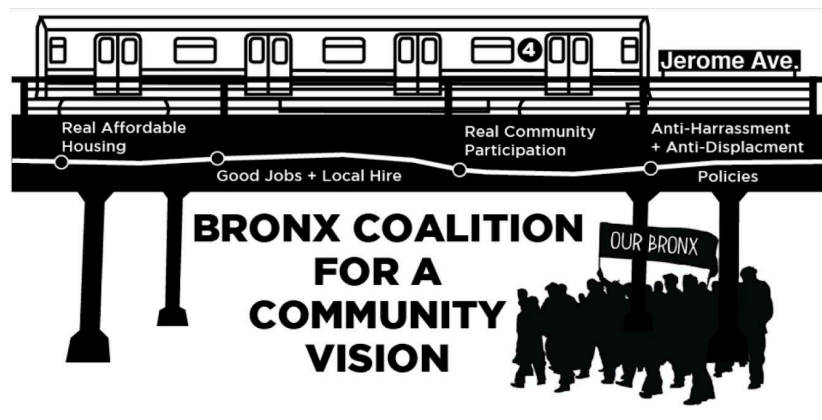


Comments on the Draft Environmental Impact Statement for the Jerome Avenue Rezoning



Submitted December 11, 2017

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I. Introduction

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

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

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

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

- **The City's analysis significantly underestimates the amount of development the Proposed Actions are likely to bring, improperly limits the analyses of direct and indirect displacement risk, and leads the City to suggest strategies that are completely inadequate to mitigate those risks.** Among other exclusions, the City removes all multi-family buildings of 6 or more units from its direct displacement analysis, turns a blind eye to illegal displacement tactics, and improperly concludes that tenants who are rent-stabilized, recipients of Section 8 vouchers or other rent subsidies, and occupants of buildings that are subsidized today are immune to the risk of indirect displacement. Because the City fails to consider the realities of tenants in such situations, it wrongly concludes that the rezoning will have a minimal impact - when past rezonings of low-income communities of color have fundamentally altered these communities.
- **The proposed housing does not meet the neighborhood need for deeply affordable housing, and the City's decision to proceed with a rezoning of this scale is irresponsible.** This is especially so in light of the City's failure to craft a term sheet that meets the need for deeply affordable housing, and the tremendous uncertainty surrounding both developers' future willingness to accept subsidy and the amount of federal housing funding that will be available to support subsidized projects.
- **The proposed rezoning will worsen rather than alleviate existing displacement pressures.** Among other concerns, we believe that the City has adopted a flawed and legally inadequate environmental review process that significantly underestimates the risk of displacement, and that the City's suggestion that new housing can mitigate the displacement of existing residents is flat wrong.
- **The proposed rezoning and, to an even worse degree, the City's proposed Alternative will destroy the thriving auto industry in the community.** We have long suggested that the City can create space for additional affordable housing in the community, *without* destroying the long-standing businesses on which so many residents rely. The City has not listened.

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

Taken together, the City's plans operate much like the Trump tax scheme: a vast transfer of wealth from the lowest-income New Yorkers to already-rich developers and landlords who need the City's assistance

¹ Page 1 - 23

the least. If our words seem harsh, it is because the City has left us with no other means of describing a plan that fails the community so completely. If our opposition seems extreme, it is only because the City's actions make clear that it has no interest in advancing the community's goals - goals that have been consistently expressed by hundreds of residents, and just as consistently ignored.

The Coalition is proud of all that it has achieved over the last three years - securing a historic Right to Counsel for tenants in housing court, passing a new Certificate of No Harassment policy that will help deter landlords in hot markets from harassing out tenants, and advocating to secure improvements to the City's subsidy term sheets to ensure that a greater share of apartments in projects subsidized by the City go toward the lowest-income families who need them most. Each of these victories would not have happened without thousands of tenants coming together, creating a vision, and advocating for policies they knew from their own experiences could make a powerful difference. But both the Right to Counsel and Certificate of No Harassment policies are defensive strategies that acknowledge the reality of tenant harassment and abuse at the hands of landlords. They are not, in that sense, positive visions for the future of our community; they are necessary protective measures that recognize the harsh world tenants face today. If the City passes the rezoning in its current state, we are concerned that neither of these policies will prove sufficient to counter the relentless pressure landlords will exert on our most vulnerable community members in the newly "hot" market of the southwest Bronx. Similarly, though the new term sheets we helped negotiate are an improvement, they still do not create enough housing for people making \$30,000, \$25,000, \$18,000 a year and less - and if the local housing market heats up significantly, developers will refuse the chance to partner with the City to build subsidized units at all.

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

II. Land Use, Zoning and Public Policy

The rezoning runs counter to the goals of Housing New York and the Industrial Action Plan by threatening to make this neighborhood less diverse and less affordable, while increasing the

displacement of current residents and killing critical, blue collar jobs for people who face barriers to employment.

A. Inconsistency with Goals of Housing New York

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

In our comments on the Draft Scope of Work (DSOW), the Bronx Coalition explained that the proposed Jerome Avenue rezoning had the potential to undermine both Housing New York’s construction goals, and its preservation goals.³ The intervening year and disclosure of further details about the plan for Jerome Avenue have only strengthened this view. By creating significant amounts of housing that are out of reach of current residents, the Jerome Avenue rezoning will both fail to meet their needs, and increase their risk of displacement through facilitating a changing housing market. Worse still, the rezoning would represent a shift away from strategies that the City has already been using in our community to build housing for those that need it most.

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

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

² 2-23

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

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

⁵ Jerome DEIS 3-37.

attracting higher-income residents through housing targeted specifically toward them as a key strategy for our neighborhood's success.

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

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

What is particularly troubling about this rezoning is that it jeopardizes the success the City has achieved in subsidizing the construction of deeply affordable units that match our neighborhood's need. Currently the City is supporting the creation of new affordable units in CDs 4 and 5 at much deeper affordability levels than it's achieving city-wide. Of the 1,297 affordable units created in the CDs through Housing NY between 2014-2016, 40% of them were set aside for Extremely Low Income (ELI) households making up to 30% AMI, or about \$25,000 for a family of three, a significantly higher percentage than the 15% of ELI units being created city-wide.⁸ 53% of these units in CDs 4 & 5 were for households making below 50% AMI, while a full 94% of units were for households making below 80% AMI.⁹ These are numbers that actually come close to matching the income breakdown of the community and they are numbers that the City must ensure they can continue. Our community currently has real income diversity because it is currently a neighborhood that is accessible to *all* income types, including, most crucially, the lowest. But maintaining this income diversity moving forward must mean ensuring that these lowest-income households can stay by, in part, continuing to subsidize

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

⁷ Jerome DEIS, Table 3-11, p. 3-35

⁸ Housing New York Units by Building, NYC Open Data

⁹ *ibid*

the affordable units within their reach, not putting them at risk by prioritizing an influx of higher income tenants.

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

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

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

In our comments on the DSOW, we cautioned that the only *guaranteed* below-market housing this rezoning will bring is Mandatory Inclusionary Housing (MIH) units - and that no Option in the MIH program reflects the neighborhood’s needs. We noted that “the best Option leaves out the 78% of neighborhood residents who make less than \$50,000 a year. None of the MIH options require any developers, anywhere to build more than 10% of new apartments at or below 40% AMI – even though almost two thirds of families in Community Boards 4 and 5 earn less than \$35,000 a year. MIH also does not require developers to build any housing at all for households who make less than 30% AMI, or \$25,000 a year – even though almost half of families in Community Boards 4 and 5 are at these low income levels.”¹¹

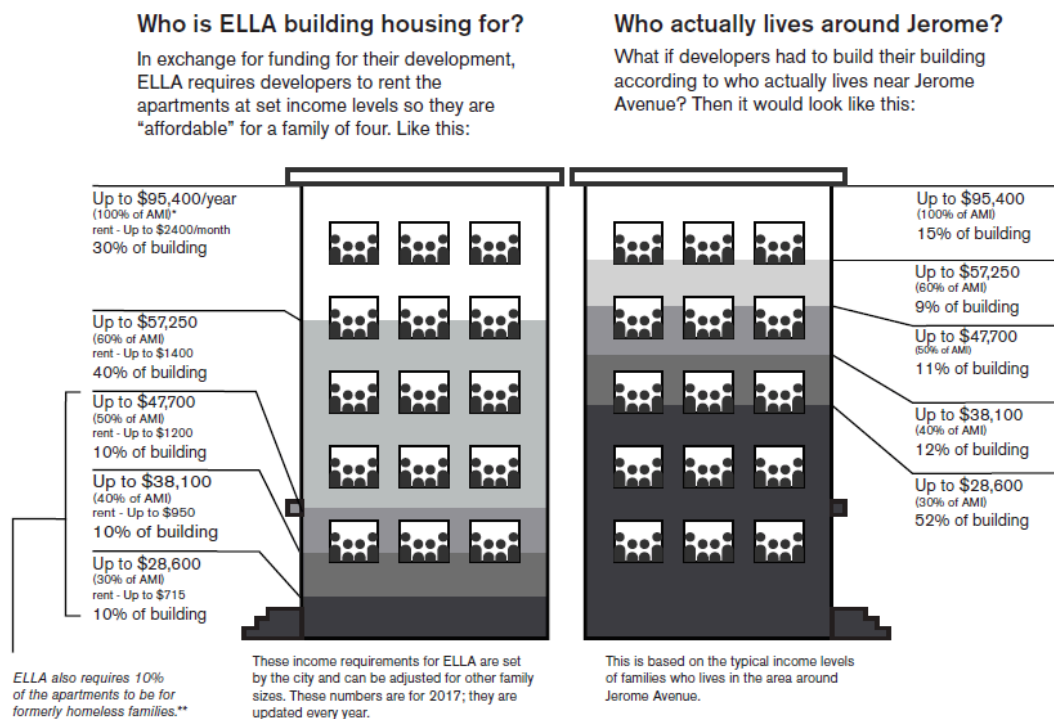
These flaws remain as true today as they were a year ago. Families making between roughly \$35,000 and \$75,000 a year would be served by MIH under the rezoning, with MIH Option 1 serving families on the lower end of this range (\$35,000 to \$50,000) and Option 2 serving families on the higher end (closer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

¹⁰ 3-65

¹¹ Bronx Coalition DSOW Comments at 8.

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

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



Furthermore, there are troubling indications that the City does not even intend to use ELLA as their best affordability option. In his recommendations for the Jerome Avenue rezoning the Bronx Borough President cited a commitment from HPD, "to guarantee that at least 10% of units will be set-aside for

¹² Bronx Coalition DSOW Comments at 8-11.

families earning less than 30% of the Area Median Income (AMI), and an additional 10% will be set-aside for families earning between 30 - 50% AMI in HPD-financed new construction developments..."¹³ This is a commitment that Councilmember Gibson further touted in her comments at the City Planning Commission public hearing on 11/29/17. This is incredibly troubling. These "committed" numbers are in fact *lower* than that provided by ELLA, and significantly lower than what is currently being created in our community. **Currently, 40% of new affordable units in our Community Districts are going to households making below 30% AMI; the City is asking us to accept a plan that would provide just one-quarter of that amount.**

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

Whatever term sheet the City uses - whether the current term sheets, or a future option that better meets the need for deep affordability in communities such as ours - the City cannot produce affordable housing using subsidies unless developers choose to partner with them in this way. This rezoning represents a marked change in land use - from primarily manufacturing to high density residential districts - opening up the possibility of a massive amount of new residential housing where it's currently not allowed. This type of wholesale changing of land use has the potential to significantly increase land value and with it the housing market around Jerome Avenue. Building deeply affordable units, such as the City is supporting today, is contingent on private developers taking City subsidy; as the market changes post-rezoning there is no guarantee that developers will continue to do this. Again, this is an outcome the City seems to continually hint at throughout the DEIS. The City acknowledges that, "Current market conditions do not support the construction of new housing without subsidy."¹⁴ Yet they go on to say, "It is therefore expected that the *first* projects constructed pursuant to the Proposed Actions would necessitate government subsidy and likely be 100 percent affordable,"¹⁵ a tacit admission by the City that future projects are less likely to take subsidy moving forward. This is a trend that has been observed in recent decades in gentrifying neighborhoods as local housing markets have changed. In it's report on the location of subsidized affordable housing in New York City, the Furman Center notes that, "as the neighborhoods closer to downtown Manhattan have become more expensive in recent years, subsidized housing development has become less common in the higher cost areas in the city center. Since 2000, just six percent of new subsidized affordable rental units have been located in Manhattan below 96th Street compared to 17 percent of subsidized rental units built in the 1970s."¹⁶ As a neighborhood's rental market starts to heat up, the calculus for landlords considering entering long-term subsidy agreements with the City begins to change; rather than making a decades-long commitment to affordability, many will decide that they are better off building market-rate.

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

¹⁴ Jerome DEIS, p. 3-64

¹⁵ *ibid*

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

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

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

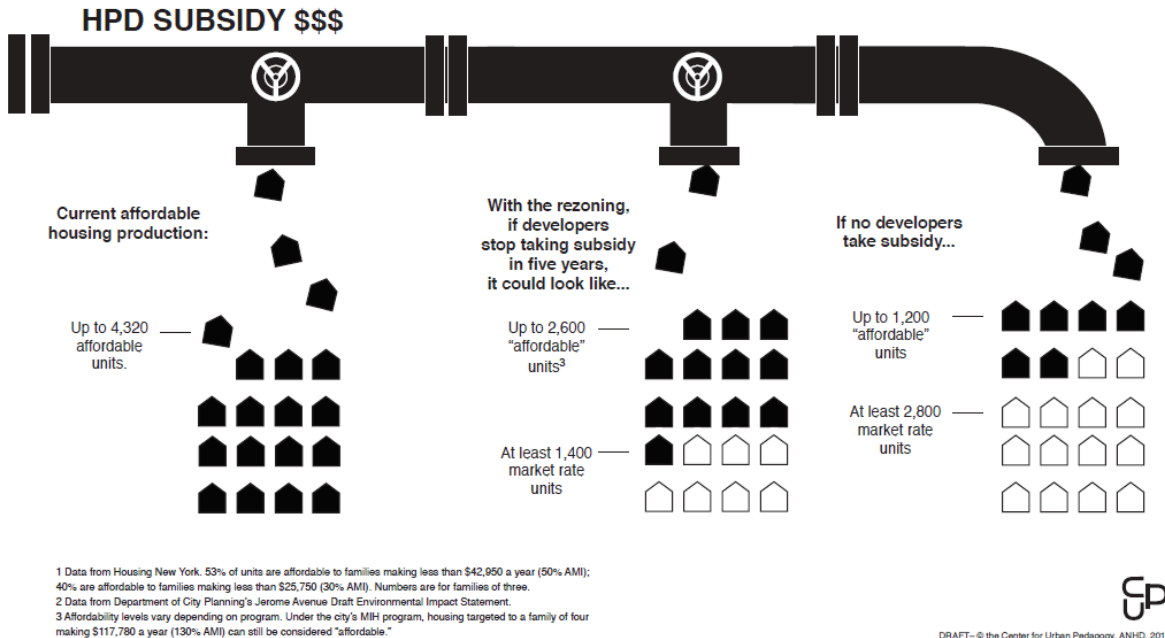
These programs are not the only ones at risk. Just as crucially, other vital funding sources for affordable housing development are threatened by the GOP's proposed tax plan. Under the plan currently being considered both the Low-Income Housing Tax Credit and Private Activity Bonds could be severely jeopardized. The LIHTC 9% Program - one of the most widely-used tool for affordable housing construction in New York City and the country - would be greatly diminished if corporate taxes are cut, while the LIHTC 4% Program and Private Activity Bonds are both at risk of being eliminated entirely. In NYC alone this would mean the loss of \$2.6 billion in affordable housing funding per year - meaning 9,700 fewer affordable units created annually.¹⁹

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

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

¹⁸ *ibid*

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



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

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

Though it is true that "many existing residents are not able to afford rents in the study area and are currently experiencing displacement pressures,"²⁰ asking rents in the proposed rezoning area are still some of the lowest in the City; the impacted community districts have the 51st and 52nd lowest rents of all CDs in the City.²¹ Although rents are rising, they are rising at a slower rate in our community

²⁰ 3-34.

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

than they are citywide.²² Because rents here are low today, and current rate of acceleration of rent is low, the rezoning of our community in a manner that invites massive amounts of market-rate housing brings a particularly significant risk of accelerating rent increases beyond what current residents can bear. In these ways, the Proposed Actions undermine, rather than advance, the affordable housing preservation goals of Housing New York.

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

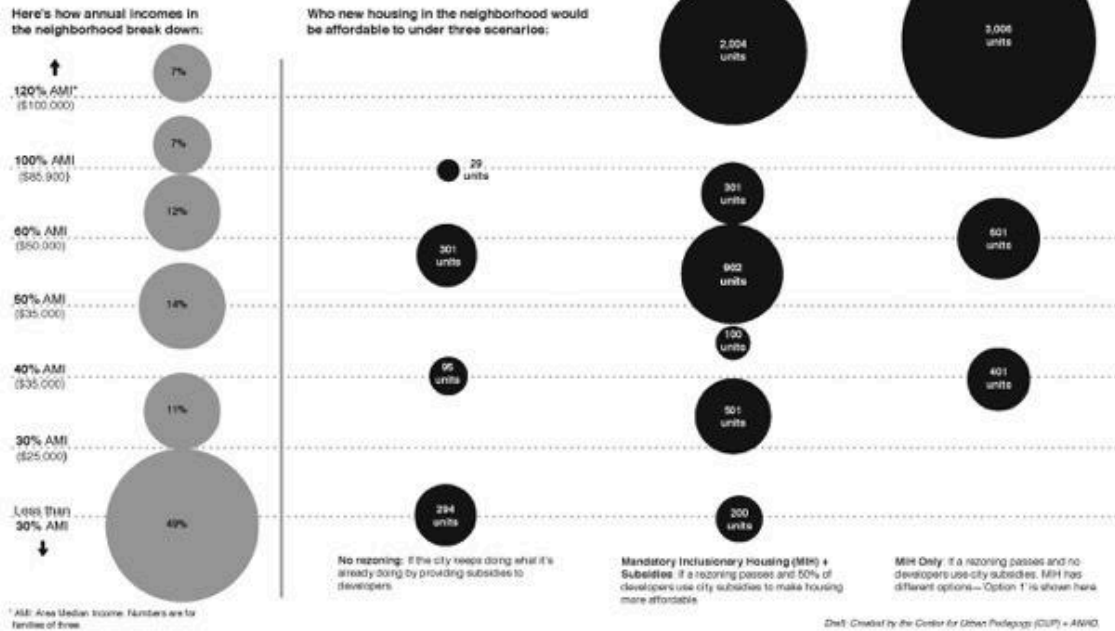
When all our concerns are considered together it is clear that our community would be better off with no rezoning compared to what is currently being proposed by the City. We care deeply about the creation and preservation of deeply affordable housing in our neighborhood. But with this rezoning, the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

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

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

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

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



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

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

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

²⁴ Ibid

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

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

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

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

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

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

²⁶ Willets Point Land Use Study, Tom Angotti.

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

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

The importance of auto repair jobs both to the people living in the surrounding community and to the economic activity in the area is not accounted for in the DEIS. Auto repair jobs are quality jobs for the same people that live in the neighborhoods of the Bronx that are affected by the proposed actions – 64% are immigrant, 68% have a high school diploma or less, and 75% are people of color throughout the city.²⁹

The Jerome Avenue Business Needs Study conducted by WHEDCo, and funded through the Department of Small Business Services, illustrates the interconnectedness of the economic ecosystem on Jerome, with the overwhelming majority of surveyed businesses indicating that they rely on other businesses in the area for both goods and services, and this was found to be equally true for auto and non-auto (industrial, wholesale, and retail) businesses.³⁰ More than half of the auto business surveyed had been operating in the area for more than 6 years³¹, a finding that is consistent with NETS data for the entire corridor that Pratt Center for Community pulled.

Auto businesses in the area reported the number one reason that they located in the area was to be close to customers, and this was followed by stating the importance of being connected to an active auto cluster.³² 64% of the customers of the auto businesses are coming either from the immediate neighborhood or elsewhere in the Bronx. Similar proportions are also reflected in the non-auto business customer base in Jerome³³.

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

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

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

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

³¹ Ibid p.6

³² Ibid p. 7

³³ Ibid p.9

³⁴ Ibid p.10

³⁵ Ibid p. 13

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

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

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

III. Socioeconomic Conditions

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

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

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

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

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

In the DEIS, the City has chosen to disregard the Coalition’s concerns, excluding almost all lots of less than 5,000 square feet from its initial list of development sites,³⁷ and further reducing the pool by deeming “very unlikely to be redeveloped” several other types of lots that otherwise meet the development site criteria, including lots containing multi-family residential buildings.³⁸ After this initial -

³⁶ Bronx Coalition DSOW Comments at 6-7.

³⁷ Jerome DEIS at 1-38.

³⁸ Jerome DEIS at 1-39.

and deeply flawed - winnowing of development sites to be considered in the DEIS, the City then utilizes 7 further criteria to separate out “potential” and “projected” development sites, removing yet more sites from the City’s projections under the RWCDs. Ultimately, the City states that, “The 101 potential development sites are less likely to be redeveloped by 2026. Therefore, the RWCDs With-Action scenario assumptions for these 101 potential development sites is not included in the assessment of the 2026 With-Action Conditions and this chapter only considers the 45 projected development sites.”³⁹

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

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

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

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

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

³⁹ Jerome DEIS at 3-11.

⁴⁰ Bronx Coalition DSOW Comments at 6-7.

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

⁴² Bronx Coalition DSOW Comments at 6-7.

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

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

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

A third criterion that is not appropriate in this area is the removal of structured parking garages from potential development⁴⁶. As has been repeatedly reported on,⁴⁷ the area surrounding Yankee Stadium, which is on the edge of the proposed rezoning area, has a glut of structured parking garages that are financially untenable. This is not the central business district of Manhattan where density, tourism, and demand for parking from higher income individuals drives the price of parking. This point is furthered by the Cromwell Avenue-Jerome Avenue Transportation Study, prepared by the DCP in August 2016, which identifies that “there is substantial excess capacity of off- street parking spaces in the 1/4-mile secondary study area, especially in the area to the south of the Cross Bronx Expressway, which

⁴⁴ Jerome DEIS at 1-39.

⁴⁵ Ibid.

⁴⁶ Ibid.

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

includes Mount Eden and Highbridge, where capacity is higher.”⁴⁸ The financial gains from a structured parking lot in an area oversaturated with structured parking should be not automatically assumed to be so great as to preclude the likelihood of the redevelopment of sites for residential development.

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

Finally, a fifth criterion, the City’s exclusion of “lots that would produce less than 60 units of housing”⁴⁹ may be appropriate in certain cases, but the complication versus benefit of housing development calculation will be different for different property owners. Less-sophisticated owners, or those who are not experienced in housing development, may simply opt to sell to larger owners who can more easily develop, and obviously there is the potential to combine these lots in ways that makes development on them worthwhile.

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

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

⁴⁸ DEIS 3-28

⁴⁹ Jerome DEIS at 1-39

⁵⁰ Bronx DSOW Comments at 6-7.

B. The City underestimates the risk of residential displacement.

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

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

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

As noted in the preceding section, in the DEIS, the City identifies just 45 projected development sites in the study area, four of which currently contain residential uses. The City concludes that, "Not all of the 106 dwelling units on projected development sites would be directly displaced as a result of the Proposed Actions"⁵² and ultimately finds that "the Proposed Actions have the potential to directly displace approximately six dwelling units on two projected development sites," resulting in the potential direct displacement of just 18 residents.⁵³ Citing the *Manual's* threshold of 500 residents, the City

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

⁵² Jerome DEIS at 3-16.

⁵³ Jerome DEIS at 3-17.

concludes that, “the Proposed Actions would not result in a significant adverse direct residential impact and no further analysis is warranted.”⁵⁴

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

Second, as discussed more fully in an earlier section of these comments, the City wrongly excludes from its analysis of projected development sites numerous potential soft sites in the community. Pursuant to the *CEQR Technical Manual*, sites that meet the soft site criteria may nevertheless be excluded from development scenarios if the City deems that they are unlikely to be redeveloped.⁵⁶ In the DEIS, the City includes in this group “Lots containing multi-family (6 or more dwelling unit) residential buildings; due to required relocation of tenants in rent-stabilized units.”⁵⁷ Again, given the numerous tactics - both legal and illegal - available to landlords with a financial incentive to dislodge rent-stabilized tenants, the categorical exclusion of rent-stabilized buildings from the analysis is improper. As the Municipal Art Society noted in its comments on the DSOW, because many sites containing rent-stabilized residential units are either underbuilt today, or will be construed as such under the new proposed zoning, “There may be thousands of rent stabilized units in the rezoning area that may be targeted for redevelopment and deregulated after the rezoning (the exact number is uncertain as registering dwelling units with the DHCR is voluntary).”⁵⁸ In addition, the DEIS improperly excludes from the soft site analysis *all* “lots containing multi-family (6 or more dwelling unit) residential buildings,”⁵⁹ and not - as the *CEQR Technical Manual* requires - “Residential buildings with six (6) or more units *constructed before 1974*”⁶⁰ (emphasis added). The *Manual* directs the exclusion only of buildings constructed prior to 1974 on the basis that “These buildings are likely to be rent-stabilized and difficult to legally demolish due to tenant re-location requirements,”⁶¹ but in the DEIS, the City improperly excludes *all* buildings of 6 or more units from the analysis - even those constructed after 1974, which were never subject to rent-stabilization. Finally,

⁵⁴ Jerome DEIs at 3-18.

⁵⁵ Jerome DEIS at 3-17.

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

⁵⁷ Jerome DEIS at 1-39.

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

⁵⁹ Jerome DEIS at 1-39.

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

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

even had the City followed the *Manual's* direction to exclude only multi-family buildings built prior to 1974 from its soft site analysis, even this standard is improper and overbroad. Many multi-family buildings built prior to 1974 contain apartments that exited rent stabilization long ago; tenants in such apartments do not have relocation rights and face direct displacement risks indistinguishable from those faced by occupants of buildings that were never stabilized to begin with. Absent more specific information about the rent stabilization status of all apartments in multi-family buildings, the wholesale exclusion of such buildings improperly overstates potential barriers to developing such buildings - and contributes to the City's underestimation of direct displacement in the DEIS.

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

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

Pursuant to the process outlined in the *CEQR Technical Manual*, the City must follow a multi-step process for its preliminary assessment of indirect displacement. First, the City must "determine if the proposed project would add new population with higher average incomes compared to the average incomes of the existing populations and any new population expected to reside in the study area without the project."⁶³ In the DEIS, the City discloses its analysis and finds that, "The 2011-2015 median household income in the overall ¼-mile secondary study area was an estimated \$25,490, approximately 26 percent lower than the median household income for the Bronx (\$34,709) and more than 52 percent lower than the median household income for New York City (\$54,011)."⁶⁴ The City concludes that "the average household income of the project-generated population could be higher than the average household income of the existing population in the study area,"⁶⁵ and proceeds to the next step of the analysis.

It is at this stage that the City reneges on its duty to conduct a detailed analysis of indirect displacement in the secondary study area as a whole. In the DEIS, the Cit

⁶² Id.

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

⁶⁴ Jerome DEIS at 3-33.

⁶⁵ Jerome DEIS at 3-37.

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

The City’s decision not to conduct a detailed analysis of secondary displacement in the entire study area, based on its conclusion that the population of the area is likely to increase by 4.6% as opposed to 5%, is deeply flawed for several reasons. First, the City’s projected population increase is improperly skewed downward by its wholesale exclusion of 101 “potential” development sites the City deems unlikely to be developed by 2026 - a determination based on erroneous assumptions discussed in our comments on the Draft Scope of Work and earlier in this document. Had the City included even some of these “potential” sites in its analysis, the projected population increase would almost certainly have exceeded the *CEQR Technical Manual’s* 5% population increase threshold warranting a Detailed Assessment. Second, the City’s decision not to pursue a Detailed Assessment of indirect displacement in the full study area based on a shortfall of less than one half of one percent - a population increase of 4.6% as opposed to 5% - underscores the extent to which the *CEQR Technical Manual* draws arbitrary boundaries on environmental analyses, in a manner that renders it impossible for the City to craft an environmental impact statement that, consistent with the requirements of state law, “deal[s] with the specific significant environmental impacts which can be reasonably anticipated.”⁷¹ The City must fulfill its obligation under state law and regulations⁷² to assess “the impacts that may be reasonably expected to result from the proposed action”⁷³ in order “to determine whether a proposed ... action may have a significant adverse impact on the environment.”⁷⁴ Under state law, “all draft EISs must include ... a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence.”⁷⁵ Both the City’s systematic and unjustified undercounting of projected development, and its maintenance of a *CEQR Technical Manual* that encourages a limited analysis of secondary displacement based on an

⁶⁶ Jerome DEIS at 3-39.

⁶⁷ Jerome DEIS at 3-40.

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

⁶⁹ *Id.*

⁷⁰ Jerome DEIS at 3-40.

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

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

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

⁷⁴ *Id.*

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

arbitrary percentage threshold and regardless of neighborhood-specific conditions that may warrant a more detailed examination, result in a DEIS that fails to meet SEQR's requirement of an assessment that reflects the true significance of the impacts.

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

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

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

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

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

⁷⁶ Jerome DEIS at 3-64.

⁷⁷ Jerome DEIS at 3-64.

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

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

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

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

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

Second, landlords in neighborhoods experiencing rapid gentrification are likely to engage in a wide range of illegal tactics to displace rent-stabilized tenants. In our comments on the DSOW, the Bronx Coalition stressed that, “DCP must not assume that rent regulated tenants are secure in their homes, nor that those units will remain affordable simply thanks to the existing laws and regulations that govern them. Any method of study that accounts only for legal methods of displacement ignores the reality of

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

⁸⁰ Jerome DEIS 3-46.

⁸¹ Jerome DEIS 3-64.

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

tenant harassment as a pervasive problem, and dismisses the very real threat of displacement to the rent stabilized tenants of the Bronx.”⁸³ Yet the City chose to disregard this, and conducted a detailed analysis of secondary displacement for the DEIS that does not examine the illegal displacement tactics that are likely to plague rent-regulated households.

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

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

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

⁸³ Bronx Coalition DSOW Comments, p. 21

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

the City fails to measure or disclose the true impacts of its actions, precluding discussion of mitigations appropriate to address these impacts.

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

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

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

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

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

⁸⁵ Jerome DEIS 3-54.

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

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

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

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

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

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

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

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

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

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

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

The City errs in relying on these measures to counteract the risk of secondary displacement. First, as discussed more fully in earlier sections of our response, the City cannot know how much housing it will be able to subsidize in this community. In stating that, “[i]t is ... expected that the first projects constructed pursuant to the Proposed Actions would necessitate government subsidy and likely be 100 percent affordable,”⁹⁰ the City acknowledges that projects after “the first” may very well *not* be subsidized, but may instead be market-rate, helping to drive up rents in the community. Second, absent the creation of a new term sheet that better addresses families making \$30,000 and below, any housing the City does subsidize will fail to meet the neighborhood need for deeply affordable housing - and below-market housing created under Mandatory Inclusionary Housing will fall yet further outside the neighborhood need. Simply put, subsidized and MIH apartments cannot in any way be construed as counteracting displacement of residents who cannot afford to live in those apartments. Third, the statement that “[t]he projected increase in housing units overall is expected to decrease rent pressures”⁹¹ is purely speculative. The City plans, through this rezoning, to add over 4000 apartments to the community, almost half of which will not be affordable by any measure and virtually all of which will be unaffordable to most residents. Given this fact, it is difficult to imagine how - much less definitively conclude that - the mere increase in the number of housing units will in any way address the needs of Mount Eden residents at risk of displacement. Finally, even the small number of units that may be created at rent levels current residents can afford will arrive too late to offset those residents’ displacement; today’s residents may be long gone by the time tomorrow’s promised apartments arrive. As the Coalition for Community Advancement: Progress for East New York/Cypress Hills argued in its comments on the Draft Environmental Impact Statement for the East New York rezoning, “low-income residents are not interchangeable, and unless current residents are guaranteed to be first in line for all new affordable units - which is not possible both because current residents will be given preferred status for, at most, half of the new units - new units will not serve to mitigate displacement.”⁹²

⁹⁰ Jerome DEIS at 3-64.

⁹¹ Jerome DEIS at 3-65.

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

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

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

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

Had detailed assessment of direct displacement, or indirect displacement for the study area as a whole, been performed, and had the City found that more than 5 percent of the study area population was potentially subject to direct or indirect displacement, that finding of a potential significant adverse impact⁹⁴ would have triggered consideration of mitigation tactics. Such mitigation would consist of "relocation of the displaced residents within the neighborhood"⁹⁵ for directly displaced residents, or "creating housing within the study area with specific opportunities for residents identified as potentially vulnerable to indirect displacement ... [such as] preservation of existing rent-stabilized units, or the development of new publicly assisted units within the study area."⁹⁶ The finding of a significant adverse impact would also have required the City to consider "alternatives that avoid indirect residential displacement ... [with] a different housing mix as part of the project - for example, including more affordable units that replace those to be affected in the study area."⁹⁷

The Coalition would have welcomed - and would still welcome - any of these strategies as potential ways to mitigate the impact of the rezoning. Later in this document, we also propose a wide range of mitigation tactics designed to protect and uplift residents and businesses in this community, and an Alternative we believe would better advance the community's goals. But because the City has

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

⁹⁴ CEQR Technical Manual, Sec. 332.1.

⁹⁵ CEQR Technical Manual, Sec. 511.

⁹⁶ CEQR Technical Manual, Sec. 521.

⁹⁷ CEQR Technical Manual, Sec. 621.

improperly limited its analysis of both direct and indirect displacement, it has - as a formal matter - deemed that any such mitigation is unnecessary.

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

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

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

Throughout these comments, we have frequently made reference to the standards in the *CEQR Technical Manual* - both to identify areas where the City fails to follow the guidelines set forth in the *Manual*, and to pinpoint instances where the City follows processes outlined in the *Manual* that we believe are fundamentally flawed. However, it is important to note that, as explained in the *Manual*, "'CEQR' is New York City's process for implementing the State Environmental Quality Review Act (SEQR), by which agencies of the City of New York review proposed discretionary actions to identify and disclose the potential effects those actions may have on the environment."¹⁰¹ Further, "SEQR permits a local government to promulgate its own procedures *provided they are no less protective of the environment*, public participation, and judicial review *than provided for by the state rules*"¹⁰² (emphasis added), "although procedures more protective of the environment can be adopted (*see*, ECL 8-0113[3][a]). Thus, the propriety of ... [a] determination [regarding the environmental impact of an action] must be judged not only according to the requirements of SEQRA but also according to the

⁹⁸ NY. Env. Cons. L. § 8-0109.

⁹⁹ NY. Env. Cons. L. § 8-0105(6).

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

¹⁰¹ *CEQR Technical Manual* at 1-1.

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

regulations promulgated by the City of New York in CEQR *to the extent those regulations are more protective of the environment*”¹⁰³ (emphasis added).

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

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

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

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

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

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

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

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

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

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

Finally, HUD regulations require the City to contemplate "meaningful public participation" in the conduct of required fair housing analyses.¹¹² Therefore, it would be a violation of the City's AFFH obligations to fail to adequately address fair housing issues raised by the Coalition that show how this rezoning does not affirmatively further fair housing by creating barriers that restrict access to affordable housing for

¹⁰⁵ 42 U.S.C. § 3601.

¹⁰⁶ 42 U.S.C. § 3608(d), (e)(5).

¹⁰⁷ 24 C.F.R. § 5.150.

¹⁰⁸ 42 U.S.C. § 3608(e)(5).

¹⁰⁹ *Id.*

¹¹⁰ 24 C.F.R. § 5.152;

<https://www.nhlp.org/wp-content/uploads/2017/09/AFFH-Rule-Guidebook-2015.pdf> (pp 6); 42

U.S.C. § 3608(d).

¹¹¹ 24 C.F.R. § 5.154.

¹¹² 4 C.F.R. § 5.158.

New York City's most vulnerable populations. To do so prohibits meaningful public discourse prior to the rezoning being approved and violates the FHA and AFFH mandate.

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

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

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

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

The City of New York has refused to assess the risk of primary and secondary displacement and the disparate impact it will have on low-income people of color residing around the proposed rezoning, even though the Coalition requested in its Draft Scope of Work comments that the City specifically examine the potential impacts of the rezoning on people of color. As described in detail in the portion of

¹¹³ *Id.*

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

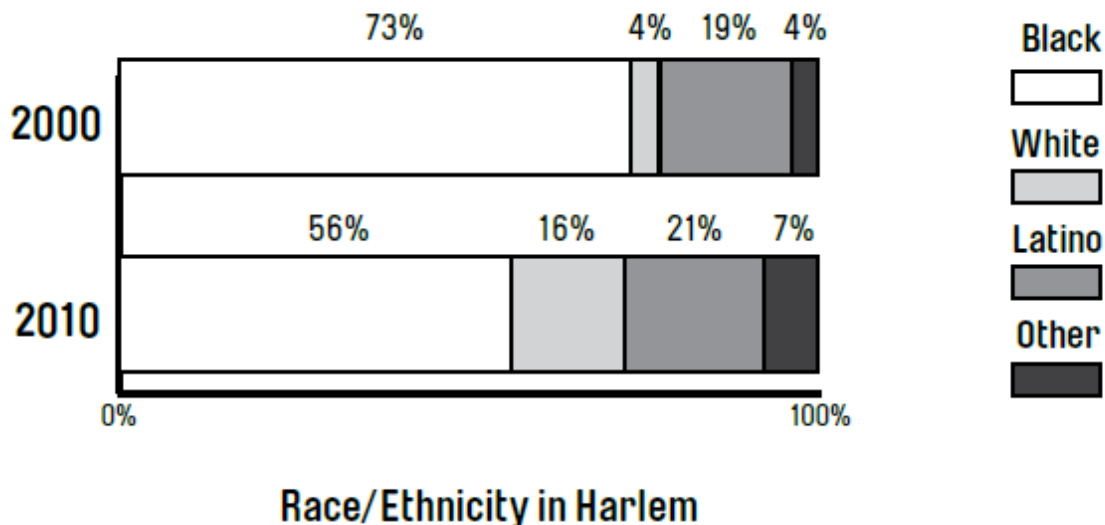
¹¹⁵ *Broadway Triangle*, 2010 N.Y. Misc. LEXIS 2321 (N.Y. Sup. Ct., May 20, 2010).

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

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

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

these comments responsive to the City's analysis of residential displacement, the City has severely underestimated the impacts of displacement on the most vulnerable populations in the study area. We are particularly concerned about the impact of the rezoning on Black and Latino residents of our community given that such residents constitute a substantial majority of the neighborhood today - and past rezonings of neighborhoods such as Williamsburg (rezoned in 2005) and Harlem (rezoned in 2008) resulted in swift and substantial decreases in populations of color.



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

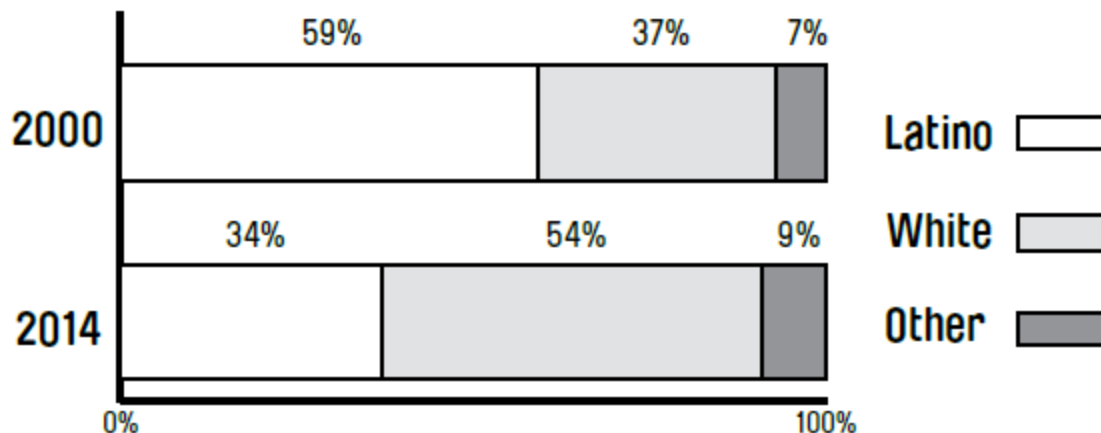
¹¹⁹ Leo Goldberg, "Game of Zones: Neighborhood Rezoning and Uneven Urban Growth in Bloomberg's New York City," Massachusetts Institute of Technology (June 2015) at 71. Online at <https://dspace.mit.edu/handle/1721.1/98935>.

¹²⁰ Id. at 66.

¹²¹ Id. at 67.

¹²² Id. at 68.

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



Race/Ethnicity in South Williamsburg

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

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

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

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

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

¹²⁶ 42 U.S.C. § 3602(k).

¹²⁷ *Id.*

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

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

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

7. Recommendations for the Final Environmental Impact Statement

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

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

B. The City underestimates the risk of business displacement.

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

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

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

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

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

Beyond the impacts of site's projected development on a business, the changes that are brought on by a rezoning can cause other types of direct displacement. In an environment where there is an increased residential population and the land values overall have increased, property owners will start to make new decisions about the rent that they will charge and the types of establishments to which they will seek to provide space. Lower value businesses such as auto repair and manufacturing uses, who already offer a market value per square foot that is just a fraction of (17-25%) what is possible from a fast food restaurant or retail establishment in the area¹³¹ and the majority of whom lease their space,

¹²⁹ Jerome DEIS 3-23

¹³⁰ Ibid 3-24

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

will see their disadvantage dramatically increase. The City should not, as it does in the DEIS, assume that lease terms will protect businesses. Many of the auto businesses in the area are operating in sites that do not have a proper Certificate of Occupancy (due to landlord error, not tenant) and this makes them more vulnerable to displacement, as well as impacts their ability to obtain necessary permits for compliance.¹³² These factors can affect the terms of the lease, and legal and illegal landlord harassment can occur. Direct displacement will occur as a result of changes in land value, even before residential development occurs on a site, and those financial incentives are ignored and unaccounted for in the DEIS.

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

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

- 1) “Conduct a study of the auto sector corridors throughout the five boroughs that assesses the real needs of workers and owners and the unique challenges that they face. ..and fairly value the contributions of the sector to the city as a whole, including the necessary service it provides, the entrepreneurship and employment pathways it creates, and economic contribution.
- 2) Develop a coherent policy that addresses the sector’s current needs, plans for and equips workers and businesses for industry changes, and makes recommendations for citywide land-use policies that address those realities.”¹³³

¹³² Ibid p. 9

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

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

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

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

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

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

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

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

¹³⁴ DEIS Table 3-23

businesses, or if it directly or indirectly displaces residents or workers who form the customer base of existing businesses in the area.”

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

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

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

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

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

The City's rationale for dismissing effects on a specific industry (auto) takes place in the context of having gathered no information about the nature of and needs for that industry. Beyond that, the City dismisses any hardship that the businesses in the Jerome area will experience from direct and indirect displacement by claiming that the businesses can relocate elsewhere.

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

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

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

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

Because of the extensive indirect impacts that are anticipated and outlined in *Under the Hood and Out of Gas*, the City should undertake extensive mitigation measures, in the short and long term. In addition

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

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

to the aforementioned strategies of limiting non-auto uses in areas that are designed to truly protect those businesses and expanding the retention areas, business and worker support should be provided. This should include:

- **Supporting auto businesses with new publicly funded programs**
 - Establishing Amnesty Program for Certificate of Occupancy so businesses can obtain necessary permits and licenses, and provide support for ongoing compliance
 - Forming an auto business “clinic” to assist companies with business management and administration
 - Provide training programs for auto business employees and local residents in auto sector
 - Creating an advertising campaign to promote Jerome Avenue auto businesses, and
- **Establishing a Guaranteed Relocation Program for Jerome Auto Businesses**
 - Assist displaced companies to relocate within the Jerome Avenue retention areas
 - For companies that cannot stay on Jerome Avenue, develop a site that can house a large group of auto businesses *BEFORE* the rezoning action is completed

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

IV. Alternatives

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

In our comments on the DSOW we requested that DCP “analyze multiple alternatives that have the potential to better accomplish the [City’s] stated goals ... To ensure a fair and genuine discussion, [a

variety of] alternatives ... should be analyzed.”¹³⁷ Specifically, we requested that the City develop Alternatives to explore the possibility of:

- Including any proposed retention areas inside the Jerome Avenue special district to enable heightened protection mechanisms, such as a restriction of allowable use groups to minimize competition for industrial and auto related businesses.
- Expanding the area(s) intended for retention to be continuous so as to promote consistent clusters of business activity without introducing conflicting residential uses and heightened market forces.
- Creating additional retention areas where significant numbers of auto businesses would be protected.
- Including more innovative land use proposals designed to strengthen the capacity of the area to generate quality blue collar jobs.
- Rezoning a smaller area / fewer lots, but permitting a greater residential upzoning on those lots. This alternative could potentially achieve the same number of new construction residential units (approximately 4000) without creating as much displacement pressure on existing automotive and residential uses.
- Reducing the total amount of residential upzoning to match the amount of affordable housing the City believes can realistically be created in the area within the next 5-10 years given the limits of the City’s capacity to move projects through the subsidy pipeline and likely disinterest of developers in accepting such subsidies after the local housing market has strengthened.

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

Even if the City ultimately declined to select such an Alternative in lieu of the Proposed Actions, the City’s failure to even identify and evaluate an Alternative more closely aligned with the community’s goals forecloses the possibility of any meaningful discussion about the feasibility and consequences of the community’s ideas. Instead of including an Alternative based on the Coalition’s comments within the realm of possibilities, the City discloses several Alternatives that fail to respond to our comments - the No-Action, Lower Density, and No Unmitigated Significant Adverse Impacts Alternatives - and

¹³⁷ Bronx Coalition DSOW Comments, p. 58

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

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

concludes that none would sufficiently advance the Proposed Actions' goals.¹⁴⁰ We are disappointed at the City's failure to develop Alternatives addressing the community's goals, which casts into doubt the legitimacy of the entire environmental review process. **For the FEIS, we demand that the City develop an Alternative that addresses the Coalition's goals as outlined in these comments.** This is the only way that decision-makers in this process will be able to fully evaluate the City's Proposed Actions as compared to the Coalition's suggested strategies.

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

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

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

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

¹⁴⁰ DEIS p. 20.2

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

¹⁴² Final Scope of Work, p. 61

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

1. Housing

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

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

2. Auto Businesses

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

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

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

¹⁴⁴ DEIS p. 1-27

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

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

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

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

- The Bronx Coalition's *Out of Gas* report, attached as Appendix B, identifies 55 lots¹⁴⁵ that could be removed from the rezoning with the goal of preventing displacement of a greater number of auto-businesses, 93 in total. In addition to retaining auto businesses - a vital source of good-paying jobs for our community - removing these sites from the rezoning would reduce the projected number of units by 486.
- The City's own Lower Density Alternative in the Alternatives chapter of the DEIS considers a rezoning with some lower proposed zoning designations. In this alternative the City considers

¹⁴⁵ Out of gas: maps page 8

Expanded retention zones:

The southernmost zone includes an additional 11 lots

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

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

East Side of Jerome only cluster, 3 lots

Northernmost expanded cluster: 13 lots

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

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

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

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

The Coalition asks that within the FEIS, the City create and consider the adoption of an Alternative that uses similar strategies to achieve a significantly smaller rezoning - a reduction to a total of 2000 new apartments instead of the roughly 4000 that would be generated under the Proposed Actions. We believe that an Alternative could be crafted that would trigger the permanent affordability requirements of the Mandatory Inclusionary Housing program to the greatest extent possible, encourage the continuation of the City's successful strategies of building subsidized housing in our community, limit the risk of secondary displacement triggered by an influx of thousands of market-rate apartments, and preserve more of the auto businesses in our community - thereby mitigating many of the risks we have emphasized throughout these comments. **However, if the City will not heed our call to develop such an Alternative, we urge the Commission to reject both the Proposed Actions and all Alternatives offered by the City in the DEIS, and to vote NO on the rezoning.**

¹⁴⁶ DEIS, p. 20-30

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

V. Mitigation

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

A. Housing

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

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

2. Fewer units, deeper affordability.

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

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

B. Good Jobs & Local Hire

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

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

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

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

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

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

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

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

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

C. Commercial Tenant Anti-Displacement

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

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

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

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

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

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

Authors of These Comments

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

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

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

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

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

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

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

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