

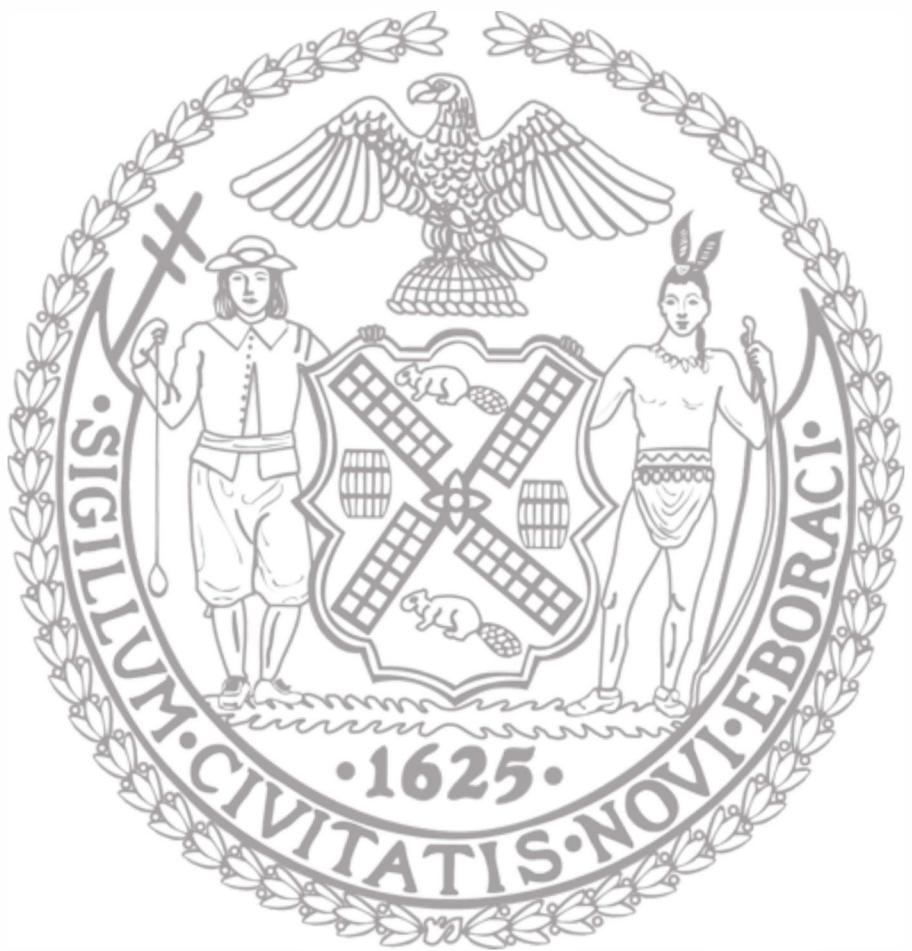


PUBLIC ADVOCATE FOR THE CITY OF NEW YORK



JUNE 16, 2021

**INTRO 1572-2019: WHY NEW YORK
CITY NEEDS A RACIAL DISPARITY
REPORT TO BE PART OF THE LAND
REZONING PROCESS**



**Intro 1572–2019: Why New York City Needs a Racial Equity Report to be Part of
the Land Rezoning Process**

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EXECUTIVE SUMMARY

In 1968, the Fair Housing Act was passed to protect people from discrimination on the basis of race, color, national origin, religion, sex, familial status, and disability. If a person is renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities, they are protected from discrimination because of this federal law. However, even with this piece of legislation in place, housing inequality remains just as prevalent today as it was 50 years ago – especially in New York City.

Land rezoning in our City has made it incredibly difficult for many New Yorkers to find – and keep their – homes. Most of the time, the land zoning process is initiated without the input of community residents, and it is conducted without consideration for how it will impact a neighborhood's racial and ethnic composition. This problem, in part, has led to mass displacement, gentrification, and exclusion across our City. Given the gravity of this issue, housing advocates have been calling for a racial equity report to be part of the land rezoning process. In May of 2019, Introduction 1572 was brought to the New York City Council to address this issue. Introduction 1572 would require a racial equity report for certain land use applications. The report must include, but is not limited to, an analysis of the existing demographic, social, economic, and housing conditions, including median household income, housing cost burden, labor force participation, and educational attainment, among many other factors.

The purpose of Int. 1572 is to generate impact statements to inform policymakers and communities at-large of the racial and ethnic disparities in social, economic, and housing conditions and the potential disparities in the benefits, burdens, displacement risks, and other equity considerations related to land use actions. Passing this bill would put us on the path to a more fair New York where everyone can afford to live, regardless of race, ethnicity, or income level.

Land Zoning

The land zoning process has a significant role in shaping New York City's housing system. Property zoning is governed by City laws and divides land into different areas, or "zones." The land rezoning process heavily depends on the New York City Zoning Resolution. Established in 1916, the Zoning Resolution created requirements for many buildings and how they were used.¹ Bulk regulations refer to heights and setbacks, whereas use regulations include the designation

¹ New York City Zoning, and the Variance and Rezoning Process.

<http://riker.com/publications/new-york-city-zoning-and-the-variance-and-rezoning-process>

of districts. Zoning designations include residential districts, commercial districts, manufacturing districts, special area rules, and special purpose districts.²

The Zoning Resolution includes 14 articles, 10 appendices, and 126 Zoning Maps.³ The Department of City Planning (DCP) and the City Planning Commission (CPC) are authorized to use the study areas of the city to decide on the proper bulks and uses. If a property owner believes the bulk or use of the property is inconsistent with the surrounding zoning, they can apply for a rezoning of their area to change the zoning map and develop the property in a way that correlates with the uses and the bulk of the current neighborhood. The rezoning process can either be started by an application from the DCP or by a private property owner. Regardless of which party submits the application, it has to go through the Uniform Land Use Review Procedure, or ULURP. The application has to include a description of the proposed project, architectural plans, and an environmental review of the impact of the development. The impact analysis on the surrounding community considers issues such as land use, zoning and public policy, socioeconomic conditions, community facilities and services, open space, shadows, historic resources, neighborhood character, hazardous materials, infrastructure, solid waste and sanitation, energy, traffic and parking, transit and pedestrians, air quality, noise, construction impacts, and public health.⁴ One issue that the environmental impact analysis does not consider, however, is race and ethnicity.

The Uniform Land Use Review Procedure (ULURP) Process

After the rezoning application is complete, it must be submitted to DCP. Once DCP receives the application materials and certifies the application as complete, the Department forwards the application and documents within 5 days to the relevant community board, borough president's office, and the New York City Council. The application will also be sent to the borough board if the project affects more than one community board.⁵ Over the course of the next 60 days, the community board notifies the public, holds a public hearing, and submits recommendations to the CPC, the borough president, and the borough board if necessary. Over the following 30 days, the borough president either submits a recommendation to CPC, or waives the right to do so. If necessary, the borough board may hold a public hearing and submit recommendation to CPC or waive the right to do so. Throughout the next 60 days, the CPC holds a public hearing; approves, modifies, or disapproves the application; and files approvals and approvals with modifications to the New York City Council.

² Zoning Handbook. <https://www1.nyc.gov/site/planning/zoning/zh-2016.page>

³ Zoning Resolution. <https://zr.planning.nyc.gov/>

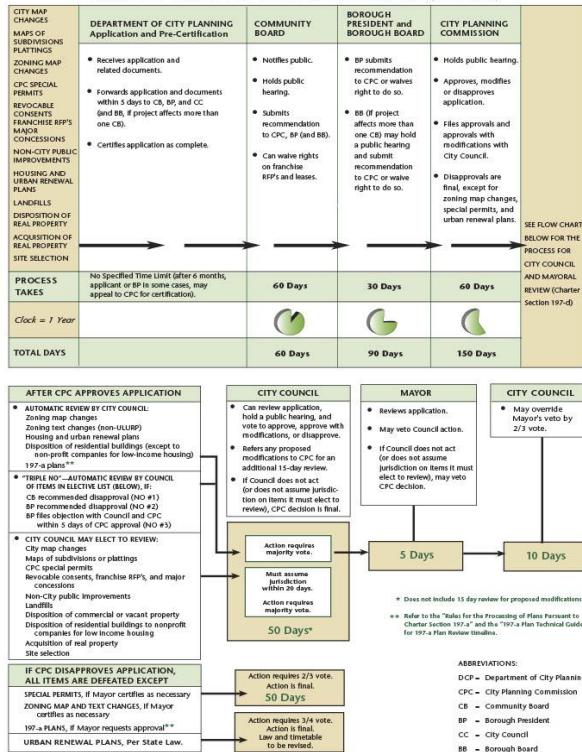
⁴ New York City Zoning, and the Variance and Rezoning Process.

<http://riker.com/publications/new-york-city-zoning-and-the-variance-and-rezoning-process>

⁵ Uniform Land Use Review Procedure (ULURP).

<https://www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/lur.pdf>

Uniform Land Use Review Procedure (ULURP)



The final step in the process is the review by the City Council. The City Council has the ability to review an application, hold a public hearing, as well as vote to approve, approve with modifications, or disapprove the application. If there are any proposed modifications by the Council, they would be referred to the CPC for an additional 15-day review. In the event that the Council does not take any of the aforementioned actions, nor assume jurisdiction on the items that it must elect to review, then the CPC decision would be final.⁶ The City Council review process takes 50 days. After the City Council review process, the Mayor reviews the application. The Mayor has the ability to veto Council action, and if the Council had decided not to assume jurisdiction on items it must review, the Mayor could veto the CPC decision. The Mayoral review process takes 5 days. The City Council could override a Mayoral veto by two-thirds majority vote, and this process would take place within 10 days after the Mayoral review process.

The Importance of Race and Ethnicity

As previously mentioned, the environmental impact analysis does not include a projected impact on the racial and ethnic demographics of the area. The lack of consideration for this particular component fails to account for potential displacement, changes in demographics, and

⁶ Uniform Land Use Review Procedure (ULURP).

<https://www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/lur.pdf>

health disparities due to exposure to environmental hazards in New York City. Although zoning laws can be used as a tool to create more affordable housing, it can also have the potential to affect speculation, increase rents, and increase evictions. .

Every major land use action, including City-initiated rezonings, must go through the City Environmental Quality Review (CEQR) process.⁷ This process leads to an environmental analysis, most often in the form of an Environmental Impact Statement (EIS). CEQR identifies the potential detrimental effects on the environment of the proposed actions, assesses their significance, and proposes measures to eliminate or mitigate significant impacts.⁸ These impacts can be a reduction in air quality, increase in greenhouse gas emissions, or a change in the type or volume of vehicle traffic.⁹ The word “race” is completely absent from the CEQR specifications, meaning the analysis dismisses the potential disparate environmental impacts on communities of color. Moreover, while the assessment of socioeconomic impacts may be included in CEQR, it is not mandatory. Even when socioeconomic impacts are considered, the measures outlined in the CEQR Technical Manual are inadequate to fully evaluate the greater impact of a land use decision.¹⁰ Race is a key indicator that determines if people have access to vital assets, such as housing, employment, and a quality education. Failing to evaluate how a project impacts these inequities perpetuates structural inequality and discrimination.

The CEQR process also fails to account for the potential of displacement in communities with existing projects or those where gentrification has overwhelmingly changed the racial makeup of the community. The Technical Manual affirms that an indirect residential displacement outcome is not possible in most neighborhoods. If a neighborhood is already experiencing widespread rent increases and market rate development, then additional analysis is not necessary.¹¹ Disregarding this factor is not only irresponsible, but it also violates the right to housing for every New Yorker. According to the Manual, an area that is not experiencing this trend is also not in need of further analysis. A more thorough review is only required if rents are increasing in a small part of the project area, which could lead to a very important finding. Another issue with the CEQR process is that it leaves authors of Environmental Impact Statements with wide discretion in determining a finding of significant impact. The Manual provides a threshold for determining significance, which is if the identified vulnerable population exceeds 5% of the study area, then a significant impact may occur. The word “may”

⁷ NYC Planning. <https://www1.nyc.gov/site/planning/applicants/environmental-review-process.page>

⁸ Ibid.

⁹ Mayor’s Office of Environmental Coordination.

<https://www1.nyc.gov/site/oec/environmental-quality-review/ceqr-faqs-general.page>

¹⁰ Pratt Center for Community Development. *Flawed Findings Part I: How NYC’s approach to measuring residential displacement risk fails communities.*

https://prattcenter.net/uploads/200002/1587837747778/Flawed_Findings_Full_Report_FINAL.pdf

¹¹ Ibid.

allows EIS analysts to subjectively claim that displacement will not be significant even if this threshold is met.¹²

In New York City, displacement disproportionately affects low-income individuals and people of color. One can look to the nearly 200,000 properties the City rezoned between 2003 and 2007 for anecdotal examples of displacement.¹³ The Park Slope/4th Avenue rezoning in 2003 and the Greenpoint/Williamsburg waterfront rezoning in 2005 displaced thousands of Black and Latinx residents, despite the neighborhoods' population growth.¹⁴ Between 2000 and 2015, Greenpoint and Williamsburg saw a decrease of nearly 15,000 Latinx residents, even though there was a population increase of 20,000 during the same period.¹⁵ In Park Slope, there was a decrease of about 5,000 Black and Latinx residents between 2000 and 2013, despite the population growth of more than 6,000 during the same period.¹⁶ To anticipate, address, or effectively discern the impact a rezoning may have on displacement, we need to start within the CEQR procedure because it is the part of the rezoning process that focuses on the impact on the environment. Moreover, the CEQR Technical Manual is the City's only official guidance on measuring residential displacement.¹⁷ Communities across the City have been very vocal in expressing their concerns regarding rising housing costs and the affordability of staying in their neighborhoods. There has been public discourse on these issues, which has led to the formation of coalitions of community groups, residents, business owners, and others in response to – or sometimes in apprehension of – City-initiated rezonings. Non-profit organizations and think tanks have also raised concerns about increased displacement pressure in low-income, and Black and Brown communities. In 2018, the Regional Planning Association called for an overhaul of the City's land use review process, specifically with the way rezoning actions exclude community input and allow projects with negative impacts to proceed.¹⁸ The exclusion of community input has caused coalitions of residents and advocacy organizations to become actively involved in rezonings, as was the case in East Harlem, the Bedford Union Armory, and Inwood.

¹² Ibid.

¹³ Churches United For Fair Housing. *Zoning & Racialized Displacement in NYC*.
<https://static1.squarespace.com/static/5dc0429de5717c7ff1caeado0/t/5de6c0e683bec649d37ab0cc/1575403753814/Zoning+and+Racialized+Displacement+in+NYC.pdf>

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Pratt Center for Community Development. *Flawed Findings Part I: How NYC's approach to measuring residential displacement risk fails communities*.

https://prattcenter.net/uploads/200002/1587837747778/Flawed_Findings_Full_Report_FINAL.pdf

¹⁸ Regional Plan Association. *Inclusive City: Strategies to achieve more equitable and predictable land use in New York City*. <https://rpa.org/uploads/pdfs/Inclusive-City-NYC.pdf>

Land Rezoning Applications: Locations, Trends, Demographics

Some of the most common zoning applications that tend to be included in Environmental Impact Statements are Zoning Amendment to Zoning Resolution (ZR), Zoning Map Change (ZM), and Special Permit (ZS). In looking at the CPC reports between August 2010 and August 2020, it is clear that there is a trend in the type of zoning applications submitted and the areas for which they pertain to. Below are the total number of zoning applications submitted for Zoning Authorization Under Zoning Resolution, Certification Under Zoning Resolution, Zoning Map Changes, Zoning Amendment to Zoning Resolution, and Special Permit during this period, disaggregated by borough.

(ZA) - Authorization Under Zoning Resolution: 21 Applications

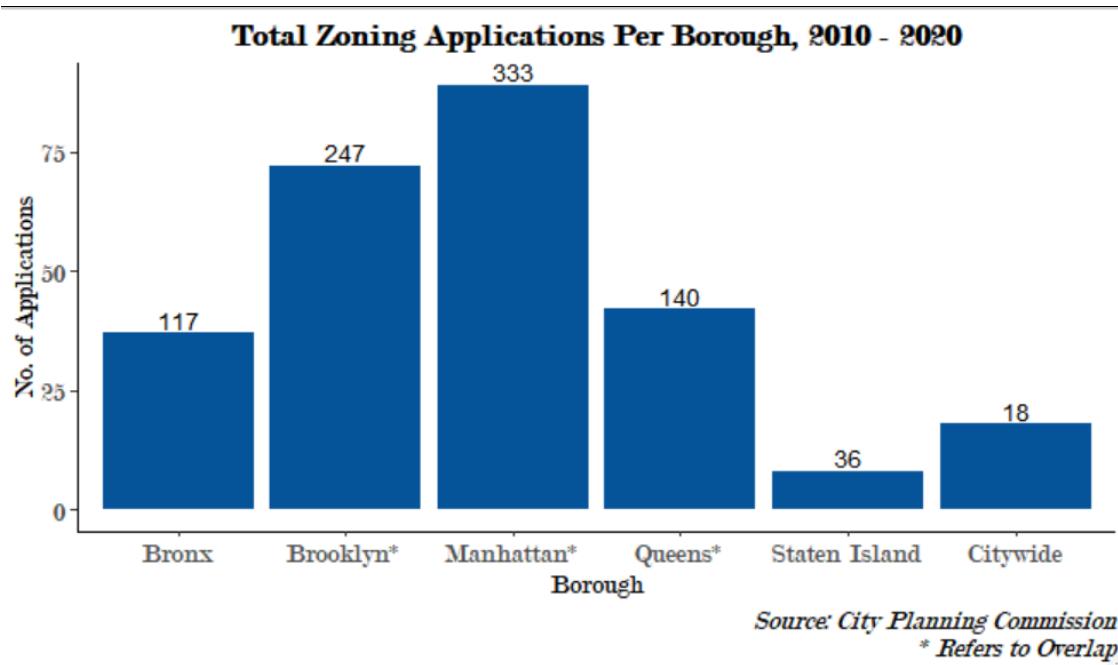
(ZC) - (Admin) Certification Under Zoning Resolution: 1 Application

*Note: There was only one ZC application, located in Manhattan's Community District 7.

(ZM) - Zoning Map Change: 289 Applications

(ZR) - Zoning Amendment to Zoning Resolution: 265 Applications

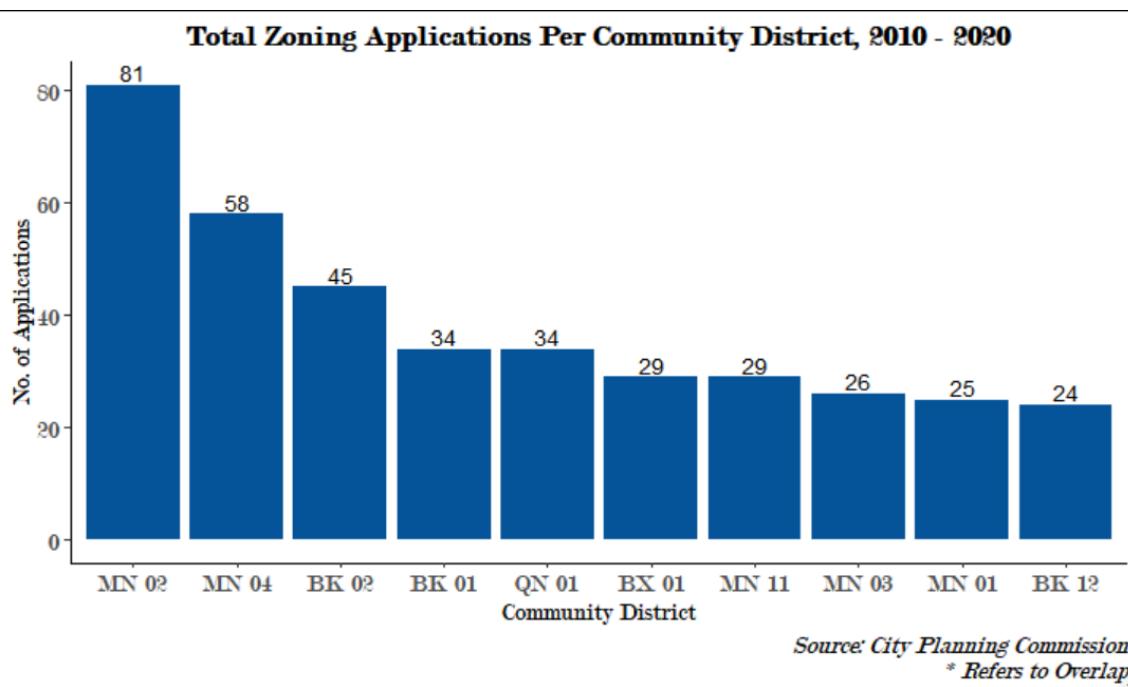
(ZS) - Special Permit: 313 Applications



When a zoning application is submitted, there is not only a corresponding borough, but a corresponding community district as well. Each of the City's 59 community districts is represented by a community board. Community districts range in size from less than 900 acres

to around 15,000 acres, with populations that range from about 50,000 residents to more than 200,000.¹⁹

Since there are many community districts reflected in the data above, below is a breakdown of the community districts with the most zoning applications in the five aforementioned categories during the period of August 2010 to August 2020.



Both charts show that there has been a significant amount of rezoning in Manhattan and Brooklyn over the past 10 years. During the same time period, many neighborhoods in both of those boroughs experienced gentrification. Manhattan Community District 2, which has the most zoning applications in the five previously mentioned categories, comprises Greenwich Village, Hudson Square, Little Italy, NoHo, SoHo, South Village, and West Village. These neighborhoods have become either or both super gentrified or enclaves of exclusion.²⁰

Long Island City

While a number of Manhattan and Brooklyn neighborhoods have become hotspots for gentrification, Queens has also started to see its significant change in the demographics that comprise a number of their community districts. One of the community districts that falls into

¹⁹ NYC Planning. *Community District Profiles*. <https://communityprofiles.planning.nyc.gov/>

²⁰ Urban Displacement Project. *Mapping Displacement and Gentrification in the New York Metropolitan Area*. <https://www.urbandisplacement.org/maps/ny>

the top 10 districts with the highest number of zoning applications in the five categories is Queens Community District 1 (QN 01). Community District 1 encompasses the neighborhoods of Astoria, Long Island City, Queensbridge, Steinway, and Ravenswood. In examining one of those neighborhoods in particular, Long Island City, it is evident that it has experienced significant transformation over the past decade. Some reports label the area as the fastest growing neighborhood in the country.²¹ Due to its proximity to railroads and waterways, and the existence of Degnon Terminal's modern loft buildings, Long Island City was at the center of the nation's commercial core during the 20th century in manufacturing and services.²² This ingenuity laid the foundation for a renovation that started in the early 2000s.²³ The luxury apartments that were starting to be built, the waterfront park that was created, and the new \$40 million library²⁴ are often cited anecdotally as major examples that contributed to the area's gentrification.²⁵ Perhaps the most significant example of the area's gentrification is the renovation of the legendary 5 Pointz site, a former graffiti haven that is now being turned into a complex with luxury apartments. In May of 2019, developers filed an application with the CPC to build 1,100 apartments, extending the project's high-rise towers by one floor.²⁶ Queens Community Board 2 wrote a letter to the CPC urging the panel to deny the change. However, in a few months, Community Board 2 changed its mind and supported the application with a 23-to-5 vote in favor of the proposal, which now includes 5,000 square feet for a library in the complex.²⁷ Contrary to the Industry City rezoning in Sunset Park, the developers at the 5 Pointz site listened to the wants and needs of the community and modified its application, which demonstrates what should be the standard for all rezoning applications to follow to meet community needs.

In 2001, Long Island City saw an increase in rezoning applications which sought to change inland areas, such as Hunters Point, Queens Plaza and Dutch Kills, from manufacturing to mixed use,

²¹ Balint, Nadia. "Top U.S. Neighborhoods that Got the Most Apartments After the Recession." https://www.rentcafe.com/blog/rental-market/real-estate-news/top-20-neighborhoods-with-most-apartments-post-recession/?_ct=z2bgn16q3tq

²² Scherling, Laura. "A Tale of Long Island City: Between Industrialization, Innovation, and Gentrification." <https://designobserver.com/feature/a-tale-of-long-island-city-between-industrialization-innovation-and-gentrification/40028>

²³ Savitch-Lew, Abigail. "Past Rezonings Shape Long Island City's Feelings About De Blasio Plan." <https://citylimits.org/2016/06/09/past-rezonings-shape-long-island-citys-feelings-about-de-blasio-plan/>

²⁴ Gannon, Devin. "See inside Long Island City's new public library designed by Steven Holl Architects." <https://www.6sqft.com/see-inside-long-island-citys-new-public-library-designed-by-steven-holl-architects/>

²⁵ LoBrutto, Ela. "CityViews: We Have to Talk About Gentrification in Long Island City." <https://citylimits.org/2017/08/25/cityviews-we-have-to-talk-about-gentrification-in-long-island-city/>

²⁶ Spivack, Caroline. "5 Pointz redevelopment expansion gets unexpected community board support." <https://ny.curbed.com/2019/10/4/20898454/queens-5pointz-development-community-board-long-island-city>

²⁷ Ibid.

leading to a combination of commercial and residential development.²⁸ The DCP predicted at the time that the rezoning of Queens Plaza would lead to the creation of 300 housing units, 5 million square feet of office space and some new retail and institutional spaces.²⁹ These projections led the agency to foresee that the neighborhood would see a large influx of workers and a small increase in residents.³⁰ Yet, its EIS concluded that the rezoning would not necessitate new police facilities, firehouses or schools, but instead would impact parks, traffic, and transit.³¹ However, in contrast to the DCP's projections, the rezoning spurred the development of 10,100 housing units, 1.5 million square feet of office space, and 600 hotel rooms.³² And as one could imagine, the residential population more than doubled between 2009 and 2014.³³ The population increase actually proved to be detrimental to the residents already living in the area. Members of Community Boards 1 and 2 voiced concerns that the population growth created a need for new FDNY and health facilities, and lamented the overcrowding in trains and schools.³⁴ By 2015, LIC's school district became the 9th most overcrowded of the City's 32 school districts, according to the Independent Budgeting Office.³⁵

Long Island City is now filled with luxury apartments, some of which have rents starting at \$2,655 for a studio,³⁶ which is unaffordable for many New Yorkers. This rent cost would require an individual to have an income of over \$6,000 a month in order to be able to spend less than 50% of their income on rent. Rezoning also appears to have affected the racial and ethnic makeup of the neighborhood. According to a thesis for Columbia University's Urban Planning master's program, the white population in the rezoned areas increased between 2000 and 2013, whereas the Asian population decreased in both the rezoned areas and non-rezoned areas during the same period.³⁷

Bedford-Stuyvesant

One of the neighborhoods that does not fall into one of the community districts with the highest number of applications, but is nevertheless experiencing rapid displacement at an accelerated rate is Bedford-Stuyvesant. Bedford-Stuyvesant is one of the most gentrified

²⁸ Savitch-Lew, Abigail. "Past Rezonings Shape Long Island City's Feelings About De Blasio Plan." <https://citylimits.org/2016/06/09/past-rezonings-shape-long-island-city-feelings-about-de-blasio-plan/>

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Lo Brutto, Ela. "CityViews: We Have to Talk About Gentrification in Long Island City."

<https://citylimits.org/2017/08/25/cityviews-we-have-to-talk-about-gentrification-in-long-island-city/>

³⁷ Ellmore, Sarah. *Transforming Long Island City: Examining the Impacts of Rezoning*.

<https://academiccommons.columbia.edu/doi/10.7916/D8Q81CKV>

neighborhoods in New York City.³⁸ The neighborhood lies in Brooklyn Community District 3 (BK 03). Between August of 2010 and August of 2020, Community District 3 had 23 rezoning applications within its area.³⁹ None of those rezoning applications included racial equity reports.⁴⁰ In addition to the number of rezonings that took place during this ten-year period, there has been an emergence of new businesses in the area. Between 2000 and 2015, Bed-Stuy was among the top 10 neighborhoods with the fastest business growth in the City, going from having a total of 857 businesses to 1,421 businesses.⁴¹ Bed-Stuy also experienced a rapid increase in homelessness with 20,000 entries into its homeless shelters in 2019, leading the neighborhood to rank eighth in the City for its number of homeless shelter admissions.⁴² It is evident that while the number of businesses increased in the area, the issue of housing affordability grew as well. There is a correlation between economic change, rent increase, and homelessness in this neighborhood, and it is widely believed that land rezoning has at least to some degree played a role. The land use actions being implemented without a racial impact study, neglected the socioeconomic impact on existing residents and the displacement that would come.

Land Use and the Perpetuation of Redlining

The absence of consideration for race and ethnicity is not only apparent in housing affordability, but also in how land acreage is dispersed. Throughout the tri-state region, white municipalities have been able to self-segregate through various methods, including the exclusionary zoning rules that permit only residential uses of large, single-family detached houses.⁴³ The Regional Planning Association's analysis of the housing stock for each of the 782 municipalities in the tri-state region that have autonomy over their land use indicates the share of single-family detached units are built in areas where spatial segregation by race, ethnicity, and income is very evident. In municipalities where more than 90% of the housing stock comes in the form of single-family detached units, the percentage of the white population is 86%, with Black individuals representing less than 2% of the population and Latinx individuals representing less than 6% of the population.⁴⁴ The Regional Planning Association's findings suggest there are likely to be more White residents in single-family detached houses, whereas there are likely to be more Black and Latinx residents in multi-family buildings.⁴⁵ Interestingly enough, in

³⁸ Szekely, Balazs. "Downtown LA's 90014 Heads the List of Fastest-Gentrifying ZIPs since the Turn of the Millennium." <https://www.rentcafe.com/blog/rental-market/real-estate-news/top-20-gentrified-zip-codes/>

³⁹ NYC Planning. *City Planning Commission Reports*. <http://a030-cpc.nyc.gov/html/cpc/index.aspx>

⁴⁰ Ibid.

⁴¹ United States Census Bureau. "ZIP Code Business Patterns." 2000-2015. *Ten NYC Neighborhoods With the fastest Business Growth*. <https://datawrapper.dwcdn.net/Qqpr1/1/>

⁴² Troutman, Matt. "Bed-Stuy Among Hardest Hit By City 'Homelessness Crisis': Data."

<https://patch.com/new-york/bed-stuy/bed-stuy-among-hardest-hit-city-homelessness-crisis-data>

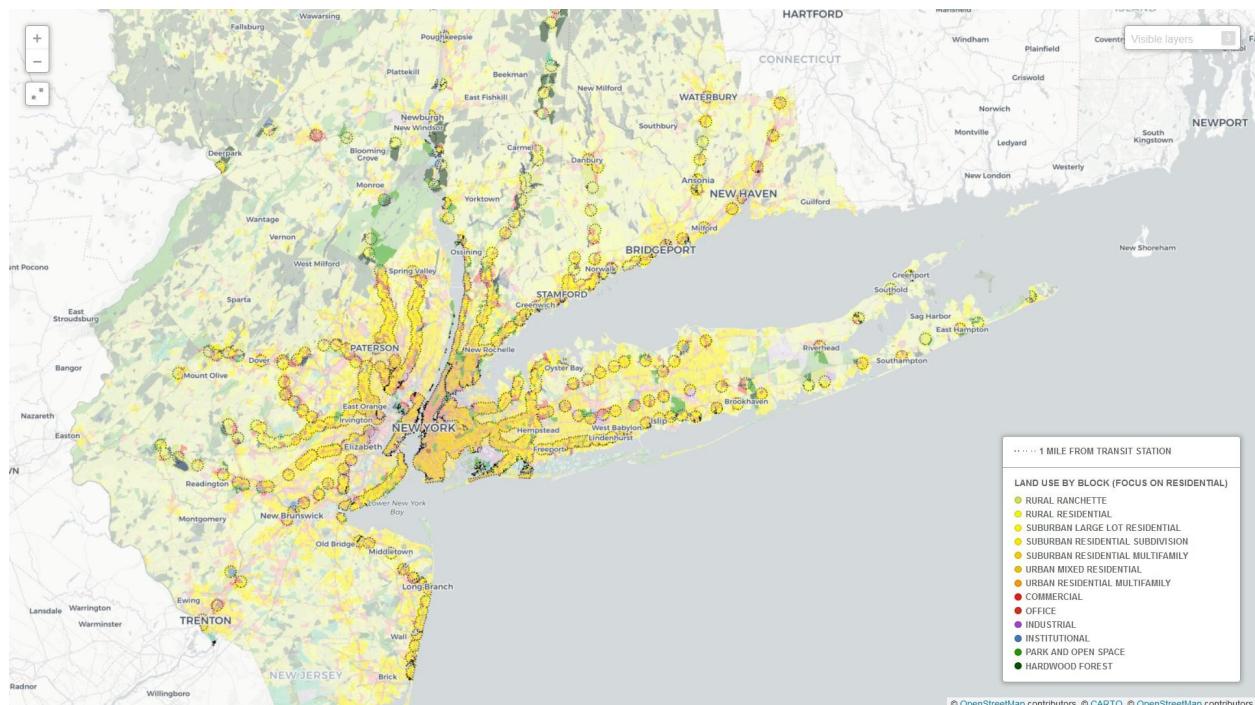
⁴³ Regional Plan Association. *Be My Neighbor*. <https://rpa.org/work/reports/be-my-neighbor>

⁴⁴ Ibid.

⁴⁵ Ibid.

residential areas within one mile of a transit station, the single-detached houses cover more residential land than the multi-family ones, even those that account for a lower percentage of housing stock.⁴⁶ Single-family houses only account for about 40% of the housing stock in these areas, and yet they cover over 93% of residential land.⁴⁷ Multi-family buildings, however, account for 60% of the housing stock in these areas, but only cover about 6% of residential acreage.⁴⁸

Below is a map of residential land use across the tri-state region by block, provided by a report from the Regional Planning Association. Areas outlined in a dotted line are one mile from a transit station.



The fact that disparities in land distribution have been a driver in segregation underlines the need for a racial equity report to be part of any rezoning application. It is our City's duty to ensure that no individual of more color or from a lower income bracket is being displaced or excluded from an area because of discriminatory zoning rules.

In addition to exclusionary zoning rules, income levels have also played a role in hindering many New Yorkers from home ownership. The Citizens Budget Commission released a report before the COVID-19 pandemic that found 44% of all New York City households are rent-burdened, and over half of these households are severely rent-burdened, meaning they pay more than 30%

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

and 50% of their income toward rent, respectively.⁴⁹ To make matters worse, 91% of these severely rent-burdened households are low-income New Yorkers.⁵⁰ This data reinforces a fact that we already know – New York City’s housing stock is becoming increasingly unaffordable.. Income levels are not changing at the same pace as housing costs, which underscores the need to ensure that our residents are able to remain in their homes and not be displaced, and have the ability to afford to move to another part of the City if they choose to without having to worry about affordability.

Case Studies: East Harlem, Bedford Union Armory, Inwood

Examples of coalition-based responses to a land use action include those of the East Harlem and Bedford Union Armory rezoning projects. After the City Council passed the East Harlem rezoning project in November of 2017,⁵¹ The Legal Aid Society took legal action, focused on the ways the review of these proposals contribute to indirect displacement.⁵² The judge dismissed the lawsuit, asserting that the City satisfied its CEQR obligations. However, the lawsuit demonstrates the growing concern and frustration with how displacement is, or rather is not, being addressed by the City.

The same month of the City Council passage, two Brooklyn residents living near the Bedford Union armory filed a lawsuit alleging that the City had not accurately assessed how many residents could be at risk of displacement once the structure is converted into a mixed income apartment complex with a recreation center and office space for nonprofits. Their argument specifically focused on the fact that it was wrong for the City to omit rent-stabilized apartment residents when calculating the number of people who may be vulnerable.⁵³ In January of the following year, two residents in East Harlem echoed the same concerns regarding their neighborhood’s rezoning project, criticizing the City for claiming it did not need to study the possibility of displacement because East Harlem is already experiencing gentrification.⁵⁴ The State Supreme Court Justice who ruled in the cases wrote in her decision, “This Court’s role, in turn, is not to question the way in which the City, entrusted with these projects, draws the balance. Its role is only to examine whether the lead agency, on behalf of the City, considered all

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Savitch-Lew, Abigail.

<https://citylimits.org/2018/03/19/4-months-after-rezoning-east-harlem-stakeholders-remain-vigilant/>

⁵² Pratt Center for Community Development. *Flawed Findings Part I: How NYC’s approach to measuring residential displacement risk fails communities.*

https://prattcenter.net/uploads/200002/1587837747778/Flawed_Findings_Full_Report_FINAL.pdf

⁵³ Trangle, Sarina. “Court ruled against tenants challenging the city’s methods for studying rezonings.”

<https://www.amny.com/real-estate/bedford-armory-zoning-lawsuit-1.19789279/>

⁵⁴ Ibid.

relevant areas of environmental concern and examined them rationally.”⁵⁵ While the City and State judicial system’s responsibility is not to change the way the City studies rezonings, in examining whether the agency considered “all relevant areas,” it is clear that City has continuously failed to adequately study the socioeconomic factor of rezoning applications, and has failed to even consider studying the extremely relevant areas of race and ethnicity.

Contrary to the outcome in the lawsuits in reference to the East Harlem and Bedford Union Armory rezoning projects, the Inwood rezoning project was a case where the judges ruled in favor of community advocates. The Inwood rezoning project, brought through the City Council in the form of Resolution 0504-2018 and Resolution 0505-2018, was approved in August of 2018. The rezoning was expected to bring residential and commercial development across 10th Avenue going east toward the Harlem River, and apply contextual zoning to several residential areas west of 10th Avenue.⁵⁶ The plan cost an estimated \$500 million and was expected to bring 2,600 new affordable housing units as part of the City’s Mandatory Inclusionary Housing (MIH) program, as well as preserve another 2,500 existing affordable homes. The project also included a plan to replace the Inwood library with a new residential building that would be above the new library. Community groups in the area, such as a coalition of advocates known as Northern Manhattan is Not for Sale, held several protests against the rezoning plan before it was approved. After the plan was passed by the City Council, the group took legal action. The coalition, along with individual business owners and residents sued to annul the rezoning plan, arguing the City’s environmental review process did not examine how the rezoning would affect the demographics, residential displacement, women-and-minority-owned businesses, emergency response times, and speculative real-estate activity.⁵⁷ In December of 2019, in the case of *Northern Manhattan Is Not For Sale v. City of New York*, the judge ruled to overturn the Council’s resolutions approving the rezoning of Inwood in Manhattan.⁵⁸ In the case, Northern Manhattan Is Not For Sale and related petitioners sought judicial review of the rezoning. They argued that the City failed to look at:

- **The racial impact of rezoning and residential displacement;**
- The impact of rezoning on preferential rents and on fostering or increasing residential displacement;
- The impact of the rezoning on minority and women-owned businesses;
- The deviation between predictions of the impact of prior rezoning and actual results;
- The social impact of the loss of the community’s library;

⁵⁵ Ibid.

⁵⁶ Kully, Sadef Ali. “Appeals Court Sides with City Hall in Dispute Over Inwood Rezoning.”

<https://citylimits.org/2020/07/23/appeals-court-sides-with-city-hall-in-dispute-over-inwood-rezoning/>

⁵⁷ Ibid.

⁵⁸ Supreme Court of the State of New York.

<https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=ohnOnriTnXSFkH80Bx1KQ==>

- The impact caused by the rezoning on emergency response times and the response times of first responders;
- The cumulative impacts of the rezoning and other major land use events impacting the community; and
- The speculative purchases of residential buildings in Inwood preceding and coincident to the rezoning.

As one can see from the aforementioned information, Northern Manhattan is Not For Sale argued the City failed to assess the racial impact of rezoning and residential displacement, further demonstrating a clear need for a racial analysis to be included in the CEQR process.

The City argued CEQRA/SEQRA does not require them to evaluate every possible impact, and by following the review of the Technical Manual, they acted in compliance. The judge rejected the argument, stating the Manuals are not rules or regulations requiring strict compliance, but rather guidelines to assist in forming the “discretionary agency decision.” The judge essentially ruled the manuals are floors, not ceilings. She stated: “While it is accurate that [the] respondent is not called to identify or address every conceivable environmental impact, the public review process exists to allow the residents of the community, who will ultimately reap the benefits and/or consequences of the proposal, to have meaningful involvement in the process and provide the agency with feedback regarding important issues to be reviewed in order to determine, what if any, environmental impact implementation of the proposed plan will have.”⁵⁹ The respondent in this statement is the City. Once this ruling took place, the Council ULURP resolutions authorizing the rezoning were annulled and the matter was remanded to the Office of the Deputy Mayor for Housing to study the eight aforementioned issues.

The City appealed the court’s decision. In June of 2020, the City’s Legal department and an attorney for the coalition went before the Appellate Division to dispute the Administration’s appeal of the December ruling from the lower court.⁶⁰ When one of the five justices listening to the appeal argument said that the City’s analysis failed to break down the information to explore the impact on racial and ethnic groups and this was cause for concern, the Administration’s attorney claimed that the EIS addressed the closely related issue of residential displacement. It proposed that there would be no significant adverse residential displacement of low-income residents in the rezoning because the plan would have added 4,000 housing units, a quarter of which would be permanently affordable housing, to the area. He contended that once the determination was made there was not going to be an adverse displacement

⁵⁹ Ibid.

⁶⁰ Kully, Sadef Ali. “Court Cases in Inwood and Flushing Test Mayor’s Power Over Development.” <https://citylimits.org/2020/06/15/court-cases-in-inwood-and-flushing-test-mayors-power-over-development/>

effect for residential use, it did not make sense for the City to go further and do a racial impact analysis. The attorney for the coalition countered this conclusion, stating that the City had refused to meet the community's demand for an EIS that included a racial impact study component as part of the larger dialogue on racism. He also explained that the City marketed the rezoning plan to Inwood residents under the pretense of affordable housing, when in reality those affordable housing units would not meet the income levels of the current Inwood residents.⁶¹

Normally, an Appellate Division ruling takes several months. Yet, the ruling for this appeal came in less than two months, with the Division ruling in favor of the City, thereby allowing the Inwood rezoning plan to go forward.⁶² The Justices cited the City's decision was not contrary to the law nor unsupported by evidence, and that it conducted the required evaluation of all the issues mandated by law, but did not have to analyze every sub-issue. What the Justices failed to see was race and ethnicity should not be considered a "sub-issue," but rather a key indicator to be considered in rezoning applications. The coalition decided to appeal this decision and tried to take the case before the New York Court of Appeals. However, in late November of 2020, the Court of Appeals announced it would not hear an appeal of the Supreme Court ruling that allowed the rezoning to move forward, without issuing an explanation for refusing to hear the appeal.⁶³ The co-chair of Inwood Legal Action, which sued the City on behalf of Northern Manhattan is Not for Sale, acknowledged this lawsuit was finished, but explained that ILA was working to develop a federal lawsuit in collaboration with other rezoned neighborhoods, citing that the City violated the Fair Housing Act by pushing for rezonings without considering the displacement effects on people of color.⁶⁴

Sunset Park

One rezoning plan that has recently gone through the ULURP process is the Sunset Park rezoning. The project area includes Industry City, which is approximately 30 acres of existing buildings owned and operated by the applicant, in addition to adjacent properties that the applicant plans to acquire.⁶⁵ The area consists of warehouse structures and other buildings contained in two primary clusters, known as the Finger Buildings and the 39th Street Buildings.⁶⁶ The Finger Buildings, which run from 32nd Street to 37th Street and is situated between 2nd

⁶¹ Ibid.

⁶² Kully, Sadef Ali. "Appeals Court Sides with City Hall in Dispute Over Inwood Rezoning."

<https://citylimits.org/2020/07/23/appeals-court-sides-with-city-hall-in-dispute-over-inwood-rezoning/>

⁶³ McQueen, Gregg. "We took it as far as we could take it."

<https://www.manhattantimesnews.com/79125-2/>

⁶⁴ Ibid.

⁶⁵ NYC Planning. *Industry City - Environmental Impact Statement.*

<https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/industry-city/01-feis.pdf>

⁶⁶ Ibid.

Avenue and 3rd Avenue, comprises 10 buildings and a former powerhouse structure.⁶⁷ The 39th Street Buildings, situated between 39th Street to the north, 41st Street to the south, 2nd Avenue to the east, and the waterfront and Bush Terminal to the west, includes structures between the waterfront and 1st Avenue, as well as four structures between 1st Avenue and 2nd Avenue.⁶⁸ All together, the project area spans 35 acres.⁶⁹

Industry City, an area that was once used for shipping, warehousing, and manufacturing purposes, now houses retail, offices, storage spaces, and restaurants. The owners, Jamestown, Angelo Gordon and Belvedere Capital applied to modify use, bulk, parking and public access requirements to create a new development that includes luxury hotels, a high school, office space, and large retail.

Industry City has a lot of industrial architecture that has become home to luxury lofts and innovative work spaces, similar to that of the SoHo and Dumbo neighborhoods.⁷⁰ Although Sunset Park's more residential areas, which are just a block away from Industry City, are valued at more than \$1 million, the area has row-houses and reasonably priced apartments that are affordable for working class New Yorkers.⁷¹ The neighborhood has begun attracting young professionals who have been priced out of neighborhoods like Park Slope.⁷² Rent prices have been steadily increasing,⁷³ and rezoning is only going to perpetuate this problem. According to the NYU Furman Center's State of New York City's Housing and Neighborhoods report, in 2018, 31.7% of renters in Sunset Park were rent-burdened, meaning a third of renters in the area were spending more than 50% of their household income on rent.⁷⁴ It was also reported that 61.5% of the rental units are affordable at 80% Area Median Income, which is 5 percentage points lower than the share in 2010.⁷⁵ Given its waterfront location and potential for development, it was no surprise when a rezoning proposal for Industry City was made public in 2015.⁷⁶ New types of businesses have been opening in Industry City over the past few years, such as an

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Piser, Karina. "Why Industry City rezoning is failing."

<https://www.cityandstateny.com/articles/politics/new-york-city/why-industry-city-rezoning-failing.html>

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ NYU Furman Center. "Sunset Park BK07." *State of New York City's Housing and Neighborhoods*.

<https://furmancenter.org/neighborhoods/view/sunset-park>

⁷⁵ Ibid.

⁷⁶ Piser, Karina. "Why Industry City rezoning is failing."

<https://www.cityandstateny.com/articles/politics/new-york-city/why-industry-city-rezoning-failing.html>

“avocado bar”⁷⁷ and a ginger liqueur tasting room.⁷⁸ These establishments have been cause for concern for residents that gentrification will hit the neighborhood and displace the working-class, Latinx community.⁷⁹ They also saw the proposed rezoning of Industry City as an indication that even the neighborhood’s most affordable streets will soon become unaffordable.

⁸⁰ Progressive activists and community members expressed apprehension about this transformation of Industry City, because they were concerned about rising housing costs and displacement.⁸¹

In March 2019, the owners of the Industry City complex planned to submit an application to DCP, detailing a 10-year, \$1 billion project to expand the facilities’ site from 5.3 million square feet to 6.6 million square feet.⁸² Council Member Carlos Menchaca, who represents the council district where Industry City is located, urged the owners to delay submitting their applications in response to opposition from local community members, and said he would only support this project if certain standards were met. These standards included removing hotels from the application, entering into a community benefits agreement with local groups, and accepting investments from the City with the intention of preserving affordable housing.⁸³ Unfortunately, the Mayor declined to send his top advisors to meet with community leaders to discuss potential investments regarding the rezoning process, stating that “Industry City is a private applicant and that the Mayor’s Office does not typically play a role in the ULURP process.”⁸⁴ The owners of the complex agreed to make adjustments to their application, but proceeded to initiate the ULURP process in October of that year without making any changes.⁸⁵ In late July of 2020, Council Member Menchaca stated he would vote no on the rezoning, and called on the owners of Industry City to pull the proposal. Council Member Menchaca’s decision was based on the input of the local community, who saw the Industry City rezoning application as a disregard for the impact this project could have on their residents of more color, emphasizing the need for a racial and ethnic disparity analysis.

⁷⁷ Gould, Jessica. “Does This Avocado Toast Come With A Side of Gentrification?” <https://www.wnyc.org/story/does-avocado-toast-come-with-side-gentrification/>

⁷⁸ Brown, Evan Nicole. “Intense Ginger Liqueur Tasting Room Opens In Sunset Park.” <https://gothamist.com/food/intense-ginger-liqueur-tasting-room-opens-in-sunset-park>

⁷⁹ Piser, Karina. “Why Industry City rezoning is failing.” <https://www.cityandstateny.com/articles/politics/new-york-city/why-industry-city-rezoning-failing.html>

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Enman, Scott. “Sunset Park leaders furious over mayor’s refusal to meet over Industry City.”

<https://brooklyneagle.com/articles/2019/12/23/sunset-park-leaders-furious-over-mayors-refusal-to-meet-over-industry-city/>

⁸⁵ Piser, Karina. “Why Industry City rezoning is failing.”

<https://www.cityandstateny.com/articles/politics/new-york-city/why-industry-city-rezoning-failing.html>

Community leaders found errors in the promises that Industry City's owners made with their rezoning proposal. For example, they pledged that the project would create 20,000 jobs.⁸⁶ Activists and community members explained even if that number was an accurate estimate, the plan included low-wage, entry-level jobs that would not allow workers to afford to live in the neighborhood.⁸⁷ Between May 2018 and May 2019, Industry City's Innovation Lab Partners placed 114 individuals in jobs, where the average salary was around \$17 per hour.⁸⁸ According to community activists and organizers, 40% of Sunset Park residents do not have a high school diploma, which would make them ineligible for higher-paid office-sector jobs.⁸⁹

In September 2020, the City Council's Subcommittee on Zoning and Franchises held a hearing on the Industry City rezoning project. More than 100 members of the public testified. In his testimony, the CEO of Industry City stated gentrification existed, but that the pace of it in Sunset Park was the same as that of the rest of the City. The CEO also acknowledged the Mayor and his Administration have not held talks with developers on ideas for the site, such as a school for example. There were apparently discussions with CUNY for using space at the site, but those talks have stalled due to the university system's budget crisis. All of the environmental groups that attended the hearing voiced their opposition to the rezoning, and were skeptical of it as well. A representative from the Natural Resources Defense Council criticized the application's demand for the projected office space, calling it unrealistic because of the COVID-19 pandemic. It is also important to note most public officials in attendance testified in opposition to the application. Some of the arguments in opposition to the project from public officials included citing previous projects in Williamsburg and Atlantic Yards as examples of rezoning they believed contributed to displacement, and making the case that the rezoning was not needed for job growth. However, other elected officials supported the project highlighting many constituents believed Industry City and its residents could benefit from waterfront development and good jobs.

Union leaders were also in favor of the project, explaining that rezoning would bring union jobs over the long-term. Workers themselves however, were skeptical of the project. One worker testified that the union and Industry City were cheating workers like himself amid contract talks, as economic conditions requested by workers had not been included in the discussion. Another worker, who worked at Industry City for nine years, recalled being told in March 2020 that he would be at home until June due to the Coronavirus. By June, he was laid off. Because of this, he remains skeptical about the owners' promise to provide good jobs. Another concern was of the

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Innovation Lab Data. <https://drive.google.com/file/d/13DWgUp7ky9RQ4WqH8IZlcNa90FASYWcd/view>

⁸⁹ Piser, Karina. "Why Industry City rezoning is failing."

<https://www.cityandstateny.com/articles/politics/new-york-city/why-industry-city-rezoning-failing.html>

impact this could have on undocumented workers. In contrast to the workers who were skeptical of the project, long-term residents were split between supporting and opposing Industry City's proposal, with supporters citing that this project could keep crime rates and poverty down in the area, and attract more consumers to the neighborhood's local businesses. One resident who opposed the application highlighted that even if Industry City's owners include a community benefits agreement in their application, it would not be enforceable nor would it be legally binding. Interestingly enough, the topic of a racial impact study and Intro. 1572, came up more than once during this hearing. A representative of Churches United for Fair Housing asked why there was no racial impact study included in the Sunset Park rezoning. The fact that grassroots organizations are calling for a racial impact analysis to be included in this rezoning application is telling of how much a neighborhood like Sunset Park has the potential to be affected by this project, and it is indicative of why this type of analysis is needed to ensure that residents can continue to afford to live in the area and have access to jobs.

About one week after the City Council hearing took place, the owners of Industry City withdrew their rezoning application.⁹⁰ The CEO cited the "context of 1 in 5 New Yorkers losing their jobs and the City's fiscal crisis spiraling out of control" as the reason why it would be unlikely for their application for the development to be approved.⁹¹ Therefore, they decided to withdraw their application. In contrast to the East Harlem, Bedford Union Armory, and Inwood rezoning projects, the case of the Sunset Park rezoning demonstrates a situation where an application was pulled because of a clear lack of consideration for the residents of color, and the fact that there would be a high-risk of displacement if the development were completed. While this outcome is a victory for housing equality and racial equity, it also indicates a need for a racial equity report to be included in every rezoning application. Our City can have economic development alongside environmental protection, and commercial progression hand-in-hand with community preservation.

⁹⁰ Adams, Rose. "Breaking: Industry City Withdraws Rezoning Application." <https://www.brooklynpaper.com/industry-city-withdraws-rezoning-application/>

⁹¹ Ibid.

Conclusion

In an effort to further economic development and have commercial advancement, our City has lost sight of the importance of protecting the right to housing and preventing the displacement of many New Yorkers. Our City can elevate economic activity, while keeping people of more color in their homes, in their communities, and not exclude individuals from certain neighborhoods on the basis of their income. This problem would not occur if the City and the developers were engaging in dialogue with members of the community prior to the submission of rezoning applications. Collaboration would allow our local government and industry to accurately understand the impact of rezonings on residents before approving applications. This collaboration is at the center of Intro. 1572, because a racial equity report would create a more well-informed land use application. The analysis would include information on current housing conditions and projected employment opportunities, with information disaggregated by race and ethnicity, as opposed to the basis of income bands and rents. A mandated racial equity report is our City's best chance at fulfilling its responsibility under the Fair Housing Act to take proactive measures to address housing discrimination.

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