to offer existing, interested businesses in the proposed rezoning area a “right of first return” or preference in occupying new space(s) created by development.
  - Identify existing interested business tenants and document their needs to shape the design and implementation of that system as part of any zoning action.
  - Returning businesses should be guaranteed rents comparable to what they previously paid.

**The City should pass legislation making it illegal to harass small businesses and other non-residential tenants**



**The City should provide training for workers and owners of local businesses.**



*To do this the City should:*

- Increase funding for outreach and training programs that help auto businesses in the area obtain the necessary licenses and meet environmental standards.
- Offer trainings in the dominant language of the workers and/or support the development English language skills.
- Provide training in the development of worker cooperatives, which are a legal way for undocumented immigrants to earn a living.
- Partner with NYS Department of Environmental Conservation to do a project similar to the one in Hunts Point to accomplish the goal of environmental compliance and improved environmental performance.
- The City should pass legislation making it illegal to harass small businesses and other non-residential tenants

**The City should ensure that local, small businesses can be physically located and thrive in the area once it is rezoned.**



*To do this the City should:*

- Adopt Special Enhanced Zoning Districts that limit commercial uses to the types commonly used by local residents, such as grocery stores.
- In new zoning, limit the size of new commercial spaces in order to create opportunities for local small businesses and not just large, corporate chain stores.
- Pass legislation to limit increases in rents to no more than 5% in the rezoning area through all legal mechanisms, including requirements on developments that receive public subsidy, and city legislation.
- Advocate with NYS to pass legislation that requires all property owners to give mandatory lease renewals for expiring leases.

**The City should develop a citywide policy approach that adopts best practices to support the auto sector as a whole.**



*To do this the City should:*

- 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. The study should be advised by a Steering Committee that includes auto business owners and workers, and conducted by an entity that can 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.
- 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.

### Who Should Own Businesses in the Bronx?



**87%**

say  
Local Bronx  
Residents

**50%**

say  
People of Color

**47%**

say  
Women

### What Kind of Businesses Do You Want To See in the Bronx?



**61%**

say  
Community  
Places

**59%**

say  
Sports and  
Recreations

**56%**

say  
Cultural  
Institutions

**52%**

say  
Local Small  
Businesses

*From community survey*







## GOOD JOBS & LOCAL HIRE

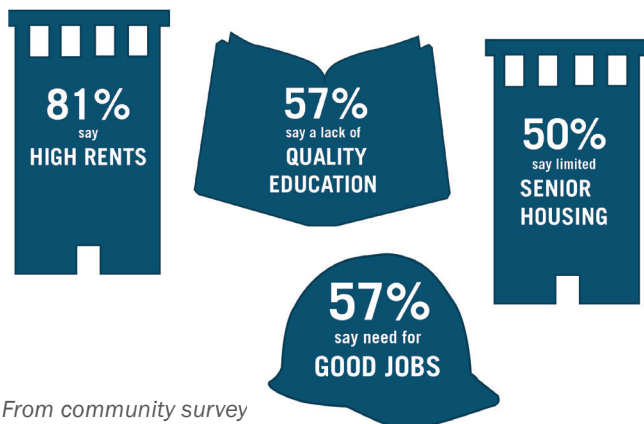
### WHY IS THIS IMPORTANT TO THE COMMUNITY?

As the City changes land regulations via the rezoning process, and additional development and construction is expected, community members want to ensure that local residents benefit most from the new economic opportunities created through the rezoning. In fact, 57% of survey respondents cited the need for good jobs as one of the most important issues facing the Bronx.

Community members report that they want such jobs to include healthy working environments, living wages, education and training for workers, job security and employee protection. Community members also want union jobs that turn into careers and the assurance that they can access these career pathways through the necessary training programs. Many community members also find it difficult to find jobs due to multiple barriers including language access, history of incarceration, education, immigration status, lack of childcare, lack of employment history and lack of job opportunities in the community.

The following policy proposals will ensure that New York City and State governments prioritize access to good, local, union jobs with career pathways and provide education and training for Bronx residents to overcome barriers to employment and ensure that they can benefit most from the rezoning of their neighborhood.

### Most Important Issues Facing the Bronx



### POLICY PLATFORM

#### The City should ensure local hiring.



*To do this the City should:*

- Insert local hiring requirements into the zoning:
  - The City should put a hard requirement for local hiring in the zoning text. Either all construction projects, or projects above a certain size, should be required to hire locally. Like the City's proposed Mandatory Inclusionary Housing policy, the requirement model would make local hiring part of the cost of doing business in our neighborhood.
- Adopt a citywide "first-source" policy:
  - A new first-source citywide policy should require developers who receive City money to hire people from the local community in which they are building. This kind of policy should include overall local hiring goals, goals for certain target populations (such as youth or people of color), and/or apprenticeship goals. The City already has laws that require certain City-funded projects to pay a living wage, and a "first source" policy would build on that policy by adding a local hiring requirement. The requirements wouldn't necessarily apply to any project receiving City money, but would affect projects above a certain size or dollar amount in public funds. "First source" policies exist in many other places and should be created in New York.
- City agencies (such as HPD) and the Economic Development Corporation (EDC) should make local hiring a requirement of projects they fund.
  - When City agencies or the EDC start large projects, they put out Requests for Proposal (RFPs) for developers who want to build the projects. These RFPs should include specific local hiring requirements and state that developers who are prepared to meet those requirements will be given preference in the selection process.
- The City should also adopt local hiring requirements for the rezoned area. The City currently has local hiring requirements for projects backed by the City

in Sandy-impacted neighborhoods; they should do the same for the neighborhoods they are rezoning.

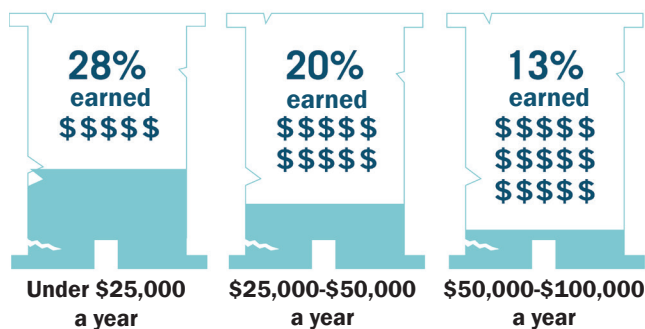
### The City should guarantee good wages for jobs created by the rezoning.



To do this the City should:

- Expand the Fair Wages for New Yorkers Act so it covers more workers. The living wage law requires employers that receive at least \$1M of financial assistance from the City or the Economic Development Corporation (EDC) to pay a living wage to their employees at the project site, unless the employer qualifies for an exception. In the fall of 2014, Mayor de Blasio extended the city's living wage requirements to include not only the owners of buildings receiving \$1M or more in support, but also commercial tenants at such project sites. But, these requirements don't apply to businesses with gross income below \$3M or to manufacturers.
- Create Community Benefits Agreements (CBAs) requiring prevailing wages. The City should pass legislation requiring developers who receive a certain amount of subsidy or public land to engage in CBA negotiations with local community groups, and should condition receipt of the subsidy or land on successful negotiation of a CBA.
- Provide real transparency on prevailing rate jobs. When prevailing wage jobs are available, signs should be posted throughout the neighborhood, and especially in front of the job site. The notices should explain what prevailing wage is, and should be in the top 6 languages spoken in the community.

Of the people who reported "TERRIBLE LIVING CONDITIONS":



From community survey

### The City should provide job training & education to local residents.



To do this the City should:

- Fund GED programs in neighborhoods where apprenticeship programs are being implemented.
- Allocate additional funding dedicated to local apprenticeship programs and implement them before construction projects begin so that there is a pool of skilled local workers available. The city must also conduct outreach so people know about training programs.
- Provide scholarships, childcare and other support to residents so they can access apprenticeship programs.
- HRA and SBS should have job training programs and transitional job programs that train residents for jobs in the sectors where new jobs are being created.

### The City should assist with job placement for local residents in need of employment.



To do this the City should:

- Create and fund a Local Employment Network to connect local residents to job opportunities created by the anticipated development in the area to be rezoned.
  - The City should provide funding to local community-based organizations to develop a network and hire a local coordinator to engage with developers in the neighborhood, provide trainings for local residents, screen candidates for positions in upcoming projects, and make referrals. This would be similar to the Lower East Side Employment Network, which emerged as a result of a development boom on the LES.
- The City should list Jerome Ave Local Employment Network as the preferred hiring source for City-funded projects.
- Allocate funding to enable community-based organizations to provide sector-specific workforce training. The City should fund local Bronx organizations to provide training for industries with a strong presence in the Bronx. Focus trainings on fields that offer high-quality, highly skilled jobs.



# REAL COMMUNITY ENGAGEMENT

## WHY IS THIS IMPORTANT TO THE COMMUNITY?

As the City plans to make major changes to the neighborhoods along Jerome Avenue through the rezoning process, community residents are concerned that they will not be able to have input into decisions about the future of their neighborhoods. In fact, 44% of survey respondents reported being concerned that they won't be able to "give real input into the rezoning plans." Community members also want to ensure that changes to our community benefit current community residents, with 60% of respondents saying that the rezoning should benefit neighborhood residents most. **With 1,500 community members turning out to participate** in the town hall meetings and visioning sessions, it is clear that community members have a strong desire to be a part of deciding what happens in their neighborhood.

To ensure real community engagement, the City must make sure that residents are informed about and included in the process of neighborhood planning. In addition, we need enforcement tools and ongoing oversight to ensure that the promises made to the community during the rezoning process are kept in the future. The following proposals will enable the City to plan smartly, promote real community engagement in the rezoning process, and give residents, workers, and local business owners authentic decision-making power and oversight over policies that will affect our neighborhoods.



Community visioning session

## POLICY PLATFORM

**The City should improve structures and systems and increase resources for real community participation in neighborhood planning.**



*To do this the City should:*

- Create a taskforce open to all community members that can help encourage better local participation.
  - People in the community have the best understanding of who needs to be involved and how to engage others. The City should draw on this local knowledge by creating a taskforce to develop more ideas to support more and better participation. City Planning and other agencies should then follow those ideas to get more people involved.
- Give residents a seat at the decision-making table and a chance to vote.
- Once the scope of study is released, the City should create an affordable housing taskforce open to all local residents who want to work with officials to figure out how much affordable housing there should be, and at what rent levels. Those principles should then guide the City's plans.
- Provide resources to support CBOs in developing a community vision. This will allow CBOs to hire planners and other experts who are directly accountable to the community.
- Allow time for a real community plan to be created and for the following to happen before the ULURP process starts:
  - Create a local design statement to guide development (at least 9 months). The City should formally adopt this statement so that community members can continue to hold elected officials accountable to that statement as development proceeds.
  - Provide a chance for community members to consider and vote on a range of ideas about possible plans for the neighborhood. Multiple options should be presented, not just a single plan.





Community visioning session

- Residents and other community members should help prioritize which issues are most important. This will ensure that local residents, workers, and business owners drive the focus of the planning.
- Residents should have a chance to review draft goals and plans throughout the process to make sure that they reflect the community's goals.
- There should be a range of activities and ways to provide feedback on proposed plans, including discussion forums, drop-in days with local experts who can explain the process and proposed ideas, models displaying suggested changes, visual presentations, small workshops, and written surveys with physical and electronic drop boxes.
- Ensure meetings are accessible to as many people as possible.
  - There should be dozens of meetings open to the public, not just a few. For example, the first Cooper Square Alternative Plan was developed after over 100 community meetings.
  - All sections of the community that will be affected should be involved in the planning process.
  - Special meetings should be held to address the concerns of specific groups, like young people, public housing residents, or local businesses.
  - All meetings and flyers should be in the top six languages spoken in the community.
  - Notices should be distributed where people live and meetings should be advertised widely in local media sources.
  - Food and childcare should be provided at all public meetings.
  - When the City plans meetings, it should work with local CBOs to help get the word out so more people know about meetings.

### **The City should evaluate the existing need of the neighborhoods affected by the rezoning.**



*The City should do this by:*

- The Department of City Planning (DCP) and related agencies should analyze each of the neighborhoods that will be affected by the rezoning, not just study the “rezoning corridor” (Jerome Ave). This will help residents better understand the impact of the rezoning on their community.
- For each impacted neighborhood, City Planning should create a profile that:
  - Shows the existing needs and capacity for housing, school seats, park space, transportation, sewage infrastructure, and other facilities and services.
  - Includes clear proposals of how and when the neighborhood's existing needs will be addressed.
  - Is in a format that is accessible to community members (unlike dense and highly technical documents, like the Environmental Impact Statement), and is translated into the top 6 languages spoken in the neighborhood.
- Evaluate local needs - including needs for the preservation and development of affordable housing and high-quality jobs - as the basis of its plans.
- The City should work with residents to identify the community's assets, challenges, and future possibilities, so that development is guided by what the community wants. The City should not just think of this area as a means of achieving broad citywide goals; the community's own goals are just as important.



- The City should make its information about housing and job needs public, so that residents can evaluate whether proposed plans are likely to meet those needs or not.

### The City should evaluate future impact of proposed changes on each neighborhood.



- For each neighborhood that will be affected by the rezoning, DCP and related agencies should create a profile that analyzes and addresses increased demand for community facilities and services that the rezoning will create. Each neighborhood profile should:
  - Explain the impact of a proposed zoning change on housing, schools, parks, transportation, and other facilities and services in the area.
  - Include clear proposals of how and when the future needs will be addressed, with details specific to each neighborhood.
  - Be in a format accessible to community members, not a dense and highly technical document, and translated into the top 6 languages spoken in the neighborhood.

### More Spanish-Speaking than English-Speaking residents LIVE WITHOUT BASIC SERVICES (gas, heat, hot water, etc.)

Spanish-Speaking Residents:



English-Speaking Residents:



From community survey

### The City should take steps to ensure that the community actually gets what it's promised.



To do this the City should:

- Create protections in the zoning to ensure that the community gets the facilities and services it needs before a lot of new housing is built.
- The City should put a rule in the zoning that requires developers to show that there is enough school capacity, park space, transportation, and other necessary facilities to support the people who will come in with the new development. The rule should say that the Department of Buildings will issue permits for more residential development only if there is enough local capacity. If there is not, DOB should issue permits only if the developer agrees to provide space in the development for the new facility that is needed (for example, a new school). This will help ensure that the community actually gets the improvements it is promised and that any residential development is timed appropriately with new community services.
- Create a formal opportunity for community oversight of the plan going forward. Local people can help make sure that the plans for the area are followed and continue to reflect the community's vision.

# CALL TO ACTION

**The Mayor's Housing Plan will drastically change our city. The question is how, for whom, and by whom?**

While the housing plan focuses on preserving and building 200,000 units of affordable housing, we must remember that more market rate housing will be built through this plan than affordable housing. In fact, for every unit of affordable housing that the City will finance developers to build, at least 2 market rate units will be built.<sup>5</sup> To do this, the City is changing policy about how land is used and facilitating the accrual of record profits for developers. Many questions remain unanswered for Jerome Avenue since the City has not yet released its plan of how many units of housing should be built, what percentage of those units should be affordable or how it defines affordability.

Both the 421A tax reforms and the proposed Mandatory Inclusionary Housing program that the administration has pushed forward fail to meet the needs of residents in the Southwest Bronx, as they provide a small percentage of affordable housing, if any at all. Rather than creating genuinely affordable housing, they create market pressures that will accelerate the displacement of poor people of color.

To date, the Mayor has not yet released a comprehensive plan to preserve the City's existing affordable housing, and has not developed the new tools necessary to address this growing crisis. While we support increased funding for eviction prevention services and the creation of a Tenant Support Unit, they do not provide a comprehensive or systematic approach to preservation.

Already, the prospect of the rezoning is impacting the neighborhood. Increased land prices provide a financial incentive for owners of rent stabilized property to push out rent stabilized tenants and accelerate the destabilization that is already happening. And owners of the buildings that house small business are doubling rents, refusing to issue leases and shortening the length of the leases from 10 years to 1 year. Displacement is here. It will only get worse if we don't intervene.

We are in a unique moment to set an example for the Bronx and for the City. We deserve to build neighborhoods for the people that live here by the people that live here so that we can live with dignity and respect. This includes preserving and creating jobs for local residents that allow pathways for advancement.

Whatever the City decides for the future of Jerome Avenue, it cannot and should not move forward without adopting our policy recommendations, to ensure that progress and gentrification are not synonymous.

**We call on the City to take this seriously, to respect this policy platform as the result of thousands of voices of Bronx residents, and to implement our recommendations.**

**We call on Bronx residents to get organized.**

*See back of report for information on how to get involved.*

<sup>5</sup> "Text of Mayor de Blasio's State of the City Address," The New York Times, February 3, 2015.

# BRONX COALITION FOR A COMMUNITY VISION

## 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.

## WHO WE ARE

Community Action for Safe Apartments - New Settlement Apartments, Latino Pastoral Action Center, Northwest Bronx Community and Clergy Coalition, VOCAL-NY, United Auto Merchants Association, Faith In New York, Local 79, Plumbers Local No. 1, NYC District Council of Carpenters, 100 Black Construction Workers, Real Affordability for All.

## GET INVOLVED!

**Call or email Susanna at CASA at  
(718)716-8000 or [s.blankley@newsettlement.org](mailto:s.blankley@newsettlement.org)**

## WITH SUPPORT FROM



**[WWW.BRONXCOMMUNITYVISION.ORG](http://WWW.BRONXCOMMUNITYVISION.ORG)**

## **Appendix H: Miscellaneous Citation Issues in the Draft Scope of Work**

- There is an error on page 6 that refers to Grand Concourse as the western, not eastern boundary.
- There should be a map of the No-Action development scenario.
- On page 7, the boundary and data source for the 345,000 residents is not given.