

**Social Justice
Recommendations
for Mayor-Elect
Eric Adams**

DECEMBER 2021

**ECONOMIC
DEVELOPMENT**

EDUCATION

**FIRST
AMENDMENT**

**CLIMATE
CHANGE**

HEALTH

HEAT

RIKERS

HOUSING

LAND USE

**POLICING
AND CRIMINAL
LEGAL
SYSTEM**

**New Yorkers for Social Justice:
A Citizens' Commission Making Recommendations to Eric Adams**

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I. Introduction

On January 1, 2022, Eric Leroy Adams will become the 110th Mayor of the City of New York. The substantial and numerous challenges facing the new Mayor and the Administration range from recovery from COVID-19 and its effects to public safety, police-community relations, affordable housing, homelessness, climate change, economic development, free speech and assembly, criminal justice, and discrimination, among other issues.

As New Yorkers, we are optimistic that Mayor Adams and the Administration can provide the necessary leadership to meet these challenges and become a unique model for how to govern a city that is both safe and just.

To assist in this achievement, we came together this past August to form New Yorkers for Social Justice: A Citizens' Commission Making Recommendations to Eric Adams.

Although independent, the Commission was created with the knowledge and approval of Mr. Adams. Its goal is to produce a Report to Mayor Adams clarifying the meaning of social justice as it relates specifically to obligations that the City of New York should have to its residents, and that the Mayor can implement or initiate through identifiable practical steps and programs.

Toward that end, this Report will set forth a list of social justice commitments that the Mayor's office should make to the residents of New York City. If implemented, such commitments would effect a historic transformation of the relationship between a municipal government and its constituents.

The members of the Commission are:

- ❖ Chair, Norman Siegel, civil rights attorney, partner Siegel Teitelbaum & Evans, LLP
- ❖ Dennis Flores, community activist, co-founder of El Grito of Sunset Park
- ❖ Hon. Marcy S. Friedman, Retired New York State Supreme Court Justice
- ❖ Ira Glasser, former Executive Director American Civil Liberties Union
- ❖ Dr. Tarry Hum, Professor and Chair of Queens College Department of Urban Studies
- ❖ Steven Hyman, partner McLaughlin & Stern, LLP
- ❖ Dr. Micaela E. Martinez, Assistant Professor, Emory University (Department of Biology); Adjunct Assistant Professor, Columbia University (Department of Population and Family Health)
- ❖ Terry McGovern, Professor and Director of Global Health, Justice & Governance, Columbia University School of Health

- ❖ Harriet R. Michel, former Executive Director, New York Urban League
- ❖ Aryana Swanson, third-year student, Columbia University
- ❖ Earl S. Ward, criminal defense attorney, chair, Housing Works, Bronx defenders; partner Emery Celli Brinckerhoff Abady Ward & Maazel, LLP¹

The goal of the Commission’s work is to expand upon the concept that “public safety is the prerequisite to prosperity”² to the larger notion that “public safety and social justice are the prerequisites to prosperity.” In our view, public safety and social justice are best achieved when they work in tandem.

The Commission believes that social justice principles and values in New York City mean, at a minimum, freedom, justice, equality, equity, fairness, and opportunity for all. “Social justice is a communal effort dedicated to creating and sustaining a fair and equal society in which each person and all groups are valued and affirmed.”³ It encompasses efforts to end systemic violence and racism, recognizes the legacy of past injustices, and promotes individual empowerment and communal action.⁴ According to the United Nations, social justice embraces “peaceful and prosperous coexistence” and the removal of “barriers that people face because of gender, age, race, ethnicity, religion, culture or disability.”⁵ The Commission would add sexual orientation and socioeconomic status to this list. In a just society, “each individual matters, their rights are recognized and protected, and decisions are made in ways that are fair and honest.”⁶

Commission member Ira Glasser postulated that “we want to have a city where it’s easy to be free and safe to be different” and that “we encompass all of the freedoms guaranteed by the Bill of Rights, in addition to equal access to health care, housing, economic rights, and public safety.”

Commission member Dr. Micaela Martinez suggested that our work “capture what the group believes are fundamental human rights to everyone in the city, and also acknowledge legacies of systemic harm perpetrated against certain groups.”

¹ More detailed biographies of the Commission members are provided at the end of this Report.

² Eric Adams, Twitter (Jun. 8, 2021), <https://twitter.com/ericadamsfornyc/status/1402370401976696838>.

³ *Our Definition of Social Justice*, John Lewis Inst. for Soc. Just. at Cent. Conn. State Univ., <https://www.ccsu.edu/johnlewisinstitute/terminology.html> (last visited Dec. 7, 2021).

⁴ *Id.*

⁵ *World Day of Social Justice 2020*, United Nations Dep’t of Econ. and Soc. Affs. (2020), <https://www.un.org/development/desa/dspd/international-days/world-day-of-social-justice/2020-2.html>.

⁶ *Overview: Social Justice*, Oxford Reference, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100515279> (last visited Dec. 7, 2021).

Commission member Dr. Tarry Hum identified principles highlighted in her course “The Just City: Theory and Practice” at Queens College, which include procedural, distributive, and restorative justice.

The Commission also believes that its recommendations should include those actions that primarily are within the jurisdiction and powers of the Mayor, as set forth in the City Charter. Chapter 1, Section 8 of the Charter provides, “The mayor shall be responsible for the effectiveness and integrity of city government operations and shall establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility including the implementation of effective systems of internal control by each agency and unit under the jurisdiction of the mayor.”⁷

Our hope is that our 81 recommendations will benefit Mayor Adams and his Administration in defining their goals and aspirations for New Yorkers as they govern for the next four years.

Each section of the Report identifies specific recommendations with analysis and description of the underlying problem, as well as the rationale for the recommendation.

⁷ 1 N.Y.C. Charter § 8.

II. Freedom of Speech

Introduction

The struggles of oppressed and relatively powerless people for social justice have always required freedom of speech in the way that a new plant requires water and sunlight.

Historically in the United States, every fight for social justice began with free speech, and depended on the right to speech to initiate and sustain a movement.

At the turn of the 20th century, the movement to end lynching of Black people, led by courageous advocates like the journalist Ida B. Wells, depended upon freedom of speech and the right to publish and spread the word about the epidemic of lynching in the land, in order to gather and build opposition to it.

The nascent labor movement critically required—and often in the early days did not enjoy—the right to meet, to leaflet, to demonstrate, and to picket in order to convert their powerlessness into success against oppressive employers.

In 1916, Margaret Sanger, the founder of Planned Parenthood, was arrested in New York City for distributing informational leaflets on birth control to women subjugated by unwanted pregnancies.

Decades later, the civil rights movement that finally ended the dominion of Jim Crow in hotels and restaurants and swimming pools and public toilets, on juries and in employment and housing and voting, could not have flourished or succeeded without the First Amendment to protect the efforts to call attention to the abuses of skin-color exclusions and build the support needed to end them.

In 1955, when Rosa Parks sat down in a seat reserved for whites on a bus in Montgomery, Alabama, and a then-unknown young Baptist minister named Martin Luther King, Jr. stood up to support her by organizing a boycott of those buses, their actions were protected by the First Amendment.

The same was true of the countless other demonstrations, sit-ins, and marches during the years that followed, including the one across the Edmund Pettus Bridge in Selma, Alabama that helped build support for the Voting Rights Act of 1965.

That is why one of the heroes of that march in Selma, the much revered John Lewis, was a fierce advocate for freedom of speech. As Lewis said, “Without freedom of speech and the right to dissent, the Civil Rights movement would have been a bird without wings.”⁸

⁸ Russell L. Weaver et al., *Constitutional Law: Cases, Problems, and Materials – 2019 Supplement* 200 (4th ed. 2019).

And that is also why Martin Luther King, Jr. was such a strong supporter of the First Amendment.

In New York City, the fight for social justice and the fight for freedom of speech are inseparable.

Recommendations

The First Amendment to the United States Constitution protects free speech by barring the government from picking and choosing which speech to permit and which to prohibit. No government official, including a New York City official, has the power under our Constitution to bar speech based on its content or the identity of the speaker.

The Mayor and all city agencies and public officials are bound by and have an affirmative obligation to comply with the First Amendment and similar provisions in the New York State Constitution, which include the following principles:

1. In regulating speech and assembly activities, no decisions shall be based on the content of speech or the views of speakers.
2. Regulations shall be limited to time, place, and manner in ways that respect the rights of others (e.g., prohibiting sound amplifiers near churches or schools when they are in session, or activities that block entrances to buildings or shops or hospitals), but that do not effectively deny speakers access to their target audiences.
3. Closely related to the right to speak is the right to relevant and easily accessible information. Accordingly, every city agency shall have an affirmative obligation to routinely provide detailed information about its policies, practices, and activities in publicly accessible ways, without the public having to initiate inquiries or litigate if such inquiries are denied.
4. Every city agency shall employ a First Amendment monitor with the responsibility and authority to implement the above principles for that agency.
5. The recommendations above should be implemented through a mayoral Executive Order that is binding upon all city officials.

[DRAFT] EXECUTIVE ORDER NO.

[Date]

PROTECTING AND FACILITATING FREE SPEECH: REQUIRING A FIRST AMENDMENT MONITOR FOR ALL CITY AGENCIES

WHEREAS, the First Amendment to the Constitution of the United States of America protects “freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances”; and

WHEREAS, Article I, Section 8 of the New York State Constitution provides that “Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press”; and

WHEREAS, federal and New York State courts have upheld the right to peaceful protest under the First Amendment to the Constitution of the United States and Article I, Section 8 of the New York State Constitution; and

WHEREAS, federal and New York State courts have determined that government may only limit the time, place, and manner of speech in a way that is content-neutral and aimed at advancing the public interest; and

WHEREAS, the ability of New Yorkers to exercise their freedom of speech depends on their access to relevant, clear information; and

WHEREAS, Section 84 of New York’s Freedom of Information Law (“FOIL”) states, “The people’s right to know the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society,” and “Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality”; and

WHEREAS, initiating and/or litigating inquiries under FOIL can be unduly burdensome for citizens of New York City who wish to access information about governmental decision-making; and

WHEREAS, this Order is given to effectuate compliance with the First Amendment of the Constitution of the United States of America; Article I, Section 8 of the New York State Constitution; and New York’s Freedom of Information Law;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, including, but not limited to, the New York Executive Law, the New York City Charter, and the Administrative Code of the City of New York:

Section 1. I hereby direct that each city agency shall have an affirmative obligation to (1) respect and protect the right of free speech and the right to peaceful

protest; and (2) routinely provide detailed information about its policies, practices, and activities in publicly accessible ways, without the public having to initiate FOIL requests.

Section 2. I hereby direct the Commissioner, Director, or executive of each city agency to appoint a staff member of appropriate managerial authority whose duties (in addition to his or her other responsibilities, if any) shall be to:

- a. Review agency policies, practices, and activities, and determine whether agency-imposed restrictions on the public's right to freedom of speech and the right to peaceful protest, if any, are limited to the time, place, and manner of speech in a way that is content-neutral and aimed at advancing the public interest; and deliver a report to the Commissioner, Director, or executive of the agency summarizing his or her findings;
- b. Thereafter review new agency policies, practices, and activities on a regular basis to determine whether any agency-imposed restrictions on the public's right to freedom of speech and the right to peaceful protest, if any, are limited to the time, place, and manner of speech in a way that is content-neutral and aimed at advancing the public interest; and deliver reports to the Commissioner, Director, or executive of the agency summarizing his or her findings; and
- c. Routinely provide detailed, clear information to the public about the agency's policies, practices, and activities.

Section 3. Effective Date: This Order shall take effect immediately.

Eric Adams,
MAYOR

III. Policing and the Criminal Legal System

Problem Statement

Policing and the criminal legal system in New York have exacerbated racial disparities, left critical gaps in public safety, treaded on civil rights, and caused public distrust. As discussed in this section’s recommendations, there is ample research supporting reform to improve public safety and fortify constitutional protections. For many years, reports, conferences, commissions, op-eds, and newspaper editorials have highlighted the myriad problems associated with policing and the criminal legal system in New York City. These reports have made specific, helpful, and potentially effective recommendations to realistically ameliorate the problems.⁹ Yet, the political will to adopt the needed changes has not met the challenge. Mayor Adams and the Administration must be different.

This Report makes specific recommendations for reforming policing and the criminal legal system, which are within the Mayor’s power to implement or promote. The recommendations are by no means a substitute for the thoroughgoing reform or overhaul of the criminal legal system that is needed to address and eliminate systemic racism and abuse of policing targeted at Black and brown people and other historically marginalized groups, including the LGBTQ+ community.¹⁰

Policing Recommendations

The NYPD should serve and protect the residents of New York City in a fair, unbiased, equal, and respectful manner. To that end, the Commission urges the Mayor to implement the following recommendations.

1. Create an equal employment opportunity police culture by implementing an affirmative action program that considers race, gender, and sexual orientation, with the aim of improving diversity in the rank and file, sergeants, lieutenants, captains, inspectors, chiefs, and commissioners. The Administration should work with the NYC Equal Employment Practices Commission, which “advises and

⁹ See, e.g., U.S. Comm’n on C.R., *The Civil Rights Implications of “Broken Windows” Policing in NYC and General NYPD Accountability to the Public* 125-27 (Mar. 2018), <https://www.usccr.gov/files/pubs/2018/03-22-NYSAC.pdf>; Off. of Brooklyn Borough President Eric L. Adams, Off. of Manhattan Borough President Gale A. Brewer & Norman Siegel, *Improving Police-Community Relations: A Report from a Series of Town Hall Meetings in Brooklyn and Manhattan* (2015), <http://www.manhattanbp.nyc.gov/downloads/pdf/NYPD%20Town%20Hall%20Report.pdf>; Michael Meyers, Margaret Fung & Norman Siegel, *Deflecting Blame: The Dissenting Report of the Mayor’s Task Force on Police/Community Relations*, N.Y. C.L. Union (Mar. 1998), <http://nycivilrights.org/wp-content/themes/civilrights/pdf/Report5.pdf>.

¹⁰ See, e.g., *Justice Roadmap 1*, Just. Roadmap N.Y. (2021), <https://justiceroadmapny.org/wp-content/uploads/2021/03/Justice-Roadmap-2021-PDF-8.pdf> (legislative roadmap, endorsed by a vast group of social justice organizations and advocates, addressing reforms needed to protect communities of color and immigrants from harms caused by bias and “deeply entangled criminal legal and immigration systems”).

assists municipal entities” in establishing affirmative action plans.¹¹ Although the NYPD has made improvements in diversity within its rank and file, NYPD supervisors and high-level officers should also reflect the diversity of the city.¹² White officers hold nearly 75% of the NYPD supervisory roles (any position above the rank of captain).¹³ Ninety percent of those roles are held by men.¹⁴ In contrast, over 57% of New Yorkers are not white and over 52% are women; over 7% of New Yorkers identify as LGBTQ+. ¹⁵ Yet in the NYPD, for example, there are 129 inspectors, of which 88 are white, 18 are black, 19 are Hispanic, four are Asian, and 17 are female.¹⁶ There are 155 Deputy inspectors, of which 113 are white, 17 are black, 18 are Hispanic, seven are Asian and 14 are female.¹⁷ There are 15 chiefs, of which nine are white, four are black, two are Hispanic, and four are female.¹⁸

2. Enact a New York City residency requirement to address the historical and current lack of racial minorities, women, and members of LGBTQ+ communities. We recognize this recommendation must be approved by the New York State Legislature. Accordingly, we recommend that Mayor Adams publicly advocate for this long-overdue change.
3. Improve and update police training by including training on systemic racism and implicit bias in policing against people of color and members of the LGBTQ+ community, along with training on racial justice, social justice, de-escalation strategy, mental health, and the First Amendment right to peaceful protest. We recognize that proper training is a far from sufficient remedy for addressing police bias. However, proper training is a necessary precondition to better policing, and one within the clear power of the Mayor to implement. For example, the

¹¹ *Our Mission*, N.Y.C. Equal Emp. Pracs. Comm’n, <https://www1.nyc.gov/site/eepc/index.page> (last visited Dec. 7, 2021).

¹² *Current NYPD Members of Service*, N.Y.C. Civilian Complaint Review Bd., <https://www1.nyc.gov/site/ccrb/policy/data-transparency-initiative-mos.page> (last visited Dec. 4, 2021).

¹³ Craig McCarthy & Nolan Hicks, *De Blasio adds ‘Rooney Rule’ to NYPD to create diversity in upper ranks*, N.Y. Post (Mar. 31, 2021), <https://nypost.com/2021/03/31/de-blasio-adds-rooney-rule-to-nypd-for-greater-diversity/>.

¹⁴ *Id.*

¹⁵ *QuickFacts: New York City, New York*, U.S. Census, <https://www.census.gov/quickfacts/newyorkcitynewyork> (last visited Dec. 3, 2019); *Sexual Orientation and Gender Identity: Selected Demographics and Health Indicators, New York State Adults, 2014-2016*, at 3, N.Y. State Dep’t of Health, https://www.health.ny.gov/statistics/brfss/reports/docs/1806_brfss_sogi.pdf (last visited Dec. 4, 2021).

¹⁶ *Demographics*, N.Y. Police Dep’t, <https://app.powerbigov.us/view?r=eyJrIjoiZTI4OTRjZTYtNTYwOC00NzcxLThhYTItOTU5NGNkMzIzYjVlIiwidCI6IjJiOWY1N2ViLTc4ZDEtNDZmYi1iZTgzLWEyYWZkZDdjNjA0MyJ9&pageName=RportSection> (last visited Dec. 7, 2021).

¹⁷ *Id.*

¹⁸ *Id.*

misbehavior surrounding illegal stop-and-frisk tactics was enabled by flagrantly wrongful training in the Police Academy.¹⁹ In addition to classes on racism and bias, existing classes should be updated to ensure that police consistently have a firm grasp on what the law permits and requires them to do when stopping individuals for questioning and before frisking. This updating can be achieved through edits to the curriculum, as well as bringing in guest lecturers, including lawyers, knowledgeable in the law on this issue.

Furthermore, the Police Academy curriculum should be more accessible and transparent. The Mayor should ensure that the next Police Commissioner is committed to transparency and achieves it, with accountable deadlines and specific goals. In order to build in multiple levels of accountability, a mayoral task force should be established to periodically review the Police Academy's curriculum. Finally, the Mayor should examine whether to increase the time spent by officers in the Police Academy from six months to one year. It is submitted that six months of training is inadequate for police recruits to learn how to do their job.²⁰

4. Formally abandon the broken windows theory of policing, which has been discredited,²¹ and has targeted, criminalized, and traumatized multiple generations of young Black and brown men, as well as members of the LGBTQ+ community.²² The Mayor should not appoint as Police Commissioner anyone who is committed to broken windows policing, and should instead appoint someone who understands why it has functioned in a discriminatory way that has not enhanced public safety.
5. Reform the policing of public housing developments. The policing of public housing has long been characterized by discriminatory harassment of residents in furtherance of the discredited broken windows theory,²³ and too often functions more as a hostile occupation than as a civil source of protection and respect.
6. Make policing data easily and publicly available. What the police actually do and where they do it is critical public information, and too much of it is still

¹⁹ *Police Practices and Civil Rights in New York City*, at Ch. 2, U.S. Comm'n on C.R. (August 2000), <https://www.usccr.gov/files/pubs/nypolice/ch2.htm> ([T]he NYPD's in-service stop and frisk training may fail to instill respect for adherence to constitutional procedures.”).

²⁰ See Kirk Burkhalter, *Retired officer: Give police a real education before putting them on the streets*, U.S.A. Today (June 11, 2020), <https://www.usatoday.com/story/opinion/policing/2020/06/11/ex-cop-academy-training-falls-short-police-need-extensive-education/5342917002/>.

²¹ See, e.g., Daniel O'Brien, Chelsea Farrel & Brandon Welsh, *Broken (windows) theory: A meta-analysis of the evidence for the pathways from neighborhood disorder to resident health outcomes and behaviors*, 228 Soc. Sci. & Med. 272-92 (May 2019).

²² See U.S. Comm'n on C.R., *supra* note 9 at 72.

²³ See J. David Goodman, *Police Patrols in New York Public Housing Draw Scrutiny*, N.Y. Times (Dec. 15, 2014), <https://www.nytimes.com/2014/12/16/nyregion/amid-calls-for-police-reform-little-scrutiny-of-public-housing-patrols.html>.

unavailable or inaccessible. Such information can be decisive in public policy debates about police misconduct. Free speech in a democracy does not mean much if the information needed to debate public policy issues is unavailable.²⁴ For example, it was detailed information and analysis about stop-and-frisk that proved decisive in bringing about that abuse to a halt and in redefining the difference between legitimate and illegitimate uses of the tactic.²⁵ This information was publicly available, but not easily accessible.²⁶ It took a huge effort by Professor Harry Levine of Queens College to analyze and publicize data on marijuana stop-and-frisk encounters in the city.²⁷

Accordingly, the Mayor should act—or require the Police Commissioner to act—to make a variety of policing data publicly available on the NYPD website in user-friendly, reviewable formats. This data should include all of the aggregate policing data that the NYPD currently collects about precincts, as well as the demographics, age, race, sexual orientation, and gender of individuals arrested or detained by the NYPD. We recommend the appointment of a special task force to make specific recommendations on what information should be available and in what form.

7. Create a mayoral task force to examine various functions that the NYPD currently exclusively performs, with the goal of determining whether other city agencies or non-profit groups could perform these functions in a more effective manner, either on their own or in conjunction with the NYPD. Transfer of certain functions, in whole or in part, would achieve the additional benefit of giving the NYPD more capacity to deal with serious crimes. Areas to be examined should include, but not be limited to, 911 mental health calls, street homeless complaints, traffic stops,²⁸ and parking meter violations. One recent example of the transfer of functions from the NYPD was the City Council’s passage, at the urging of the press, photojournalists, and civil liberties advocates, of legislation transferring the issuance and revocation of press credentials from the NYPD to the Mayor’s Office of Media and Entertainment.²⁹

²⁴ See First Amendment, Section I, *supra* at 4-7.

²⁵ See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

²⁶ N.Y. Times Ed. Bd., *The Legacy of Stop-and-Frisk in New York’s Marijuana Arrests*, N.Y. Times (May 14, 2018), <https://www.nytimes.com/2018/05/14/opinion/stop-frisk-marijuana-nyc.html>.

²⁷ *Id.*

²⁸ Indeed, Philadelphia recently banned low-level traffic stops. Jonaki Mehta, *Why Philadelphia has banned low-level traffic stops*, NPR (Nov. 8, 2021), <https://www.npr.org/2021/11/08/1052957246/why-philadelphia-has-banned-low-level-traffic-stops>. The ban includes, but is not limited to, bumper issues, driving with a single broken light or single headlight, and driving without an inspection or emissions sticker. *Id.*

²⁹ Christopher Robbins, *The Mayor’s Office—Not The NYPD—Will Now Issue NYC Press Credentials*, Gothamist (Mar. 27, 2021), <https://gothamist.com/news/the-mayors-officenot-the-nypdwill-now-issue-nyc-press-credentials>.

8. The Adams Administration should create a working committee to evaluate the NYPD's use of surveillance cameras. They consist of body-worn cameras (BWCs) by NYPD officers and NYPD street surveillance cameras, including the Domain Awareness System.³⁰ The NYPD's surveillance programs raise many issues, such as the appropriate circumstances in which to turn on the BWCs, when access to the videos is permitted, and who may view the videos. For example, the NYPD Patrol Guide lists 14 instances for "mandatory activation" of BWCs by all "Uniformed Members of the Service" and 11 instances of "Prohibited BWC Recordings for Uniformed Members of the Service."³¹ The working committee should examine how successful officers are in adhering to these standards, and what accountability measures have been implemented when officers fall short of them. The question of who is allowed to access BWC video files has provoked a range of opinions. For example, El Grito, a community watchdog group, takes the position that all public camera footage should be immediately available to the public, especially after an arrest or incident involving the police.³² Furthermore, El Grito asserts that it is vital that the city create transparent storage systems where members of the public can access public footage without unnecessary red tape, expense, and interference.³³

El Grito also states that the public's right to access data exists independently of the NYPD.³⁴ On the other hand, the NYPD Patrol Guide takes a more restrictive access position. It provides that "in the performance of their duties, uniformed members of the service may view the following BWC recordings" and lists four specific circumstances: reviewing their own recordings, furthering an investigation or preparing a case, defending themselves in a departmental investigation, and reviewing incidents with a serious use of force or a serious injury/death in custody.³⁵ It also sets a more onerous test for granting civilians authority to view the same data, stating: "[r]equests by a witness or victim to view a BWC recording must be declined and referred to the appropriate prosecutor handling the case...[or the] Legal Bureau's Subpoena Litigation Unit."³⁶ Finally, it refers civilians and witnesses to the Freedom of Information Law (FOIL).³⁷

³⁰ Ángel Díaz, *New York City Police Department Surveillance Technology*, Brennan Ctr. for Just. (Oct. 4, 2019), <https://www.brennancenter.org/our-work/research-reports/new-york-city-police-department-surveillance-technology>.

³¹ *Patrol Guide: Procedure No: 212-123*, N.Y. Police Dep't (Aug. 3, 2020), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/212-123.pdf.

³² Commission member Dennis Flores is the founder of El Grito.

³³ *See Next Steps*, El Grito, <https://elgrito.witness.org/next-steps/> (last visited Dec. 3, 2021).

³⁴ *Id.*

³⁵ N.Y. Police Dep't, *supra* note 31.

³⁶ *Id.*

³⁷ *Id.*

The working committee should review the current state of the policy, including whether changes are required that strike an appropriate balance between public transparency and individual privacy. In addition to consulting the NYPD, the working committee should consult a number of organizations and stakeholders that work on these issues. They include, but are not limited to, officer unions, district attorneys, the CCRB, NYCLU, the Lawyers Guild, AALDEF, LatinoJustice PRLDEF, the Department of Investigation, the Office of the Inspector General for the NYPD,³⁸ and the independent monitor appointed by the United States District Court for the Southern District of New York to reform stop-and-frisk.³⁹

9. Create a mayoral task force to study the NYPD's gang database.⁴⁰ The Grassroots Advocates for Neighborhood Groups and Solutions (GANGS) Coalition⁴¹ notes, "The NYPD maintains a secretive, arbitrary list of people it deems gang members called the Criminal Group Database, or Gang Database. This database is racially discriminatory, with over 99% of people listed in the database being non-white, and the overwhelming majority of people listed being Black or Hispanic people. A person does not need to have committed a crime to be included in the database."⁴² The task force should examine fundamental questions relating to the database, including who has access to the database, who is listed in the database, whether the list is racially discriminatory, whether the criteria for inclusion in the database need reform, whether the database violates constitutional rights of association and due process, and how individuals can remove their names from the database.

Criminal Legal System Recommendations

1. Mayor Adams should call for the establishment of a permanent and independent special statewide prosecutor for police misconduct. Local prosecutors who handle cases of alleged police misconduct have a built-in conflict of interest because they must normally rely on the cooperation and testimony of police officers to successfully prosecute their cases.⁴³ An independent special

³⁸ See *Body Worn Cameras in NYC: An Assessment of NYPD's Pilot Program and Recommendations to Promote Accountability*, N.Y.C. Dep't of Investigation & Off. of the Inspector Gen. for the NYPD (July 2015), <http://www.nyc.gov/html/oignypd/assets/downloads/pdf/nypd-body-camera-report.pdf>.

³⁹ See *Floyd*, *supra* note 25.

⁴⁰ See Josmar Trujillo & Alex S. Vitale, *Gang Takedowns in the De Blasio Era: The Dangers of 'Precision Policing'*, Brook. Coll. Policing & Soc. Just. Project (2019), <https://static1.squarespace.com/static/5de981188ae1bf14a94410f5/t/5df14904887d561d6cc9455e/1576093963895/2019+New+York+City+Gang+Policing+Report+-+FINAL%29.pdf>.

⁴¹ The GANGS Coalition consists of: Brooklyn Defender Services, Immigrant Defense Project, Justice Strategies, LatinoJustice PRLDEF, The Legal Aid Society, The Policing and Social Justice Project at Brooklyn College, Surveillance and Technology Oversight Project (STOP). *Members*, GANGS Coalition, <https://gangscoalition.org/> (last visited Dec. 7, 2021).

⁴² *The Problem*, GANGS Coalition, <https://gangscoalition.org/the-problem/> (last visited Dec. 6, 2021).

⁴³ See, e.g., Kate Levine, *Who Shouldn't Prosecute the Police*, 101 Iowa L. Rev. 1447, 1465-70 (2016).

prosecutor can change this dynamic, and would lead to greater confidence and trust in the criminal legal system in cases involving allegations of police misconduct.

2. Mayor Adams should call for abolishing grand juries and increasing use of preliminary hearings in police misconduct cases. The original purpose of the grand jury in English law was to prevent oppressive prosecutions by the King by interposing a citizen's hearing in order to limit the crown's discretion.⁴⁴ Today, that original function is a relic, and the grand jury functions entirely as a prosecutorial instrument and represents a conceptual departure from the adversarial ethos that characterizes the rest of our legal system. For example, the grand jury is not subject to arguments and cross-examination by opposing counsel or to legal rulings by a presiding judge.⁴⁵ In addition, grand jury proceedings are secret, and secrecy leads to distrust, especially in cases involving allegations of police misconduct.

A number of jurisdictions now utilize a preliminary hearing in open court, with a judge presiding and lawyers on both sides, to decide whether to indict in a police misconduct case.⁴⁶ Such preliminary hearings would lead to greater confidence in the process of holding police officers accountable for misconduct as, for example, seen in the 2015 Eric Garner and 2014 Michael Brown cases. The Mayor should use his influence and bully pulpit to push for greater use of preliminary hearings as an alternative to grand juries in cases of police misconduct. According to a 2021 study by the National Center for State Courts, 23 states and the District of Columbia continue to require an indictment issued by a grand jury to pursue criminal prosecutions in serious cases.⁴⁷ In the remaining states, prosecutors have the option of commencing criminal cases either through an indictment issued by a grand jury or by submitting evidence to courts in the form of an information or a criminal complaint.⁴⁸ A preliminary hearing is then held to determine whether there is enough evidence in the information or complaint to charge the defendant.⁴⁹ In 2016, California became the first state to specifically ban the use

⁴⁴ See *Handbook for Virginia Grand Jurors* 2-3, Va.'s Jud. Sys. (May 2013), https://www.vacourts.gov/courts/circuit/handbook_grand_jurors.pdf.

⁴⁵ See Andrew D. Leipold, *Why Grand Juries Do Not (and Cannot) Protect the Accused*, 80 Cornell L. Rev. 260 (1995), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=2544&context=clr>.

⁴⁶ *Reforming the Grand Jury Indictment Process: Recent Efforts to Improve Public Confidence in Cases Involving Police Use of Lethal Force* 3, Nat'l Ctr. for State Cts., https://www.ncsc-jurystudies.org/_data/assets/pdf_file/0019/5851/grand-jury-report_rev-2021.pdf (last visited Dec. 7, 2021).

⁴⁷ *Id.* at 2.

⁴⁸ *Id.* at 3.

⁴⁹ *Id.*

of grand juries for cases in which a police shooting or excessive use of force resulted in a fatality.⁵⁰

3. Improve and strengthen the Civilian Complaint Review Board (CCRB). The CCRB has largely failed in its mission. The CCRB has failed to substantiate approximately half of police misconduct complaints and lacks adequate resources and personnel.⁵¹ The CCRB is not yet a mayoral agency in which residents and police officers place their confidence and trust. That trust requires a number of changes to the organization. First, there should be an established CCRB timeline for addressing a complaint after it is filed. The CCRB statute of limitations for charges against a police officer should be increased. Currently, the statute of limitations is 18 months.⁵² A three-year statute of limitations should be enacted, consistent with the three-year federal statute of limitations for civil rights violations.⁵³ If a Police Commissioner decides not to follow the CCRB's discipline recommendation, then the Police Commissioner should be required to explain, with specific detail, his or her reasons in writing for not accepting the recommendation. The Administration or an appointed task force should review the CCRB's staffing and budget to determine whether it is adequate. The Chair and Executive Director of the CCRB should be individuals who have a police-community relations track record, civil rights experience, and knowledge of the history and current state of the NYPD. Effective leadership is essential for the CCRB to become an independent, fair, and effective agency.
4. Support the decriminalization of the vast majority of nonviolent "quality-of-life" offenses for which arrests and prosecutions are made under broken windows policing, such as open alcohol containers, public urination, being in the park after dark, and selling goods on the street without a license.⁵⁴
5. When an individual enters the criminal justice system with a mental health problem, the system is generally not equipped to address the underlying problem. There are mental health courts, but they must be expanded so they can further aid the most difficult cases.⁵⁵ Those cases often result in incarceration for the mentally ill, and upon their release they are further at risk.⁵⁶ There is no court-

⁵⁰ *Id.* at 9.

⁵¹ David Cruz, *Why The Majority Of NYPD Misconduct Complaints End Up "Unsubstantiated"*, Gothamist (Aug. 18, 2020), <https://gothamist.com/news/why-the-majority-of-nypd-misconduct-complaints-end-up-unsubstantiated>.

⁵² N.Y. Civ. Serv. Law § 75(4).

⁵³ *Owens v. Okure*, 488 U.S. 235 (1985); N.Y. C.P.L.R. § 214(5) (McKinney).

⁵⁴ See Miscellaneous Recommendations, Section XII, *infra* at 67.

⁵⁵ Truman Stephens, 'Nobody Should Enter the Criminal Justice System for Something Related to Mental Illness', Gotham Gazette (July 30, 2019), <https://www.gothamgazette.com/state/8705-new-york-criminal-justice-system-mental-illness-thrive-nyc>.

⁵⁶ *Serious Mental Illness Prevalence in Jails and Prisons*, Treatment Advoc. Ctr. (Sept. 2016), <https://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3695>.

supervised housing program for the mentally ill who are charged with serious crimes, weakening mental health courts' effectiveness.⁵⁷ A mayoral task force should be established to review this issue, and develop a plan to improve the system.

⁵⁷ Truman Stephens, *supra* note 55.

IV. Reforming and Closing Rikers

Problem Statement

In 1968, there were fewer than 190,000 people in prison in the United States for all state and federal crimes combined.⁵⁸ By the end of the 20th century, that number soared to over 1.3 million, fueled largely by a War on Drugs that largely targeted individuals of color and an epidemic of mandatory minimum sentencing laws.⁵⁹ Taken together with individuals in jails, the number of incarcerated Americans currently exceeds two million, a 500% increase over the last 40 years.⁶⁰

That increase has not led to a commensurate increase in public safety, but has resulted in the unjust denial of the right to vote to over six million citizens through felony disenfranchisement laws.⁶¹ No program of social justice can ignore that increase in incarceration or fail to seek to radically reduce it.

In New York City, the specter of incarceration is best epitomized by Rikers Island, the largest jail complex in the state and one of the largest correction centers in the world.⁶² The majority of people incarcerated on Rikers (78% of detainees, based on 2016 data) have not been convicted of anything, but are pre-trial detainees who are there because they are too poor to afford bail.⁶³

The money bail system—combined with the denial of the constitutional right to a speedy trial—results in lengthy detention merely upon an accusation and without a trial, often compelling guilty pleas to secure release for time served. That is a breach of justice, and the victims are disproportionately Black and Hispanic.⁶⁴ The conditions described in this Report would be unacceptable if people convicted of crimes were subjected to them. For people neither convicted nor tried, this treatment must be impermissible for an administration committed to elementary standards of social justice.

It has been amply and repeatedly demonstrated that judges, psychiatrists, and algorithmic tools alike cannot consistently predict future behavior that is dangerous to

⁵⁸ *Criminal Justice Facts*, Sent'g Project, <https://www.sentencingproject.org/criminal-justice-facts/> (last visited Dec. 7, 2021).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Felony Disenfranchisement*, Equal Just. Initiative (Nov. 30, 2019), <https://eji.org/news/history-racial-injustice-felony-disenfranchisement/>.

⁶² *New York's infamous Rikers Island jail is to close*, BBC News (Oct. 18, 2019), <https://www.bbc.com/news/world-us-canada-50095418>; Ginia Bellafante, *Why is Rikers Island Still Open?*, N.Y. Times (Oct. 15, 2021), <https://www.nytimes.com/2021/09/24/nyregion/rikers-island-closing.html>.

⁶³ Nick Pinto, *Report: Rikers Still Full Of New Yorkers Who Can't Afford Bail*, Vill. Voice (May 19, 2017), <https://www.villagevoice.com/2017/05/19/report-rikers-still-full-of-new-yorkers-who-cant-afford-bail/>.

⁶⁴ *Id.*

others.⁶⁵ Therefore, such predictions in the absence of a conviction should not be used as a justification to incarcerate. Nor should the often undelivered promise of treatment be used to justify incarceration prior to conviction.

A social justice focus should be on assuring the right to a speedy trial and only detaining individuals where the court has determined that there exists a risk of flight. In the interim, however, we cannot ignore the unacceptable conditions of confinement. Thus, we recommend that the Mayor and the Administration not only reframe the reason for pretrial detention and secure the right to a speedy trial, but also take immediate steps to substantially change the conditions and policies at Rikers. These steps include the creation and expansion of supervised release and GPS ankle bracelet programs to determine whether the discriminatory effects of pretrial detainment at Rikers can be ameliorated.

Rikers Island has been notorious for decades. In the 1970s, there were a series of riots at Rikers and the adolescent unit was a dangerous and troubled jail.⁶⁶ Decades later, starting in 2011, the adolescent unit was the subject of class action litigation in *Nuñez v. City of New York*.⁶⁷ Since a consent decree was entered into in *Nuñez*, violence has persisted and correction officer use of force has worsened.⁶⁸

Rikers' problems are endemic, not episodic. The problems of Rikers and the Department of Corrections (DOC) are as profound as they are long-standing. In the 1980s, the state opened two facilities solely to house Rikers' incarcerated population. In the 1990s, the jail population rose to nearly 22,000 and the city purchased a purportedly short-term decommissioned ship to house incarcerated people.⁶⁹ The barge still exists and still houses incarcerated people.⁷⁰ And in recent months, the state began taking incarcerated people from Rikers into state custody again to relieve pressure as violence

⁶⁵ Bruce J. Ennis & Thomas R. Litwack, *Psychiatry and the Presumption of Expertise: Flipping Coins in the Courtroom*, 62 Cal. L. Rev. 693 (1974); Julia Dressel & Hany Farid, *The Dangers of Risk Prediction in the Criminal Justice System*, MIT Case Stud. in Soc. and Ethical Resps. of Computing (Feb. 5, 2021). <https://mit-serc.pubpub.org/pub/risk-prediction-in-cj/release/2>.

⁶⁶ N.Y. Daily News Staff, *Rikers Island timeline: jail's origins and controversies*, N.Y. Daily News (Mar. 18, 2017), <https://www.nydailynews.com/news/crime/rikers-island-timeline-jail-origins-controversies-article-1.3001976>.

⁶⁷ See Benjamin Weiser, *Lawsuit Accuses City's Jails of Condoning Inmate Abuse*, N.Y. Times (May 29, 2012), <https://www.nytimes.com/2012/05/30/nyregion/suit-says-new-york-citys-jails-condone-guards-beatings-of-inmates.html>; *Case Profile*, C.R. Litig. Clearinghouse at Univ. of Mich. L. Sch., <https://www.clearinghouse.net/detail.php?id=12072> (last visited Dec. 7, 2021).

⁶⁸ Jose Olivares, *Despite Scrutiny, Rikers Island's 'Culture of Violence' Persists, Report Says*, NPR (Nov. 30, 2017), <https://www.npr.org/2017/11/30/559846083/despote-scrutiny-rikers-islands-culture-of-violence-persists-report-says>.

⁶⁹ See Selwyn Raab, *Rikers Maxi-Maxi Dungeon: Too Brutal?*, N.Y. Times (July 5, 1991), <https://www.nytimes.com/1991/07/04/nyregion/rikers-maxi-maxi-dungeon-too-brutal.html>; Matthew Haag, *A Floating Jail Was Supposed to Be Temporary. That Was 27 Years Ago*, NY Times (Sept. 22, 2021), <https://www.nytimes.com/2019/10/10/nyregion/a-floating-jail-was-supposed-to-be-temporary-that-was-27-years-ago.html>.

⁷⁰ Matthew Haag, *supra* note 69.

and use of force by staff mount, staff continue to call in sick, and triple shifts and unstaffed posts abound.⁷¹

There is a culture of violence and overall malaise that permeates DOC facilities. Advocates have successfully advanced proposals, such as eliminating solitary confinement. However, some correctional officers push to “bring back the box,” at a time when problems at Rikers have been exacerbated by the pandemic.⁷² Approximately one-third of all uniformed staff are unavailable to work each day, the already sluggish court system has been slowed, there is reduced visitation and programming, and staff have heightened fears about returning to work.⁷³

For too long, incremental plans have ruled the day, overwhelmed by the enormity of the problem. Too often, City Hall has ignored Rikers’ problems, either because they lacked priority or in the hopes that the next Corrections Commissioner could fix them. But as current Commissioner Vincent Schiraldi stated when discussing Rikers, the DOC complex is in need of “a gut reno.”⁷⁴

Recommendations

The following are elements of a plan to get violence under control on Rikers Island, reduce the population, promote and accelerate efforts to close the facility, and improve conditions and care of both incarcerated people and staff.

1. Significantly reduce incarceration. New York City has alternatives to incarceration and, during the pandemic, these alternatives expanded to safely divert thousands of incarcerated people from Rikers, lowering the population in a matter of months.⁷⁵ While this diversion rolled out rapidly, a more planned and deliberate approach to diverting people from Rikers, and to supporting them post-release, should be a high priority. The courts should also be engaged to more rapidly move cases, as case processing—never particularly efficient—has suffered badly since the pandemic.⁷⁶ Prior to the pandemic, in January 2020, there were 913 people in city jails for more than one year; that number now

⁷¹ See Jan Ransom et al., *Inside Rikers: Dysfunction, Lawlessness and Detainees in Control*, N.Y. Times (Nov. 8, 2021), <https://www.nytimes.com/2021/10/11/nyregion/rikers-detainees-correction-officers.html>.

⁷² “Bring back the box” is a reference to solitary confinement.

⁷³ See Vincent Schiraldi, *Staffing Crisis Press Conference EOC, Rikers Island*, N.Y.C. Dep’t of Corr. (Sept. 7, 2021), <https://www1.nyc.gov/site/doc/media/remarks-by-commissioner-09-07-2021.page>.; Nicole Hong & Jan Ransom, *Only 9 Trials in 9 Months: Virus Wreaks Havoc on N.Y.C. Courts*, N.Y. Times (Dec. 3, 2020), <https://www.nytimes.com/2020/12/02/nyregion/courts-covid.html>.

⁷⁴ Vincent Schiraldi, *supra* note 73.

⁷⁵ Troy Closson & Jonah E. Bromwich, *‘A Ticking Time Bomb’: City Jails Are Crowded Again, Stoking Covid Fears*, N.Y. Times (Sept. 22, 2021), <https://www.nytimes.com/2021/03/10/nyregion/nyc-jail-covid.html>.

⁷⁶ Nicole Hong & Jan Ransom, *supra* note 73.

exceeds 1,600.⁷⁷ Engaging the courts in high-level planning and implementation efforts to have cases resolved is imperative. Otherwise, the result will be a continuation of the denial of the right to a speedy trial, with increased coerced guilty pleas for time served and where criminal charges will not be adjudicated at trial. That the city is unable to provide speedy trials is not justification for detaining people without a trial.

2. Move populations from Rikers to community-based facilities. There are several possible housing options to which to begin removing populations from Rikers within the next year. Undertaking efforts to implement them would represent a down payment on Rikers' ultimate closure while jails are provided for the remainder of the population. New York City Health and Hospitals is planning to open 250 beds to serve as therapeutic housing beds for detainees with severe mental health conditions and/or complex medical needs.⁷⁸ The Adams Administration should prioritize and accelerate those renovations to get the population out of Rikers as soon as possible. Almost all remaining individuals with mental health conditions on Rikers (about half of its current population) should be housed in specialized units that attend to their mental health, similar to the successful Clinical Alternative to Punitive Segregation (CAPS) and Program to Accelerate Clinical Effectiveness (PACE) units that Health and Hospitals has piloted in partnership with the DOC.⁷⁹

Women and transgender people are being moved to state prisons; almost all of them should be gone from Rikers in the next few months.⁸⁰ The Adams Administration should work with the state to have at least one of these state prisons (Lincoln in Harlem, Bayview in Chelsea, or Edgecombe in Washington Heights) transferred to the city for renovation to permanently house the women and transgender people so that they never return to Rikers.

Finally, the city should open a work facility that helps detainees transition to home. Such a facility would allow detainees to earn their ability to work, participate in training programs, and receive medical and treatment and therapy,

⁷⁷ Gwynne Hogan, *Detainees Now Spend More than 9 Months on Rikers, An 88 Day Jump, Report Finds*, Gothamist (Oct. 19, 2021), <https://gothamist.com/news/detainees-now-spend-more-9-months-rikers-88-day-jump-report-finds>.

⁷⁸ *De Blasio Administration Announces Outposted Therapeutic Housing Units to Serve Patients in Custody With Serious Health Conditions*, N.Y.C. Health and Hosps. (Nov. 26, 2019), <https://www.nychealthandhospitals.org/woodhull/pressrelease/mayor-announces-outposted-therapeutic-housing-units-to-serve-patients-in-custody-with-serious-health-needs/>.

⁷⁹ *See CAPS and PACE Backgrounder*, N.Y.C. Dep't of Corr., <https://www1.nyc.gov/site/doc/media/caps.page> (last visited Nov. 11, 2021). The CAPS and PACE programs provide patients with intensive therapeutic support, including programming, one-on-one meetings with mental health staff, and encouragement of adherence to treatment. *Id.*

⁸⁰ Jan Ransom, *Amid Chaos at Rikers, Woman and Transgender People to Be Transferred*, N.Y. Times (Oct. 13, 2021), <https://www.nytimes.com/2021/10/13/nyregion/rikers-women-trans-people-state-prison.html>.

as needed, to gradually smooth their transition home. With prioritization, all three could be done within a year, rapidly removing these populations from Rikers, simultaneously improving treatment and staff morale. This reduction in Rikers's population would then allow the other jails to move forward, but with smaller footprints.

3. Improve decency, safety, and morale. Simply building new facilities will not unilaterally change decades of a violent and inhumane culture that permeated Rikers. If there is not a decisive, well-implemented plan, it is highly likely that this culture will migrate to the other jails.

The short-term plan should prioritize safety, cleanliness, and adequate staffing for the facilities by bringing people back to work, hiring additional staff, and focusing on safety, cleanliness, and health.

In the medium-term, we recommend the creation of program-rich young adult and mental observation units for the two populations that experience the most violence and use of force on Rikers. This plan should include deep involvement by staff, community advocates, and incarcerated people to break the gridlock and maximize buy-in to assure strong implementation and durability. Once the mental health and young adult plans provide “proof of concept” with the jails’ most difficult populations, all living units for all populations at Rikers should mirror them in the longer term.

These two plans, the “Safe and Clean” Plan and the “Model Unit” Plan, are outgrowths of the approach being taken by the current Corrections Commissioner. They must be fully pressure-tested by the Adams Administration. If adopted, the Commissioner should receive the full support of the Administration and be held accountable for implementation.

4. Work towards truth and reconciliation. Mass incarceration was launched in the 1970s as part of Richard Nixon's War on Drugs, implemented from the outset with a stark racial bias.⁸¹ As Nixon's Chief of Staff H.R. Haldeman admitted, the President “emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.”⁸² The explosion of mass incarceration since then focused largely on young, Black and Hispanic men, and has expanded to numbers that dwarf historic incarceration rates in the United States and present-day imprisonment in other Western Nations.

⁸¹ Brian Mann, *After 50 Years Of The War On Drugs, 'What Good Is It Doing For Us?'*, NPR (Jun. 17, 2021), <https://www.npr.org/2021/06/17/1006495476/after-50-years-of-the-war-on-drugs-what-good-is-it-doing-for-us>.

⁸² *H.R. Haldeman Diaries Collection, Jan. 18, 1969 – April 30, 1973*, Nat'l Archives and Recs. Admin., <https://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diaries/37-hrhd-journal-vol02-19690428.pdf> (last visited Dec. 7, 2021).

There has never been a reckoning on mass incarceration and the impact it has had on New Yorkers, particularly on communities of color and low-income communities. We recommend that the Adams Administration launch one in its first 100 days. We recommend that a Knapp-style commission be established to examine the brutal, racialized history of pretrial and other detention in New York City and its relationship to the problem of mass incarceration.⁸³ As the Adams Administration gradually dismantles Rikers Island, it should also address the more fundamental questions identified above, including the denial of the right to a speedy trial, which fuels the problems that have plagued the city's jails. In doing so, the Administration should take testimony from staff, incarcerated people, advocates, family members, and others who have first-hand knowledge of or have been involved with the problems addressed in this Section, and create a moment of reconciliation that reckons with the past, offers hope of a better future, and significantly reduces incarceration in New York.

⁸³ The Knapp Commission was formed in 1970 to investigate corruption within the police department. Over the course of its work, the Commission held public hearings and took testimony from dozens of witnesses before releasing its findings. *See, e.g., Knapp Commission Hearings*, WNYC Pub. Radio <https://www.wnyc.org/series/knapp-commission-hearings>, (last visited Dec. 7, 2021).

V. Housing and Homelessness

Problem Statement

The lack of affordable housing for low-income New Yorkers is among the greatest crises facing New York City. The city was once at the forefront of the nation's commitment to affordable public housing. Public housing in the United States dates back to passage of the Housing Act in 1937, during the Administration of President Franklin Delano Roosevelt.⁸⁴ New York City became a champion of public housing under Mayor Fiorello LaGuardia, with the creation of the historic First Houses on the Lower East Side, followed by numerous other public housing developments, built primarily between 1945 and 1965.⁸⁵ With approximately 180,000 apartments in 325 developments, housing between 400,000 and 600,000 people, New York City became home to the nation's largest public housing system.⁸⁶

The national commitment to public housing drastically eroded during the Reagan Administration, which halved the budget for public housing and Section 8 vouchers, which are federal funds to aid low-income people to pay for housing.⁸⁷ By the end of the 1980s, federal funding for local government housing had been cut by 60%.⁸⁸ Today, New York City faces not only the absence of public funding for new housing, but also inadequate funding for repair of existing, often severely deteriorated public housing.⁸⁹

Another challenge to public housing is presented by privatization of public housing developments, either by sale of housing authority lands to private developers or by a federal program, Rental Assistance Demonstration (RAD), under which private developers renovate and manage public housing. While these steps have been taken to raise needed funds in the face of reduced federal funding for public housing, the consequences have been severe. A substantial number of public housing units have been demolished or otherwise eliminated. Nationwide, over 285,000 units have been lost since 1992, returning the volume of public housing to a level not seen since the 1970s.⁹⁰ Only about one-sixth have been replaced.⁹¹ In addition, the RAD program has operated

⁸⁴ Norman Siegel & Pedro Wolfe, *Keep Public Housing Public*, N.Y. Daily News (Sept. 30, 2019), <https://www.nydailynews.com/opinion/ny-oped-keep-public-housing-public-20190930-bek4tbfpbfaf3dns64axeejjuu-story.html>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Martin Z. Braun, *The \$40 Billion Housing Headache Facing New York's Next Mayor*, Bloomberg CityLab (May 27, 2021), <https://www.bloomberg.com/news/articles/2021-05-27/the-40-billion-housing-headache-facing-new-york>.

⁹⁰ Jasmine Coleman, *Why is America pulling down the projects?*, BBC (Apr. 14, 2016), <https://www.bbc.com/news/magazine-35913577>.

⁹¹ *Id.*

without sufficient government oversight, which has resulted in surveillance of tenants, civil rights violations, and a high number of evictions in converted developments.⁹²

New York City has also lost a massive number of units of non-public affordable housing. Notably, until the 1950s, there were hundreds of thousands of Single-Room Occupancy units (SROs) (units with shared bathroom and kitchen facilities) throughout the city. Today, as a result of city policy commencing in the mid-1950s and continuing for approximately three decades, SROs constitute “a fraction of a single percent of New York’s rental housing stock.”⁹³ These policies attempted to eliminate SRO housing by, among other things, banning construction of new SRO units and providing tax incentives for conversion of the units to apartments with higher rents.⁹⁴ Yet, SROs were, and continue to be, a safety net for poor and low-income working people.⁹⁵ Significantly, there is no “absolute prohibition” on the development of SROs.⁹⁶ While the Housing Maintenance Code limits the parties that may build SROs, they may be owned and operated by certain non-profits, or built with the approval of the commissioner of the Department of Buildings, when created with public loans or subsidies or when owned, operated, or used by a public agency or instrumentality or by a non-profit organization.⁹⁷ It is the political will that has been lacking to create this affordable housing.

The Adams Administration has the opportunity to demonstrate that will and to reverse decades of homelessness. It is imperative that the Administration support the preservation and repair of existing public housing, as well as the development of additional public housing and other affordable housing.

Against this background of the lack of affordable housing, the Adams Administration also faces the critical challenge of addressing the homelessness crisis. While a problem for decades, homelessness has risen to the highest level since the Great Depression.⁹⁸ As of September 2021, there were 47,916 homeless New Yorkers, including 14,946 children.⁹⁹ The pandemic, tenants’ resulting loss of work, and

⁹² Siegel & Wolfe, *supra* note 84; Schulte Roth & Zabel LLP & Siegel Teitelbaum & Evans, LLP, *Concept Paper: Resident Management Corporation: A Viable Option for Fulton House Residents*, Feb. 3, 2020.

⁹³ Brian J. Sullivan & Jonathan Burke, *Single-Room Occupancy Housing in New York City: The Origins and Dimensions of a Crisis*, 17 CUNY L. Rev 113, 113 (2013).

⁹⁴ *Id.* at 122.

⁹⁵ *Id.* at 117.

⁹⁶ Eric Stern & Jessica Yager, *21st Century SROs: Can Small Housing Units Help Meet the Need for Affordable Housing in New York City?* 14, N.Y.U. Furman Ctr. (Feb. 20, 2018), https://furmancenter.org/files/Small_Units_in_NYC_Working_Paper_for_Posting_UPDATED.pdf.

⁹⁷ N.Y.C. Admin. Code § 27-2077.

⁹⁸ *Basic Facts About Homelessness: New York City*, Coal. for the Homeless (November 2021), https://www.coalitionforthehomeless.org/wp-content/uploads/2021/11/NYC_Homelessness_Fact_Sheet_9-2021_citations.pdf.

⁹⁹ *Id.*

consequent inability to make rental payments has significantly exacerbated the problem. Mass evictions are an intolerably real prospect upon the January 15, 2022 expiration of the New York State COVID-19 moratorium on evictions, and upon exhaustion of the \$2.7 billion in federal Emergency Rental Assistance Program (ERAP) funds allocated to New York State to assist tenants affected by the pandemic in paying rental arrears.

It is submitted that very few people will live on the streets once they have a viable option.¹⁰⁰ It is also well-documented that many homeless people suffer from mental illness, a substance abuse disorder, and/or unemployment.¹⁰¹ The homelessness crisis thus underscores not only the need for additional affordable housing, but also for wide-ranging initiatives to assess the needs of homeless people and to provide them with supportive housing with social services, such as mental health care, substance use disorder rehabilitation, and job training.¹⁰²

The recommendations that follow support these objectives.

Recommendations

Keep Public Housing Public

1. Explore potential sources of public funding for the creation of additional public housing and repair of existing public housing.¹⁰³ Work in partnership with local officials, Governor Hochul, and the Biden Administration to advocate for allocation to New York City of state and federal funds for public housing.
2. Preserve the limited public housing that exists by declaring a moratorium on the sale of public land at public housing developments, while exploring sources of public and/or private funding for the creation and repair of public housing.
3. Declare a moratorium on the RAD program, which allows private developers to renovate and manage public housing developments. In conjunction with the moratorium, create a pilot program, at one or more public housing developments, of a Resident Management Corporation (RMC). Under the pilot program, with training and support of the New York City Housing Authority and the Department of Housing Preservation and Development, residents of the development would contract with legal, financial, and management consultants regarding the

¹⁰⁰ Norman Siegel & Robert M. Hayes, *A Proven Plan to End Homelessness in New York*, N.Y. Observer (Oct. 14, 2015), <https://observer.com/2015/10/a-proven-plan-to-end-homelessness-in-new-york/>.

¹⁰¹ *Id.*; N.Y.C. Dep'ts of Health and Mental Hygiene and Homeless Servs., *The Health of Homeless Adults in New York City* (December 2005), <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/epi-homeless-200512.pdf>.

¹⁰² Siegel & Hayes, *supra* note 100.

¹⁰³ As discussed above, public housing is often in severely deteriorated condition. Repair of public housing, including removal of mold and lead, is not only essential to improve the quality of life and health of public housing residents, but will have an important impact in addressing climate change. See *Climate Change and Environment*, Section VIII, *infra* at 51, Recommendation 3.

management of the development, and thereby achieve the important objective of maintaining control over their living conditions.

Prioritize the Reduction of Homelessness

1. Establish a task force to undertake a thorough analysis of homelessness, including review of its causes, persistence over decades, and massive increase during COVID-19; review of city contracts with non-profits, which run most of the shelters; assessment of the conditions of shelters, the application process and procedures for entry into shelters, and the interactions of Department of Homeless Services staff and security with applicants and shelter residents; and development of potential initiatives to ameliorate homelessness and provide necessary services to homeless people.
2. Establish a volunteer program of diverse teams—e.g., of concerned residents, students, formerly homeless people, social workers, law enforcement officers, and medical professionals—to make weekly visits to homeless people at encampments, in the streets, and in the subway in order to learn from those struggling with homelessness what their needs are, and to develop working relationships of trust with homeless people. The goal of the program should be to assist homeless people in obtaining viable options to enable them to stop living on the streets, in the subway, and in homeless encampments and to participate in housing they need—whether independent housing or supportive (safe haven) housing with social services and/or mental health and addiction programs.

Prioritize the Creation of Affordable Housing

1. Establish a task force to develop a blueprint for creation of affordable housing. Without limiting the potential types of affordable housing to be created, the task force should evaluate the regulatory and financial measures necessary to facilitate the building of SROs, whether by public agencies, non-profits, or private developers. Given the vast increase in vacant commercial space during the pandemic, the task force should also evaluate the feasibility of using such space for the development of affordable housing, including need for rezoning measures.
2. Redefine the meaning of affordable housing or the metrics used to determine who qualifies for affordable housing, in order to ensure that low-income people actually qualify for such housing. Area Median Income (AMI) is the standard used to determine eligibility for subsidized housing.¹⁰⁴ The AMI in New York City is high at \$107,400 for a three-person family.¹⁰⁵ In addition, developers' access to tax credits is conditioned on creation of affordable units for persons with

¹⁰⁴ *Affordable Housing: Do You Qualify?*, N.Y.C. Dep't of Hous. Pres. and Dev., <https://www1.nyc.gov/site/hpd/services-and-information/do-you-qualify.page> (last visited Dec. 6, 2021).

¹⁰⁵ *Area Median Income*, N.Y.C. Dep't of Hous. Pres. and Dev., <https://www1.nyc.gov/site/hpd/services-and-information/area-median-income.page> (last visited Dec. 6, 2021).

incomes up to specified percentages of AMI, which are often high.¹⁰⁶ Lower-income people are thus often excluded from the definition of those who qualify for affordable housing. Although the federal government determines AMI,¹⁰⁷ the task force should evaluate the ways in which the Mayor and local officials can support measures to reduce the percentage of a person's or family's AMI necessary to qualify for affordable housing. The task force should also examine the optimal mix of incomes to encourage in new developments, in order to balance the creation of as many affordable units as possible with the goal of ensuring that housing remains available to those who need it the most.

¹⁰⁶ N.Y. Real Prop. Law § 421-a; Kay Dervishi, *Why AMI are the three most controversial letters in New York housing policy*, City and State N.Y. (Aug. 14, 2018), <https://www.cityandstateny.com/policy/2018/08/why-ami-are-the-three-most-controversial-letters-in-new-york-housing-policy/178202/>.

¹⁰⁷ N.Y.C. Dep't of Hous. Pres. and Dev., *supra* note 105.

VI. Health

Food Justice

Problem Statement

There are currently 1.6 million New Yorkers who are food insecure,¹⁰⁸ meaning that they lack consistent access to enough food for an active healthy life.¹⁰⁹ In addition to noting the vast number of New Yorkers facing food insecurity, the Mayor’s Office of Food Policy observes that “[c]ommunities of color in all five boroughs have less access to affordable, healthy food than white communities.”¹¹⁰ The lack of access is due to urban food deserts, which some advocates now refer to as food apartheid,¹¹¹ which are located in impoverished areas where residents have little to no access to fresh produce and nutritious foods.¹¹² Instead of supermarkets, which often contain healthier options, bodegas and fast-food restaurants tend to populate communities of color, and fail to provide fresh fruits, vegetables, and other healthy, high-quality foods. Many Community Districts lack a sufficient number of supermarkets to meet the needs of their community members. In the worst-affected communities, the ratio of bodegas to full-service grocery stores is 21 to 57 bodegas for each grocery store, an indicator of less healthy food available relative to convenience food.¹¹³ This contrasts with the most served communities, such as those in lower Manhattan, which have three to eight bodegas per grocery store, indicating plenty of healthy food available.¹¹⁴ Lack of access to healthy food is a risk factor for serious health problems, such as hypertension, diabetes, and heart disease, and “inequitable access to healthy food is a key driver of New York’s race-based health inequities, premature deaths, and preventable illnesses.”¹¹⁵

¹⁰⁸ *Food Forward NYC: A 10-Year Food Policy Plan* 8, N.Y.C. Mayor’s Off. of Food Pol’y (February 2021), <https://www1.nyc.gov/assets/foodpolicy/downloads/pdf/Food-Forward-NYC.pdf>.

¹⁰⁹ *Understand Food Insecurity*, Hunger + Health, <https://hungerandhealth.feedingamerica.org/understand-food-insecurity> (last visited Dec. 7, 2021).

¹¹⁰ N.Y.C. Mayor’s Off. of Food Policy, *supra* note 108, at 17.

¹¹¹ Nina Sevilla, *Food Apartheid: Racialized Access to Healthy Affordable Food*, Nat’l Res. Def. Council (Apr. 2, 2021), <https://www.nrdc.org/experts/nina-sevilla/food-apartheid-racialized-access-healthy-affordable-food>.

¹¹² *See id.*; Anna Brones, *Food apartheid: the root of the problem with America’s groceries*, Guardian (May 15, 2018), <https://www.theguardian.com/society/2018/may/15/food-apartheid-food-deserts-racism-inequality-america-karen-washington-interview>.

¹¹³ N.Y.C. Mayor’s Off. of Food Pol’y, *supra* note 109, at 15.

¹¹⁴ *Id.*

¹¹⁵ Nicholas Freudenberg et al., *Can NYC use COVID to fix its food problems?*, N.Y. Daily News (Sept. 30, 2020), <https://www.nydailynews.com/opinion/ny-oped-can-nyc-use-covid-to-fix-its-food-problems-20200930-mxchfhgxhvgm5jfdtcymnqga3y-story.html>.

Recommendations

1. Expand the Green Cart program. The city's Green Cart program has identified low-income areas that are food deserts, where residents lack access to fresh produce. The Green Cart program provides permits to mobile food vendors that provide fresh fruits and vegetables in these neighborhoods.¹¹⁶ While the Green Cart program allows for 1,000 permits to be distributed, there are currently waiting lists for the program.¹¹⁷ The program should be expanded to allow more small businesses to participate, increasing the availability of fresh produce across the city.

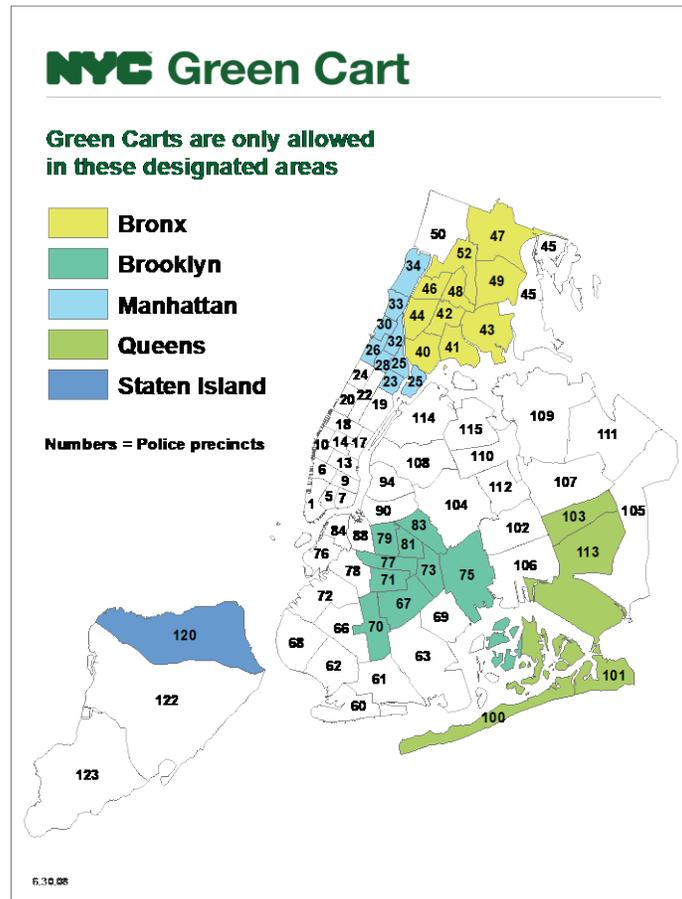


Figure 1. NYC Green Cart designated areas were selected by the Department of Health and Mental Hygiene based on four characteristics associated with food deserts: (1) median income of up to 200% of the federal poverty level, (2) low concentrations of grocery stores, (3) low consumption of fresh fruits and

¹¹⁶ *Green Cart Permit*, N.Y.C Business, <https://www1.nyc.gov/nycbusiness/description/green-cart-permit> (last visited Dec. 7, 2021).

¹¹⁷ *Id.*

vegetables, and (4) high incidences of food-related health issues such as obesity, diabetes, and heart disease.¹¹⁸

The city should also develop a method to monitor the number of active Green Carts and where they are located to ensure that the permits are being used efficiently. Researchers at Columbia University found that Green Carts are successfully serving many high-need neighborhoods, but that other high-need areas need more active carts.¹¹⁹ Some of the most vulnerable areas with the least access to fresh produce are not being served by the Green Cart program, potentially because these areas are not economically viable for vendors.¹²⁰ The city should provide financial incentives to Green Cart vendors who choose to locate in these underserved areas.

Additionally, the city should set up a program where vendors partner with NYCHA to operate a Green Cart on city property and provide residents with access to fresh produce. If a vendor requests it, the city should provide operating Green Carts with currently active permits with processing equipment for electronic benefit transfer (EBT) cards—which are linked to cash assistance and SNAP benefits—in order to facilitate low-income customer access to fresh fruits and vegetables.¹²¹ Since the Green Cart program has been successful at increasing fruit and vegetable consumption, Green Cart vendors should also be allowed to sell other healthy food items, in addition to fruits and vegetables, such as nuts and whole grains, which have a longer shelf life.

2. To address the problem of existing grocery stores not fulfilling the needs of low-income New Yorkers, the city should expand its Shop Healthy NYC! program.¹²² The city could start by investing more funds in incentives, such as subsidies and tax breaks, to bodegas and supermarkets located in underserved communities in order to increase access to affordable fresh fruits, vegetables, and other healthy foods. This investment will incentivize more small businesses to

¹¹⁸ *Green Carts FAQ*, N.Y.C. Dep’t of Health and Mental Hygiene (2013), https://www1.nyc.gov/assets/doh/downloads/pdf/cdp/green_carts_faq.pdf.

¹¹⁹ Ester R. Fuchs et al., *Study: NYC Green Carts Expand Access to Fresh Produce in Low-Income Neighborhoods*, Columbia Sch. of Int’l and Pub. Affs. (Jun. 11, 2014), <https://www.sipa.columbia.edu/sites/default/files/Green-Carts-Final-June-16-2014.pdf>.

¹²⁰ *Id.*

¹²¹ EBT cards allow individuals to pay for food through their Supplemental Nutrition Assistance Program (SNAP) benefits. *What is Electronic Benefits Transfer (EBT)?*, U.S. Food and Nutrition Serv., <https://www.fns.usda.gov/snap/ebt> (last visited Dec. 6, 2021).

¹²² Shop Healthy NYC! is an initiative of the Department of Health and Mental Hygiene, in partnership with the Center for Economic Opportunity, that “aims to increase access to healthy food and engage residents and organizations to support sustainable food retail change in their community.” *Shop Healthy NYC! Implementation Guide*, N.Y.C. Dep’t of Health and Mental Hygiene (2013), <https://www1.nyc.gov/assets/doh/downloads/pdf/pan/shop-healthy-implementation-guide.pdf>.

serve produce without necessitating the creation of new, large supermarkets in those areas.

Under this program, the city should also fund an initiative that trains small business owners to promote healthier food choices. In 2018, the American Heart Association called on the city to prioritize access to healthy food in the city budget, particularly for neighborhoods that need it the most.¹²³ The Association urged the city to include \$15 million additional funds for SNAP incentives, \$10 million for a Healthy Food Financing Initiative to open or expand healthy food retail in underserved neighborhoods, and \$3 million to support healthy corner store initiatives.¹²⁴

New York also needs policies that work to preserve existing supermarkets. One way to keep supermarkets open would be to establish commercial rent control.¹²⁵ Food is a human right, and the city needs to ensure that the most vulnerable New Yorkers have consistent access to healthy foods.

3. The city should broaden the Meatless Monday program¹²⁶ by committing to serve more plant-based meals and reduce the amount of animal products it serves in schools, child care centers, senior programs, and hospitals. Providing healthy food is just the first step. In order to sustain healthy eating habits, the city should improve nutrition education in city schools and health centers. As demonstrated by Figure 2 on the next page, the communities where fruit and vegetable consumption is low are the same communities with high rates of food insecurity, too few grocery stores, and high prevalence of childhood obesity, hypertension, and diabetes.¹²⁷ Through targeted educational initiatives and by facilitating access to healthy foods, the Mayor can increase healthy food consumption in underserved communities, improving overall health.

¹²³ Alicia Johnson, *NYC Coalition Supports Access to Affordable, Healthy Food*, Am. Heart Ass'n (Apr. 18, 2018), <https://www.yourethecure.org/nyc-coalition-supports-access-to-affordable-healthy-food>.

¹²⁴ *Id.*

¹²⁵ Two City Council Members have proposed legislation to this effect. See Int 0737-2018, N.Y.C. Council (2018); Int 1796-2019, N.Y.C. Council (2019).

¹²⁶ *Mayor de Blasio, Chancellor Carranza, and Brooklyn Borough President Adams Announce Citywide Meatless Mondays*, N.Y.C. Off. of the Mayor (Mar. 11, 2019), <https://www1.nyc.gov/office-of-the-mayor/news/135-19/mayor-de-blasio-chancellor-carranza-brooklyn-borough-president-adams-citywide#0>.

¹²⁷ N.Y.C. Mayor's Office of Food Pol'y, *supra* note 108, at 14-15.

THE CONNECTION BETWEEN FOOD AND HEALTH

Across New York City, rates of obesity, diabetes, and hypertension – conditions strongly tied to the consumption of unhealthy foods and beverages – correlate closely with indicators of food access, including rates of food insecurity, the ratio of bodegas to full service grocery stores in a neighborhood, and the consumption of fresh fruits and vegetables.

Hypertension



Percent of adults

- 15%–23%
- 24%–28%
- 29%–34%
- 35%–42%
- Unpopulated areas

SOURCE: NYC COMMUNITY HEALTH SURVEY, 2015-2016

Diabetes

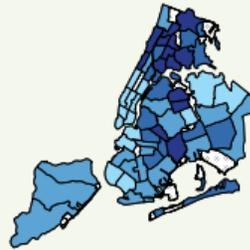


Percent of adults

- 3%–9%
- 10%–13%
- 14%–14%
- 15%–22%
- Unpopulated areas

SOURCE: NYC COMMUNITY HEALTH SURVEY, 2015-2016

Childhood Obesity



Percent of public school children (grade K-8)

- 5%–16%
- 17%–21%
- 22%–23%
- 24%–28%
- Unpopulated areas

SOURCE: FITNESSGRAM, 2016-2017

Food Insecurity

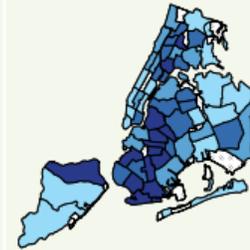


Percent of individuals

- <15%
- 15%–20%
- 20%–25%
- >25%
- Non-residential

SOURCE: FEEDING AMERICA, 2018

Ratio of Bodegas to Full Service Grocery Stores



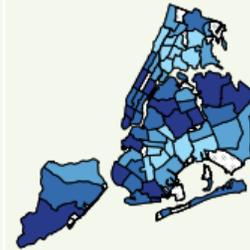
Number of bodegas to grocery stores

- 3–8
- 9–14
- 15–20
- 21–57
- Unpopulated areas

SOURCE: NYC DOHMH AND THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS, OCTOBER 2016

Fruit and Vegetable Consumption

(1+ serving in past day)



Percent of adults

- 76%–83%
- 84%–87%
- 88%–91%
- 92%–96%
- Unpopulated areas

SOURCE: NYC COMMUNITY HEALTH SURVEY, 2015-2016

Figure 2. The Connection Between Food and Health, mapped in Food Forward NYC: A 10-Year Food Policy Plan.¹²⁸

4. New Yorkers know their own needs best and should be given the opportunity to provide more direct input on food policies that impact their daily lives. Over the next decade, as part of Food Forward NYC: A 10-Year Food Policy Plan, the city should create food policy councils and community planning boards in high-need areas, and dedicate a section on the city’s website to the provision of user-friendly data on local food environments.¹²⁹ These changes would facilitate transparency and resident participation in local government.

Reduce Infant Mortality

Problem Statement

There is a large disparity in infant mortality among the 59 Community Districts in New York City.¹³⁰ Figure 3 on the next page shows a map of infant mortality rate in each Community District. Community Districts with the highest infant mortality rate (Morris Park, Bronxdale, Central Harlem, Williamsbridge, Baychester) have a rate of infant death seven to eight times higher than that in Community Districts with the lowest rates.¹³¹ To begin to address this health disparity, New York City should relaunch the Newborn Home Visiting Program, which provided mothers with assistance through visits from health workers.¹³² Universal home visits may not remove the disparity completely, but will be an informed first step for the city to tackle this problem.

¹²⁹ N.Y.C. Mayor’s Off. of Food Pol’y, *supra* note 108.

¹³⁰ *New York City Community Health Profiles 2018 Map Atlas* 61, N.Y.C. Dep’t of Health and Mental Hygiene (2018), <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018-chp-atlas.pdf>.

¹³¹ *Id.*

¹³² *Newborn Home Visiting Program*, N.Y.C. Dep’t of Health and Mental Hygiene, <https://www1.nyc.gov/site/doh/health/health-topics/pregnancy-newborn-visiting.page> (last visited Dec. 7, 2021).

Infant Mortality



Rate of infant deaths (under one year old) per 1,000 live births.

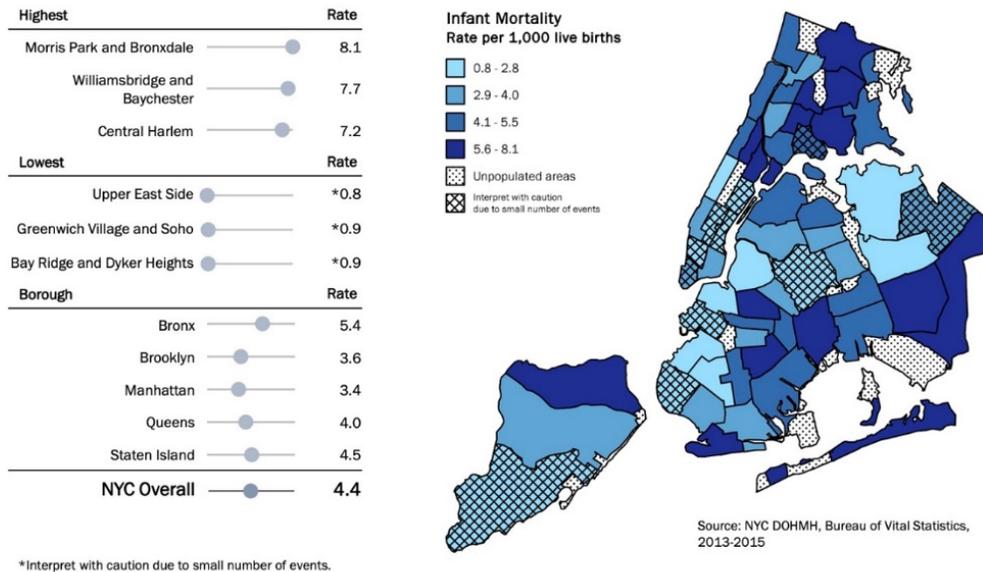


Figure 3. Infant mortality rate per 100,000 live births in each New York City Community District.¹³³

Recommendation

1. Relaunch the Newborn Home Visiting Program for new mothers.¹³⁴ Every person that delivers a baby should get a home visit that offers (1) education on the child’s development; (2) breastfeeding support; (3) education on parent-infant bonding; (4) education on putting the baby to sleep; (4) mental health support for the parent; (5) help creating a safe environment for the baby; and (6) connection with other services like health insurance and medical care.

Following the home visit, the practitioner will create a matrix based on need. Some new parents will receive peer-based services, while other parents will meet with nurses. The most monitored, expensive services would go to those at the highest risk. Before the pandemic, the city had allocated \$42 million to this program, but it did not move forward.¹³⁵ Relaunching the Newborn Home Visiting Program is essential because home visits have been shown to decrease

¹³³ N.Y.C. Dep’t of Health and Mental Hygiene, *supra* note 130.

¹³⁴ N.Y.C. Dep’t of Health and Mental Hygiene, *supra* note 132.

¹³⁵ Interview with Dr. Oxiris Barbot, former N.Y.C. Comm’r of Health (2021).

preventable mortality in infants living in disadvantaged settings.¹³⁶ The program must be separate and distinct from the Administration for Child Services. These visits should not be the basis for a proceeding for termination of parental rights.

Health Enterprise Zones for Underserved Communities

Problem Statement

The NYC Community Health Profiles have demonstrated that “policies and practices based on a history of racism and discrimination (often referred to as structural racism) have created neighborhoods with high rates of poverty and limited access to resources that promote health.”¹³⁷ In affected communities, structural racism has created more air pollution, unhealthy living conditions, restricted access to healthy food, barriers to exercise, and economic stress. This confluence of inequalities has generated severe health disparities in New York City.¹³⁸

Recommendation

1. Create Health Enterprise Zones (HEZ) for the community districts with the highest rates of health inequity indicators.¹³⁹ These neighborhoods tend to be communities of color with high rates of poverty and limited access to healthy environments and health-promoting activities. The creation of a HEZ will support public health by offering tax incentives for primary care facilities in communities of color that allow for better equipment, business opportunities, and workforce pipelines, and providing funding for community-based interventions. The HEZs should be placed in the community districts that carry the highest burden of chronic illness, which include those districts with the highest rates of childhood asthma, obesity, diabetes, hypertension, premature mortality, premature birth, and infant mortality. The 2018 NYC Community Health Profiles should be used to identify and prioritize which neighborhoods should become Health Enterprise Zones.

¹³⁶ David Olds et al., *Effect of Home Visiting by Nurses on Maternal and Child Mortality: Results of a 2-Decade Follow-up of a Randomized Clinical Trial*, 9 JAMA Pediatr. 168, 800-06 (Sept. 2014), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/1886653>.

¹³⁷ See, e.g., *Community Health Profiles 2018: Lower East Side and Chinatown 3*, N.Y.C. Dep’t of Health and Mental Hygiene (2018), <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018chp-mn3.pdf>.

¹³⁸ Amanda Dunkerand & Elisabeth R. Benjamin, *How Structural Inequalities in New York’s Health Care System Exacerbate Health Disparities During the COVID-19 Pandemic: A Call for Equitable Reform*, Cmty. Serv. Soc’y (Jun. 4, 2020), <https://www.cssny.org/news/entry/structural-inequalities-in-new-yorks-health-care-system>.

¹³⁹ See, e.g., *Maryland Health Enterprise Zones Linked to Reduced Hospitalizations and Costs*, Johns Hopkins Bloomberg Sch. of Pub. Health (Oct. 1, 2018), <https://publichealth.jhu.edu/2018/maryland-health-enterprise-zones-linked-to-reduced-hospitalizations-and-costs>.

Create Substance Abuse Beds and Mental Health Beds in City Hospitals

Problem Statement

There are not enough mental health services in New York City.¹⁴⁰ Mental health clinics tend to have waitlists and affordable options are limited.¹⁴¹ Mental health clinics do not accept health exchange plans.¹⁴² Thus, individuals who cannot afford insurance only have the option of admission into a psychiatric facility for treatment, which many people are reluctant to undergo as a first step.¹⁴³

Recommendation

1. Require all hospitals in New York City to have beds dedicated to substance abuse patients and individuals needing to be treated for mental health conditions. We also recommend that the city create a peer-based mutual aid system for mental health and substance abuse.¹⁴⁴

Reduce the Impact of Adverse Childhood Experiences

Problem Statement

Adverse Childhood Experiences (ACEs) are potentially traumatic events that occur in childhood, which have been linked to long-term physical and mental health problems in adulthood.¹⁴⁵ Exposure to events like physical and emotional neglect, food insecurity, and structural racism in childhood can lead to toxic stress, creating long-term consequences.¹⁴⁶ The CDC has estimated that preventing ACEs could reduce adult depression by 44%, improve education and employment opportunities, and prevent up to 1.9 million cases of heart disease nationwide.¹⁴⁷ In New York State, it is estimated that

¹⁴⁰ Larry McShane et al., *NYC's mental health crisis spans far and wide with few answers in sight*, NY Daily News (May 15, 2021), <https://www.nydailynews.com/coronavirus/ny-nyc-mental-health-covid-20210516-zuggg7vmjbctbookukawwccrle-story.html>.

¹⁴¹ See Nicole Spector, *Mental health services: How to get treatment if you can't afford it*, NBC News (Jun. 5, 2018), <https://www.nbcnews.com/better/health/mental-health-services-how-get-treatment-if-you-can-t-ncna875176>.

¹⁴² Interview with Dr. Juliet Widoff, Callen-Lorde Community Health Center (2021).

¹⁴³ The drastic impacts of untreated mental illness on homelessness and incarceration are discussed in Housing and Homeless, Section V, *supra* at 23 and Policing and Criminal Legal System, Section III, *supra* at 8, respectively.

¹⁴⁴ See generally Peers, Substance Abuse and Mental Health Servs. Admin., <https://www.samhsa.gov/brss-tacs/recovery-support-tools/peers> (last visited Dec. 7, 2021).

¹⁴⁵ *Adverse Childhood Experiences (ACEs)*, Ctrs. for Disease Control and Prevention (Nov. 2019), <https://www.cdc.gov/vitalsigns/aces/>.

¹⁴⁶ See *id.*; see also Figure 4.

¹⁴⁷ See Ctrs. for Disease Control and Prevention, *supra* note 142; *Preventing Adverse Childhood Experiences*, Ctrs. for Disease Control and Prevention (Apr. 6, 2021), <https://www.cdc.gov/violenceprevention/aces/fastfact.html>.

59% of adults have experienced at least one adverse childhood experience.¹⁴⁸ Given the disparate impact of issues such as food and housing insecurity, incarceration, and structural racism, ACEs have the potential to widen existing health disparities in New York City.

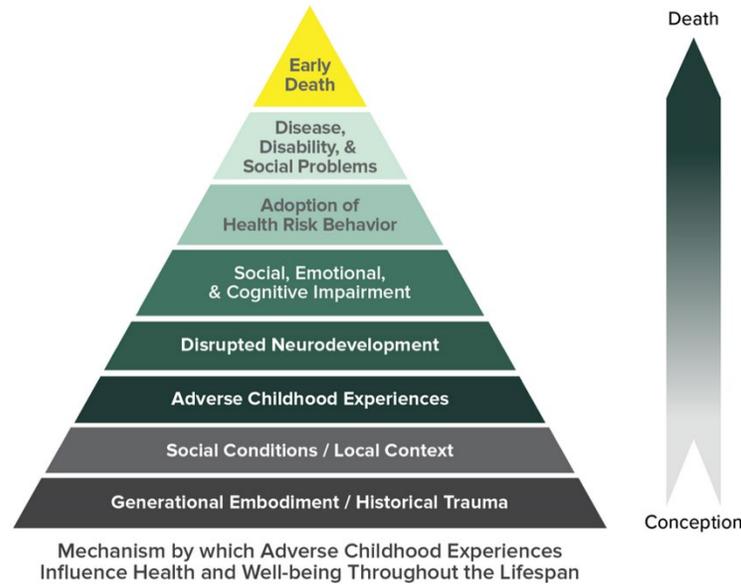


Figure 4. The Adverse Childhood Experiences Pyramid represents the conceptual framework for an ACE study, which uncovered how ACEs strongly influence Health and Well-being throughout life.¹⁴⁹

An opportunity exists in New York City to provide care earlier, prevent adverse childhood experiences, and support protective factors that reduce their impact. We recommend the introduction of ACEs training at city agencies, as well as training on early intervention for early childhood providers and community members. An ACEs approach targeting city agencies would help ensure that “the whole community understands the prevalence and impact of ACEs, the role trauma plays in people’s lives, and the complex and varied paths for healing and recovery.”¹⁵⁰ Care programs targeting providers and community members have an opportunity to support children in building resilience, reducing the effects of toxic stress from adverse experiences.¹⁵¹

¹⁴⁸ *Understanding and Responding to Adverse Childhood Experiences in New York State 4*, N.Y. State Dep’t of Health (May 2018), https://www.health.ny.gov/statistics/brfss/reports/docs/adverse_childhood_experiences.pdf.

¹⁴⁹ *About the CDC-Kaiser ACE Study*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/violenceprevention/aces/about.html> (last visited Dec. 8, 2021).

¹⁵⁰ Jane Stevens, *PACEs Science 101 (FAQs) — Positive and Adverse Childhood Experiences*, PACEs Connection (Oct. 1, 2019), <https://www.pacesconnection.com/blog/aces-101-faqs>.

¹⁵¹ *See id.*

Recommendation

1. New York City should adopt an approach to reduce the impact of ACEs that prioritizes training city agency employees, early childhood care providers, teachers, parents, and other community members about ACEs. The city can also create a taskforce on ACEs-informed approaches to care in New York City, with representatives from city agencies and community stakeholders. It is imperative that the Administration improve care for ACEs and expand on the existing mental health initiatives, such as ThriveNYC.¹⁵² Any new training program for city agencies must include regular refresher trainings. There should also be programs that offer training in the community at large, including to parents, other family members, and community leaders.

Increased Mental Health and Behavioral Services for Children

Problem Statement

In a 2019 study, researchers found that, nationwide, approximately 49% of children with a mental health disorder have not received treatment or counseling from a mental health professional.¹⁵³ While New York City has some free and low-cost services available, it does not meet the increasing need for mental health services for children and adolescents facing the dual burden of ACEs and the COVID-19 pandemic.¹⁵⁴

Recommendation

1. Increased mental and behavioral health services should be made available for children and adolescents. These mental health services should prevent involuntary commitment to psychiatric facilities and serve to eliminate the history of overreliance on and abuse related to involuntary psychiatric commitment. The city should implement a program to increase the availability of behavioral and mental health services. In particular, the city should increase funding to mental health and behavioral health services in underserved communities to improve access to services and ensure adequate referral services for care. Further, the city

¹⁵² See *Understanding New York City's Mental Health Challenge*, ThriveNYC, <https://www1.nyc.gov/nyc-resources/thrivenyc.page> (last visited Dec. 8, 2021).

¹⁵³ Daniel G. Whitney & Mark D. Peterson, *US National and State-Level Prevalence of Mental Health Disorders and Disparities of Mental Health Care Use in Children*, 4 *Jama Pediatr.* 173, 389-391 (Feb. 11, 2019), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2724377>.

¹⁵⁴ See Afia Eama, *City's Black and Hispanic Youth Face Dire Need for Mental Health Care*, *Gotham Gazette* (Dec. 10, 2020), <https://www.gothamgazette.com/city/9973-nyc-black-hispanic-youth-dire-need-mental-health-care>.

should expand the mental health workforce through a pipeline training program implemented with CUNY.¹⁵⁵

¹⁵⁵ See, e.g., *Mental Health Counseling*, CUNY Hunter Sch. of Educ., <https://education.hunter.cuny.edu/admissions/graduate-programs/counseling-programs/mental-health-counseling/> (last visited Dec. 7, 2021).

VII. Heat

Problem Statement

According to Dr. Diana Hernández of Columbia University, “heat or eat” is an impossible choice that some people will have to face this winter in New York City.¹⁵⁶ Landlords in the city are responsible for providing and maintaining heat in residential apartment buildings. During the “heat season,” which stretches from October to May, residential building owners are required to maintain indoor temperatures at 68 degrees when outdoor temperatures fall below 55 degrees during the day, and indoor temperatures must be kept at a minimum of 62 degrees overnight.¹⁵⁷

However, many landlords do not provide the heat required by law, leaving some New Yorkers freezing in their homes during the winter. Inadequate heat is particularly a problem in low-income households because they are more likely to experience landlords that do not follow the law.¹⁵⁸ Low-income residents also cannot readily afford supplemental heat, such as electric heaters, given the cost of obtaining them and the increased electric bill that would ensue. The incoming Mayor should immediately act to address the problem of heat insecurity and of inadequate heat in low-income and communities of color (particularly in the Bronx), and by doing so will save lives.

According to the community group Heat Seek, no-heat complaints are consistently the most common complaint made to the city during the winter.¹⁵⁹ For example, the New York City Department of Housing Preservation and Development (HPD) reported over 170,000 heat complaints between October 2019 and May 2020.¹⁶⁰ Those complaints ultimately resulted in issuance to landlords of 3,547 heat and 5,164 hot water violations in that period.¹⁶¹ Most of those heat complaints were in the community board districts located in Inwood and Washington Heights (Manhattan CB 12) and Fordham, University Heights, Morris Heights, Bathgate, and Mount Hope (Bronx CB 5).¹⁶² The number of heat complaints stemming from those districts ranged from 1.7 to 11.2 times higher than the complaints stemming from community board districts with the most complaints in the other three boroughs.¹⁶³ During the 2018-19 heat season,

¹⁵⁶ Interview with Dr. Diana Hernández, Associate Professor of Sociomedical Sciences at Columbia University (2021).

¹⁵⁷ *HPD Announces Beginning of 2021-2022 “Heat Season” in New York City*, N.Y.C. Dep’t of Hous. Pres. and Dev. (Oct. 1, 2021), <https://www1.nyc.gov/site/hpd/news/042-20/hpd-start-the-2020-2021-heat-season-new-york-city#/0>.

¹⁵⁸ See Kevin Zawacki, *NYC’s Low-Income Renters Are Freezing*, Daily Beast (Apr. 14, 2017), <https://www.thedailybeast.com/nycs-low-income-renters-are-freezing>.

¹⁵⁹ *What We Do*, Heat Seek, <https://heatseek.org/how-it-works-2> (last visited Nov. 26, 2021).

¹⁶⁰ N.Y.C. Dep’t of Hous. Pres. and Dev., *supra* note 157.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

one-quarter of all heat and hot water violations occurred in the Bronx, which has 17% of the city's population.¹⁶⁴

This disparity between neighborhoods reflects racial and socioeconomic disparities. For example, Bronx CB 5 is also the community district with the highest rate of poverty in the city, with a 37.1% poverty rate.¹⁶⁵ The data indicate that communities of color and economically disadvantaged New Yorkers are in need of more heat protection. Given the increase in climate-driven extreme weather events, the city must ensure that there is a robust system to guarantee heat.

Recommendations

1. The city needs a better way of enforcing compliance with the eight-month long “heat season.” The Mayor must provide HPD with more funding and resources so as to better address heat complaints and issue violations to landlords who violate this law. HPD should be given the resources needed for conducting heat-related inspections, emergency repairs, enforcement, and providing supplemental heat (i.e., electric heaters and electric bill payment) to those in need. HPD should be encouraged to work with housing advocates and legal services to help monitor and enforce the heating requirement.

The Mayor should work with HPD to develop a plan for stronger enforcement of the heating law. HPD should streamline the paperwork and monitoring process for 311 complaints and publicly report data on inspections and violations so that landlords can be held accountable. Heat complainants should have a direct line to HPD so that they may access emergency repairs and receive immediate supplemental heat and hot water. HPD should expand the heat sensor program, which requires installation of internet-capable heat sensors in select buildings that have been flagged due to multiple violations.¹⁶⁶ Heat sensors should also be made readily available to tenants and activist groups for collecting data on heat violations. Free sensors should be prioritized in the poorest neighborhoods and in communities where landlords use no heat as a means of harassment to drive tenants out of gentrifying neighborhoods.¹⁶⁷

¹⁶⁴ Sarah Elizabeth Spoon, *Bronx Tops Charts in Heat and Hot Water Complaints*, Bronx Ink (Oct. 22, 2019), <http://bronxink.org/2019/10/22/28795-bronx-tops-charts-in-heat-and-hot-water-complaints/>.

¹⁶⁵ *New York City Government Poverty Measure 2018*, Mayor's Off. of Econ. Opportunity (2020), https://www1.nyc.gov/assets/opportunity/pdf/20_poverty_measure_report.

¹⁶⁶ See *Heat Sensors Program*, New York City Dep't of Hous., Pres. and Dev., <https://www1.nyc.gov/site/hpd/services-and-information/heat-sensors-program.page> (last visited Nov. 26, 2021).

¹⁶⁷ See Jeanie Riess, *Turning Up the Heat on Bad Landlords*, New Yorker (Feb. 11, 2019), <https://www.newyorker.com/magazine/2019/02/18/turning-up-the-heat-on-bad-landlords>; *Tenants Fight Displacement and Gentrification in East Harlem*, Legal Servs. NYC (Dec. 10, 2015), <https://www.legalservicesnyc.org/news-and-events/press-room/948-tenants-fight-displacement-and-gentrification-in-east-harlem>.

2. The city should also address heat and hot water issues in New York City Housing Authority (NYCHA) buildings. No heat and hot water complaints in NYCHA are handled differently than complaints in privately owned buildings, effectively leaving NYCHA to police itself.¹⁶⁸ The city needs more transparency and accountability regarding heat in NYCHA, and should take a more active oversight role. The city should invest more in updating the heat and hot water systems within NYCHA to ensure health and safety for its residents.

¹⁶⁸ Luis Ferré-Sadurní, *No Heat for 10 Years, and the City Is Their Landlord*, N.Y. Times (Dec. 9, 2018), <https://www.nytimes.com/2018/12/19/nyregion/nycha-housing-heat.html>.

VIII. Climate Change and Environment

Introduction

Climate change impacts all New Yorkers, but some individuals and communities are more vulnerable than others. As New York City moves forward with climate mitigation and adaptation strategies, the city must take specific action to protect all residents, with special attention to the most vulnerable individuals and communities. The health burden caused by the geographic concentration of polluting industries in low-income Black and brown communities is part of the legacy of environmental racism, and has contributed to health disparities.¹⁶⁹

Furthermore, the increased frequency and intensity of extreme heat, cold, and flooding events will continue to harm those with chronic medical conditions, families living in low-quality housing, and households lacking disposable income to afford air conditioning in the summer and supplemental heat in the winter. In the following sections, we provide recommendations for a mayor who seeks to promote justice and fairness in addressing climate change and environmental racism.

Preservation and Creation of Green Space

Problem Statement

Environmental justice communities are those disproportionately impacted by environmental burdens, such as pollution, that have not received the same level of investment in green infrastructure as affluent, predominantly white neighborhoods.¹⁷⁰ According to the Trust for Public Land Park Equity Plan for New York City, communities of color have 33.5% less park space per person within a 10-minute walk compared to white communities, and low-income communities have 21.2% less park space per person within a 10-minute walk compared to high-income communities.¹⁷¹ Safe, equitable access to quality green space is not only important for climate resilience (i.e., to buffer communities from flooding and heat waves), but also to provide a safe space for exercise and to support mental health and well-being. The combined health and climate benefits of green space make it imperative that the city equitably distribute green space to achieve social justice in New York.

Recommendations

1. The city should preserve and create more green space, focusing on the disparities in access and the associated health and climate adaptation benefits that green

¹⁶⁹ See *Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone*, N.Y.C. Dep't of Health and Mental Hygiene (April 2011), <https://www1.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf>.

¹⁷⁰ *Park Equity Plan for New York City 4*, Tr. for Pub. Land (Apr. 15, 2021). https://www.tpl.org/sites/default/files/tpl_nyc-park-equity-plan_2021%20report_final_41521.pdf.

¹⁷¹ *Id.*

space provides.¹⁷² Specifically, the city should protect, revamp, and create green space in communities of color and communities with concentrated poverty that have suffered from generations of environmental racism. The city's environmental justice law defines low-income and racial minority communities to be environmental justice (EJ) areas.¹⁷³

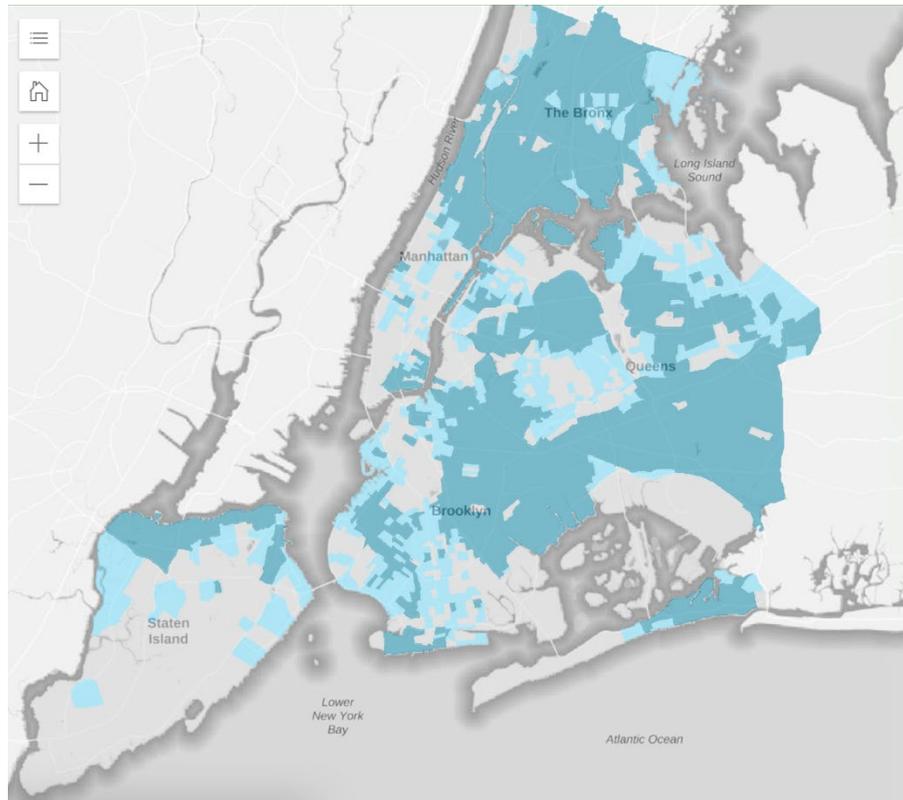


Figure 1. Environmental justice areas as reported by the Mayor's Office of Climate and Sustainability.¹⁷⁴ Environmental justice areas are shaded in dark blue indicating low-income communities, where the population below poverty is equal to or greater than 23.59% of the total population, and/or minority communities, where the minority population is equal to or greater than 51.1% of the total population. Light blue regions indicate potential EJ communities that do not meet the statistical threshold to be defined as an EJ community, but are being investigated for inclusion in the City's Environmental Justice report. Grey areas are not EJ communities.

To address the inequity in green space, the city should (1) develop a formal definition of safe, publicly accessible green space in terms of land area, vegetation

¹⁷² *Id.* at 3.

¹⁷³ 10 N.Y.C. Admin Code § 3-1001.

¹⁷⁴ *New York City's Environmental Justice for All Report: Map of NYC's Environmental Justice Areas*, N.Y.C. Mayor's Off. of Climate and Sustainability, <https://www1.nyc.gov/site/sustainability/our-programs/new-york-citys-environmental-justice-for-all-report.page> (last visited Dec. 8, 2021).

coverage, recreational uses, amenities, and aesthetic beauty; (2) declare protection for all existing green spaces, particularly in EJ communities; (3) fund the revitalization of green space in EJ communities with community input and involvement, particularly for community gardens and parks; (4) create new green spaces, specifically in EJ communities that fit the stated needs and cultural values of the community; (5) develop green “climate gentrification” laws to prevent residential and social displacement of people from EJ communities as a result of new green infrastructure;¹⁷⁵ and (6) add an action plan to the N.Y.C. Department of Environmental Protection’s Green Infrastructure Program that will act as a roadmap for green infrastructure in EJ communities.¹⁷⁶

2. When evaluating land for the creation of new green space, the city should look to two areas of opportunity: streets and asphalt schoolyards. The creation of green spaces within streets can be done using green streets and complete streets designs, as described by the U.S. Environmental Protection Agency and U.S. Department of Transportation, respectively.¹⁷⁷ Green streets and complete streets transition streets from serving private passenger vehicles to being climate-friendly spaces that promote more pedestrian, bicycle, and bus transportation. Optimal street infrastructure will not only make the city more climate resilient, but can also help protect residents from harmful tailpipe emissions by creating a barrier between pedestrians, cyclists, and cars. Such infrastructure should include trees, rain gardens, and bioswales, which are green spaces designed to channel water runoff and remove debris and pollution. According to the N.Y.C. Department of Design and Construction, bioswales increase street drainage capacity and reduce flooding by collecting an estimated eight million gallons of water per year.¹⁷⁸
3. In addition to streets, another space for opportunity for new green infrastructure is the conversion of asphalt school yards. According to the Trust for Public Land Park Equity Plan for New York, the city has long recognized the problem of asphalt schoolyards that deprive students of quality outdoor spaces for exercise and learning.¹⁷⁹ The city can create new green spaces that serve children via the conversion of asphalt school yards to green spaces. The Department of Education

¹⁷⁵ See Isabelle Anguelovski et al., *Opinion: Why green “climate gentrification” threatens poor and vulnerable populations*, Proc. of the Nat’l Acad. of Scis. (Dec. 26, 2019), <https://www.pnas.org/content/116/52/26139>.

¹⁷⁶ See *Green Infrastructure*, N.Y.C. Dep’t of Env’tl. Protection, N.Y.C. Dep’t of Env’tl. Protection, <https://www1.nyc.gov/site/dep/water/green-infrastructure.page> (last visited Dec. 6, 2021).

¹⁷⁷ *Learn About Green Streets*, U.S. Env’tl. Protection Agency, <https://www.epa.gov/G3/learn-about-green-streets> (last visited Dec. 6, 2021); U.S. Dep’t of Transp., *Complete Streets*, <https://www.transportation.gov/mission/health/complete-streets> (last visited Dec. 6, 2021).

¹⁷⁸ *Rain Gardens*, N.Y.C. Dep’t of Design and Constr. (Aug. 1, 2017), <https://www1.nyc.gov/site/ddc/resources/features/2017/08/bioswales.page>.

¹⁷⁹ Tr. for Pub. Land, *supra* note 170, at 3-4.

has already converted over 200 schoolyards to green spaces.¹⁸⁰ This program should be expanded with particular emphasis on EJ communities.

Close the Gap in Air Conditioning Access

Problem Statement

Climate change is increasing the frequency and duration of heat waves.¹⁸¹ New York City must pay special attention to heat waves because it is an urban area, which absorbs significant heat due to the large amount of cement and constructed surfaces. Concrete and asphalt absorb heat, and intensify heat waves by preventing heat dissipation and cooling.¹⁸²

Black and brown communities are highly vulnerable to heat for two reasons. First, Black and brown communities have less green and blue space (i.e., parks, trees, soils, and waterways) to buffer the heat. The paucity of trees restricts shade, particularly for pedestrians commuting to and from the subway or bus.¹⁸³ As a consequence, those living in neighborhoods with less green and blue space experience heat exposure more acutely.¹⁸⁴ Second, Black and brown communities in the city experience higher rates of chronic illness, partly due to environmental and structural racism (e.g., health food deserts, lack of safe outdoor spaces for exercise, and the lack of high-quality preventative care).¹⁸⁵ Individuals with chronic health conditions and older individuals are most susceptible to hospitalization and death during heat waves, as excess heat can exacerbate existing health conditions.¹⁸⁶ Expansion of the air conditioning (AC) program will not solve the issue of heat vulnerability in communities of color, but it will lessen the health impact.

Recommendation

1. The city should expand its existing heat wave plan to ensure all vulnerable households are given an air conditioning unit and financial assistance to pay the additional cost of electricity during heat waves and hot summer months.
New York City has an existing Cooling Assistance benefit that provides AC units

¹⁸⁰ *Id.* at 4.

¹⁸¹ *Climate Change Indicators: Heat Waves*, U.S. Env'tl. Prot. Agency, <https://www.epa.gov/climate-indicators/climate-change-indicators-heat-waves> (last visited Dec. 8, 2021).

¹⁸² *See Pavement Thermal Performance and Contribution to Urban and Global Climate*, U.S. Dep't of Transp., Fed. Highway Admin. (May 27, 2021), https://www.fhwa.dot.gov/pavement/sustainability/articles/pavement_thermal.cfm.

¹⁸³ *See N.Y.C. Urban Forest Agenda 14*, Forest for All N.Y.C., <https://forestforall.nyc/wp-content/uploads/2021/06/NYC-Urban-Forest-Agenda-pdf> (last visited Dec. 8 2021).

¹⁸⁴ *See id.*

¹⁸⁵ *See, e.g.*, N.Y.C. Dep't of Health And Mental Hygiene, *supra* note 169.

¹⁸⁶ *2021 New York City Heat-Related Mortality Report*, N.Y.C. Dep't of Health and Mental Hygiene, <https://nyccas.cityofnewyork.us/nyccas2021v9/report/1> (last visited Dec. 8, 2021).

to families who qualify based on their income; this benefit should be expanded to assist more households.¹⁸⁷

Reduce Indoor Air Pollution & Childhood Asthma by Replacing Gas Stoves with Electric Stoves

Problem Statement

Gas stoves are not only bad for the environment, but also harmful to human health.¹⁸⁸ In order to meet its emission reduction goals, the city must implement electrification policies to transition from burning fossil fuels to using sustainable, electric sources of energy. The transition from gas to electric stoves is low hanging fruit in replacing fossil fuels with sustainable energy. Gas stoves are one of the most common uses of fossil fuels in the home, and buildings are the greatest source of greenhouse gas emissions in the city.¹⁸⁹ Therefore, in order to cut emissions, the city must prioritize the decarbonization of residential buildings, in part through replacing gas stoves with electric stoves. Most importantly, alongside the necessity to cut back on greenhouse gas emissions, the city must recognize its responsibility to address existing health disparities created and exacerbated by the legacy of environmental racism in the city. There is a nationwide movement to transition from gas to electric, and New York can lead by rolling out decarbonization policies that address both climate justice and health disparities.

Recommendation

1. The city should provide economic support, incentives, job-creation programs, and training to enable residential buildings to transition from gas to induction electric stoves with convection ovens. This transition will provide both climate change and health benefits by (1) reducing the city's use of fossil fuels and (2) reducing children's risk of asthma, which is one of the most significant manifestations of environmental racism in New York. According to a meta-analysis published in the *International Journal of Epidemiology*, living in a home with a gas stove can increase a child's current risk of asthma by 42%.¹⁹⁰ Furthermore, data from the NYC Community Health profiles has shown that the rate of child asthma emergency department visits (per 10,000 children) in the South Bronx neighborhoods of Mott Haven and Melrose is approximately 23 times higher than

¹⁸⁷ *Cooling Assistance Benefit*, Access N.Y.C., <https://access.nyc.gov/programs/cooling-assistance-benefit/> (last visited Dec. 8, 2021).

¹⁸⁸ See Weiwei Lin, Bert Brunekreef & Ulrike Gehring, *Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children*, *Int'l J. of Epidemiology* (Aug. 20, 2013), <https://academic.oup.com/ije/article/42/6/1724/737113>.

¹⁸⁹ *Energy Benchmarking*, N.Y.C. Mayor's Off. of Climate and Sustainability, <https://www1.nyc.gov/site/sustainability/codes/energy-benchmarking.page> (last visited Dec. 8, 2021) (over 70% of New York City's greenhouse gas emissions come from buildings).

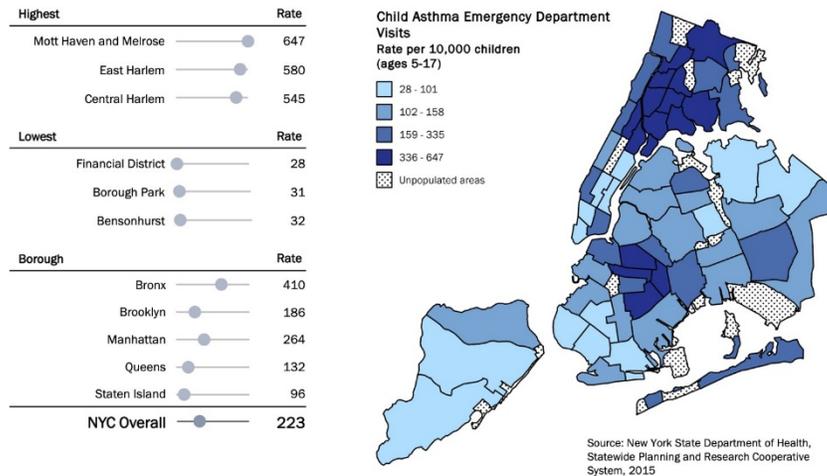
¹⁹⁰ Lin, Brunekreef & Gehring, *supra* note 188.

that of the least-affected community, the Financial District in lower Manhattan.¹⁹¹ Together, the asthma health disparity in the city and the climate crisis make the conversion from gas to electric a clear-cut avenue for addressing health and climate change.

Child Asthma Emergency Department Visits



Rate of emergency department visits for asthma among children per 10,000 children ages 5 to 17.



2018 Community Health Profiles Map Atlas

39

Figure 2. Childhood asthma emergency department visits per 10,000 children age 5-17 by community in New York City. The neighborhoods with the highest rates of childhood asthma are also some of the most economically disenfranchised communities and those with majority Black and brown residents.¹⁹²

Importantly, when transitioning from gas to electric stoves, the city should prioritize EJ communities, as well as communities with the highest rates of childhood asthma.¹⁹³ Furthermore, the city should create educational campaigns and support local communities in the transition from gas to electric cooking, with emphasis on cultural cooking.

¹⁹¹ *New York City Community Health Profiles 2018 Map Atlas* 39, N.Y.C. Dep't of Health and Mental Hygiene, <https://www1.nyc.gov/assets/doh/downloads/pdf/data/2018-chp-atlas.pdf> (last visited Dec. 8, 2021).

¹⁹² *Id.*

¹⁹³ *See id.*

Make Waterfronts Accessible to the Public

Problem Statement

New York's most disadvantaged communities have, in some cases, gone decades without access to waterfront spaces.¹⁹⁴ In order to address equitable access to green space, the city must also address equitable access to waterfronts. Many of the EJ communities that lack access to the waterfronts in their neighborhoods are the same communities oversaturated with polluting industries, whose residents carry the health consequences of these industries.¹⁹⁵ Revitalized waterfronts provide safe outdoor space to facilitate healthy activities, allow for bicycle and pedestrian movement through neighborhoods, separate people from roadways saturated with air pollution, and protect communities from flooding. Given these benefits, waterfront access can simultaneously improve several areas of social justice.

Recommendations

1. The city should ensure safe equitable access to waterfronts, particularly on public lands. The city should advocate for the state to provide equitable and inclusive access to waterfronts, prioritizing EJ communities that have lacked access to waterfronts for decades, and have been disproportionately impacted by pollution from waterfront industrial sites.
2. The city should also advocate for revitalizing waterfronts to adapt to climate change. Specifically, these flood-prone areas can be physically adapted with green space and built infrastructure to dampen the effects of flooding during extreme weather events. The NYC Comprehensive Waterfront Plan already calls for equitable and climate-resilient public-access waterfronts that provide economic opportunity, improved water quality, and natural resources.¹⁹⁶ The Administration can help achieve this goal by (1) supporting waterfront plans in environmental justice communities, such as the Mott Haven-Port Morris Waterfront Plan developed by the environmental justice group South Bronx Unite, which has already been recognized as a New York State Priority Project;¹⁹⁷ and (2) providing resources to community groups to develop community organized waterfront plans that may be taken to the state. For example, Appendix Figure 3 displays a proposal that encompasses Lincoln Avenue to Alexander

¹⁹⁴ See *Mott Haven-Port Morris Waterfront Plan*, South Bronx Unite, <https://www.southbronxunite.org/mott-havenport-morris-waterfront-plan> (last visited Dec. 8, 2021).

¹⁹⁵ See *id.*; N.Y.C. Dep't of Health and Mental Hygiene, *supra* note 191.

¹⁹⁶ *New York City Comprehensive Waterfront Plan*, N.Y.C. Dep't of City Planning, https://static1.squarespace.com/static/5ef0c82bd1b5db4d3c1d9507/t/5f3d6cb090043424273c36ac/1597861044179/IntroToCWP_20200819.pdf (last visited Dec. 8, 2021).

¹⁹⁷ South Bronx Unite, *supra* note 194.

Avenue from East 132nd Street to the Harlem River in the South Bronx, which is one of the communities with the highest rates of poverty in the city.

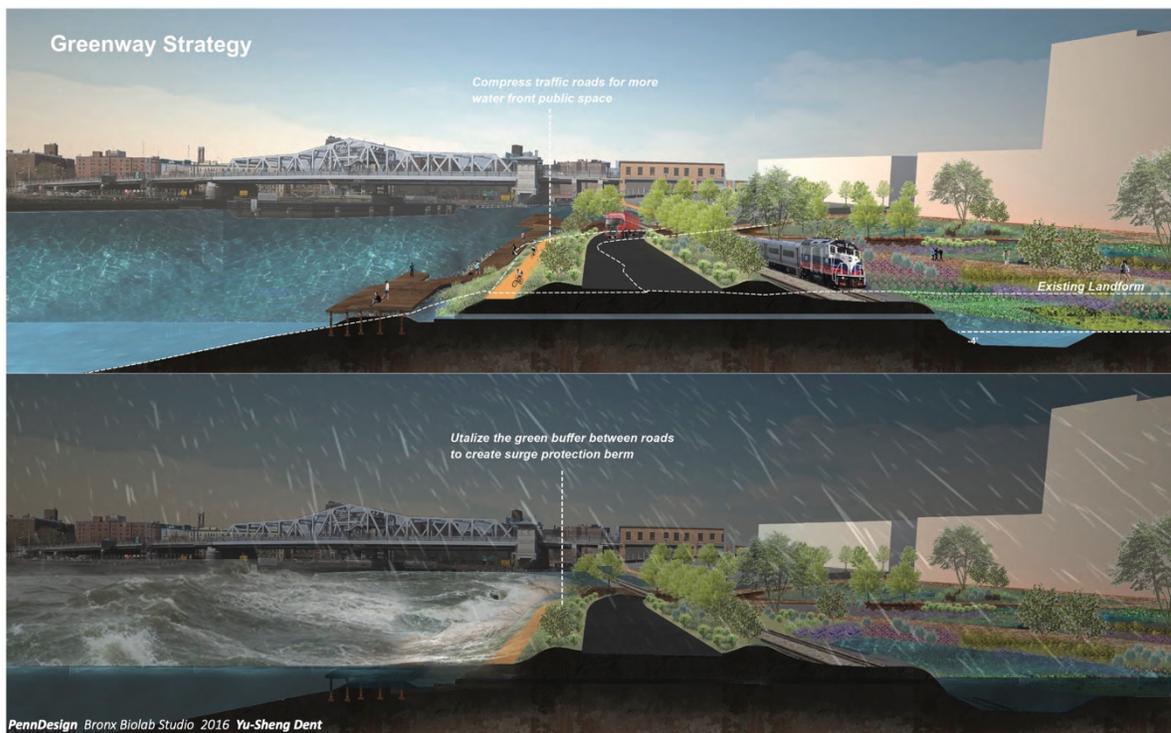


Figure 3. Rendering of the waterfront plan in the South Bronx obtained from South Bronx Unite. As illustrated, by revitalizing the waterfront, not only can more public green and blue space be available to disadvantaged communities, but the “green buffer” can offer surge protection during extreme weather events.¹⁹⁸

Additional Recommendations in Short-Form

1. The city should provide greater subsidies for solar power. The city should create a taskforce to investigate using municipal buildings to generate solar and then distribute this energy to households that qualify for the federal Low Income Home Energy Assistance Program (LIHEAP) or other assistance programs.
2. The city should commit to no new fossil fuel infrastructure in New York City. This commitment should include preventing gas utilities from being placed in new buildings/remodels and working to prevent new gas pipelines, such as the

¹⁹⁸ C-Lincoln Avenue Waterfront Park, South Bronx Unite, <https://www.southbronxunite.org/c-lincoln-avenue-waterfront-park> (last visited Dec. 8, 2021) (rendering available via link on webpage).

North Brooklyn Pipeline, which would run through disadvantaged communities.¹⁹⁹

3. The city should create programs to help landlords and NYCHA remove mold and lead from residential buildings. This removal is a prerequisite to weatherizing buildings, making them more airtight, and preparing for electrification for heat, hot water, and appliances. Removal of mold and lead will also have the health benefit of creating a healthy indoor living environment by removing these health hazards from homes.
4. The city should provide resources for landlords and NYCHA to have backup power at the building level, particularly in buildings with crowded households that include vulnerable people with chronic medical conditions. Backup power will help ensure the continued functioning of medical devices and breast pumps during power outages.
5. The city should advocate to the state for more shut-off protection for utilities.²⁰⁰ New York State lags behind our neighbors, such as New Jersey, in providing protection from utility shut-offs during the winter and other sensitive times of year, such as heat waves.²⁰¹
6. The Mayor should request that energy insecurity be added to the Department of Health and Mental Hygiene’s community health surveys and profiles. Energy insecurity means the “inability to adequately meet basic household heating, cooling, and energy needs.”²⁰² The Department of Health and Mental Hygiene’s data about energy security should include information about household (1) ability to afford utilities, (2) utilities shutoffs for cooking, heating, and cooling, (3) inadequate insulation, and (4) discomfort from cold during the winter. Energy insecurity is connected to health because “children in moderately and severely energy-insecure homes are more prone to food insecurity, hospitalizations, poorer health ratings and developmental concerns...”²⁰³

¹⁹⁹ See Sydney Pereira, *National Grid Is Building A Natural Gas Pipeline Through North Brooklyn. But Do We Need It?*, Gothamist (Apr. 16, 2021), <https://gothamist.com/news/national-grid-building-natural-gas-pipeline-through-north-brooklyn-do-we-need-it>.

²⁰⁰ The New York Public Service Commission, a state authority, regulates utilities in the city. See *A Stronger, More Resilient New York* 111, PlaNYC (June 11, 2013), http://s-media.nyc.gov/agencies/sirr/SIRR_singles_Hi_res.pdf.

²⁰¹ Interview with Dr. Diana Hernández, Associate Professor of Sociomedical Sciences at Columbia University (2021).

²⁰² *Energy Insecurity Among Families With Children* 3, Nat’l Ctr. for Children in Poverty (Jan. 2014), https://www.nccp.org/wp-content/uploads/2020/05/text_1086.pdf.

²⁰³ *Id.*

7. The city should advocate for the state to require the utility companies publicly report shut-off data so that disparities may be identified and addressed.²⁰⁴
8. The city should create a taskforce to investigate carbon capture infrastructure for New York City, such as the encapsulation of greenhouse gases from urban traffic and highways.

²⁰⁴ See PlaNYC, *supra* note 200.

IX. Land Use and a Comprehensive Planning Framework

Land Use

Problem Statement

New York City’s land use and development decisions deepen inequality by prioritizing property owners, real estate developers, and investors’ interests over community needs and interests. City planning has resulted in the disparate impact of environmental hazards on low-income communities of color, such as the South Bronx, a predominantly Black and Hispanic community located between four highways and adjacent to seven Superfund sites.²⁰⁵ As one example, asthma rates in the Mott Haven neighborhood of South Bronx are five times the national average and 21 times higher than other city neighborhoods.²⁰⁶ The rezonings of formerly industrial and working class neighborhoods—including Williamsburg, Long Island City, Crown Heights, Fort Greene, Flushing, and Harlem—have facilitated market-driven residential and commercial transformative developments that contribute to residential and small business displacement.

Discretionary land use applications²⁰⁷ are subject to the City Environmental Quality Review (CEQR), a disclosure process for environmental impacts, and the Uniform Land Use Review Procedure (ULURP), a public review and approval process.²⁰⁸ Our recommendations seek to advance land use justice by reforming CEQR and ULURP, and strengthening the independence and public mission of city planning agencies, such as the Department of City Planning (DCP) and the City Planning Commission (CPC). CEQR review of discretionary land use applications requires an Environmental Assessment Statement (EAS). After the EAS submission, if the project includes the potential for at least one significant adverse impact in the environment or is determined to need additional review, the agency in charge must complete an Environmental Impact Statement (EIS).²⁰⁹

As discussed in Recommendation 1 below, we recommend the adoption of a precautionary principle in dealing with environmental challenges. There are three potential points of failure that this recommendation can address. The first is the EAS

²⁰⁵ See J. Mijin Cha et al., *The Bronx Is an Epicenter for Coronavirus and Environmental Injustice*, Data for Progress (May 19, 2020), <https://www.dataforprogress.org/blog/5/18/bronx-is-epicenter-for-coronavirus>.

²⁰⁶ See Hazar Kilani, ‘Asthma alley’: why minorities bear burden of pollution inequity caused by white people, *Guardian* (Apr. 4, 2019), <https://www.theguardian.com/us-news/2019/apr/04/new-york-south-bronx-minorities-pollution-inequity>.

²⁰⁷ Such applications are put forth for projects that need city funding or involve the acquisition, sale, lease of city-owned land, changes in the zoning text and map, agency approvals, or permits.

²⁰⁸ *Environmental Review Process*, N.Y.C. Dep’t of City Planning, <https://www1.nyc.gov/site/planning/applicants/environmental-review-process.page> (last visited Nov. 19, 2021).

²⁰⁹ *Id.*

determination. In downtown Flushing, the EAS of a private application for a special waterfront district designation and rezoning was issued a negative declaration, meaning that the DCP found no significant adverse impacts despite the proposed addition of three million square feet of mixed-use development on an industrial waterfront along the Flushing Creek with an existing sewage overflow problem.²¹⁰ Upon CPC and City Council approval of the special district application, a coalition of organizations filed a lawsuit based on the city's failure to conduct an EIS; however, the lawsuit was ultimately dismissed.²¹¹ The dismissal underscores the need for land use reform.

The second potential point of failure is in the EIS findings. At present, the EIS is drafted by the land use application lead agency or organization, giving the organization considerable control over whether findings are declared significant.²¹² The impact of this control has been felt by residents of communities where major development projects have been planned. Residents of Inwood, Two Bridges, Crown Heights, and East Harlem have filed lawsuits against the city to block rezoning, in part, because of what communities have deemed as inadequate review of the environmental impacts.²¹³ While these lawsuits have been met with mixed success, they indicate a need for greater transparency and accountability as to how findings are determined. In some cases, communities have developed alternative development plans which are rarely included in the EIS for consideration and analysis.²¹⁴

The final point of failure is in the decision to move forward, or not, after the completion of the EIS. According to the Pratt Center for Community Development, the intent of the EIS is to disclose impacts, not to make conclusions about whether a project

²¹⁰ See Allie Griffin, *Flushing Community Groups Suing City Council Over Waterfront Development*, Queens Post (Feb. 19, 2021), <https://queenspost.com/flushing-community-groups-suing-city-council-over-waterfront-development>.

²¹¹ *Challenging Unlawful Lack of Environmental Review of Massive Flushing Waterfront Rezoning*, TakeRoot Justice, <https://takerootjustice.org/2012/10/flushing-waterfront/> (last visited Nov. 19, 2021); Dkt. No. 85, *Chhaya Community Dev. Corp. v. N.Y.C. Dep't of City Planning*, No. 706788/2020 (N.Y. Sup. Ct. Oct. 15, 2021) (denying petition and dismissing lawsuit).

²¹² *Environmental Review Process*, N.Y.C. Dep't of City Planning, <https://www1.nyc.gov/site/planning/applicants/environmental-review-process.page> (last visited Nov. 19, 2021).

²¹³ See Stefanos Chen, *The People vs. Big Development*, N.Y. Times (Sept. 10, 2021), <https://www.nytimes.com/2020/02/07/realstate/the-people-vs-big-development.html>.

²¹⁴ UPROSE's Green Resilient Improvement District (GRID) was a community-based development alternative to the proposed rezoning of Industry City but was not considered by DCP in the EIS alternative scenarios. See Stephen Witt, *UPROSE Floats 'New Green Deal' Alternative To Industry City Plan*, PoliticsNY (Aug. 15, 2019), <https://politicsny.com/2019/08/15/uprose-floats-new-green-deal-alternative-to-industry-city-plan/>; Rodrigo Camarena, *Rise to protect Sunset Park: The current Industry City rezoning plan would accelerate gentrification and displacement*, N.Y. Daily News (Sept. 19, 2019), <https://www.nydailynews.com/opinion/ny-oped-time-to-protect-sunset-park-20190915-npg5fmejpj5aexmqc5aobpj4iu-story.html>.

should move forward.²¹⁵ Even when there are “significant findings,” projects may move forward.

These three points of failure indicate a clear need to review and adjust the current system to better investigate and address potential environmental hazards.

Recommendations

1. Convene a committee to incorporate a precautionary principle in the CEQR Analysis Framework described in the Technical Manual. As described by the 1992 Rio Declaration on Environment and Development, the precautionary principle provides, “[W]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”²¹⁶ The committee should establish thresholds for the application of the precautionary principle to findings of significant impact and set a similar high threshold for a negative declaration on the initial EAS.

At present, the precautionary principle is not applied to the CEQR process, allowing potentially hazardous projects to move forward. By incorporating the precautionary principle in the CEQR process, potentially hazardous projects could be stopped. Additionally, the precautionary principle places the burden of proof on those who carry out activities threatening the environment and health, rather than placing that burden on communities themselves.²¹⁷ Incorporating the precautionary principle in the Technical Manual will reduce the subjectivity of the CEQR process by creating thresholds at which projects could be rejected.²¹⁸

2. Modify and regularly review the CEQR Technical Manual. The Mayor’s Office of Environmental Coordination supervises updates to the CEQR Technical Manual, giving the Mayor wide discretion to instigate a review of the Manual.²¹⁹ Although the Manual was updated in November 2020, a new administration

²¹⁵ See *Flawed Findings Part I*, Pratt Ctr. for Cmty. Dev. (2018), https://prattcenter.net/uploads/200002/1587837747778/Flawed_Findings_Full_Report_FINAL.pdf.

²¹⁶ *The Ten Principles of the UN Global Compact*, UN Global Compact, <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-7> (last visited Nov. 19, 2021).

²¹⁷ See Ole W. Pedersen, *Environmental Principles and Environmental Justice*, 12 *Env’tl L. Rev.* 26 (Apr. 20, 2010).

²¹⁸ Pratt Ctr. for Cmty. Dev., *supra* note 215.

²¹⁹ See *2020 Technical Manual*, N.Y.C. Mayor’s Off. of Env’tl Coordination, <https://www1.nyc.gov/site/oc/environmental-quality-review/technical-manual.page> (last visited Nov. 19, 2021).

provides an opportune time to implement additional changes.²²⁰ Specific changes to the Technical Manual should include:

- EAS submissions should be prepared by an independent consultant or a city agency, instead of by a firm secured by private applicants.
 - The pre-certification assessment of all applications should require a draft EIS to ensure a comprehensive review of project impacts on the natural, social, and built environment.
 - Community plans should be included in the EIS analysis of the impacts of the Action and No Action scenarios.
 - The CEQR Technical Manual should be periodically reviewed, with opportunity for public comment to help ensure that methodologies and recommendations reflect current and best knowledge and practices²²¹ to protect the natural and social environment and prevent harm, especially to frontline environment justice communities.²²²
3. Provide greater accountability for mitigation measures identified through the EIS. At present, when mitigation measures are identified in the Environmental Impact Statement, the lead agency and ULURP applicant is responsible for ensuring that mitigation measures are undertaken.²²³ After the initial review, though, there is insufficient transparency about whether these mitigation measures have occurred.²²⁴ This lack of transparency serves to further limit community engagement in the ULURP process. The City Council passed Local Law 175 in

²²⁰ The recent amendment to the New York Constitution, Section 1, Article 19 (“Each person shall have a right to clean air and water, and to a healthful environment”) may require reinterpretation of state laws regarding the processes and procedures of the State Environmental Quality Review Act and CEQR, as well as local law ULURP.

²²¹ See Adalene Minelli, *Reforming CEQR: Reforming Mitigation Under the City Environmental Quality Review Process*, Guarini Ctr. on Env’tl, Energy, and Land Use L. (Feb. 2020), <https://guarinicenter.org/reforming-ceqr/>.

²²² Frontline communities are those experiencing the “first and worst” effects of the climate crisis. Frontline communities are marginalized and typically overburdened with hazardous, undesirable land uses such as power plants and waste transfer stations. They are also typically low-income communities of color. See Carolyn Holland, *Centering frontline communities*, Ecotrust (May 20, 2017), <https://ecotrust.org/centering-frontline-communities/>.

²²³ *CEQR FAQs – Procedures*, N.Y.C. Mayor’s Off. of Env’tl Coordination, <https://www1.nyc.gov/site/oec/environmental-quality-review/ceqr-faqs-procedures.page> (last visited Nov. 19, 2021).

²²⁴ See Pierina Ana Sanchez et al., *Inclusive City: Strategies to achieve more equitable and predictable land use in New York City*, Reg’l Plan Ass’n (Jan. 2018), <https://rpa.org/work/reports/inclusive-city>.

2016, requiring the Administration to maintain a publicly accessible database of city commitments in connection with ULURP applications.²²⁵

While an important step, this City Commitment tracker has been found to be difficult to access and fails to incorporate environmental mitigation measures. City Council District 34 representative Antonio Reynoso introduced legislation, Int 0252-2018, which would amend the New York City Charter to improve the City Commitment tracker by requiring an agency of the Mayor’s choosing “to include environmental mitigation strategies among the commitments tracked as part of the publicly accessible online database tracking commitments.”²²⁶ Passage of this bill would provide transparency to communities about efforts to mitigate environmental impacts of development projects identified through CEQR’s environmental review and support future advocacy efforts about land use development projects.

Redefining the roles of DCP and CPC is necessary to promote the public interest, equitable growth, and the construction of a just city. City planning is a highly technical and top-down process that lacks transparency and meaningful public engagement. DCP conducts research and makes recommendations about zoning and land use in the city. DCP also serves as the lead agency for land use applications (e.g., Special Flushing Waterfront District) which presents a conflict between its role as an applicant for land use changes (e.g., rezoning and special district designation) and its public interest functions in (1) providing technical analysis and expertise on zoning, land use, and environmental impacts; (2) serving as a neutral arbiter of all stakeholders’ interests (e.g., community/public and private property owner/developer interests) in land use actions; and (3) organizing the ULURP review process. The City Planning Commission (CPC or the Commission) is a thirteen-member body, comprised of a majority of mayoral appointees, which reviews and votes on land use issues in ULURP. With the exception of the Chair of the CPC—who also holds the position of DCP Director—commission members are not city employees, as they hold full-time jobs and serve on the CPC as a public service.

CUNY Hunter College Professor Emeritus Tom Angotti has observed that “the role of the DCP and CPC in environmental review is unique and fraught with serious contradictions and potential conflicts.”²²⁷ As the city’s primary land use agency, the DCP should pursue development and growth that promotes an equitable and inclusive city. It should also prioritize community-centered technical assistance and public engagement through processes that facilitate an

²²⁵ See *Reporting*, N.Y.C. Mayor’s Off. of Operations, <https://www1.nyc.gov/site/operations/performance/reporting.page> (last visited Nov. 19, 2021).

²²⁶ Sadeq Ali Kully, *Advocates Push Charter Commission for Bolder Action on Land Use*, City Limits (May 10, 2019), (<https://citylimits.org/2019/05/10/advocates-push-charter-commission-for-bolder-action-on-land-use/>).

²²⁷ Tom Angotti, *Land Use and the New York City Charter* (Aug. 10, 2010), <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf>.

independent review of applications. To promote the public interest, equitable growth, and building a just city, our recommendations are:

- The Mayor’s Office of Environmental Coordination and the DCP should provide technical assistance to community members and organizations, as well as private applicants.
 - In land use applications where a city agency, such as the DCP or NYCEDC, is the applicant or a partisan to an application, the Public Advocate should serve as an independent arbiter in order to provide “maximum information and transparency to all participants in ULURP.”²²⁸
 - To maximize independence and impartiality in the provision of citywide and neighborhood-specific planning expertise, the Director of the DCP—an agency in which a majority of the staff have civil service titles—should not be the same person as the Chair of the City Planning Commission.
 - The appointment of the Chair of the CPC should require the advice and consent of the City Council, which would strengthen oversight and accountability of the Commission and heighten due diligence by Council Members. To ensure that plans developed by the DCP are evaluated and modified impartially by the CPC, the Commission should be an independent body whose responsibilities are separate from those of the DCP or the Office of the Mayor, and the Chair of the Commission should not be a member of the DCP.
4. Improve ULURP by providing greater accountability for conflicts of interest. The ULURP process for the Special Flushing Waterfront District (SFWD) underscores the inadequacies of the 2018 Charter Reforms pertaining to community boards and the outstanding need to further democratize the land use decision-making and approval process.

One of the most important functions of community boards, the City Planning Commission, and the City Council is their role in the ULURP process. Currently, for example, under the city’s conflict of interest rules, individuals who acknowledge conflicts of interest are not precluded from participating in community board discussions. This loophole should be corrected so that the city’s conflicts of interest rules align with the New York Attorney General’s view that public officials may not vote on or engage in discussions of proposals in which they have a personal interest.²²⁹

²²⁸ *Id.*

²²⁹ The New York Attorney General has advised that a “[local planning] board member’s participation in deliberations has the potential to influence other board members who will exercise a vote with respect to the matter in question. Further, . . . a board member with a conflict of interests should not sit with his or her fellow board members during the deliberations and action regarding the matter. The mere presence of the board member holds the potential of influencing fellow board members and

Comprehensive Planning Framework for a Just City

Problem Statement

New York City does not have a comprehensive plan except for occasional topic-specific plans, such as former Mayor Bloomberg’s PlaNYC 2030: A Greener, Greater NYC. As a result, neighborhood rezoning has proceeded in a piecemeal fashion, which has transformed land use and development and contributed to gentrification and displacement in working class communities of color. Without a comprehensive planning framework, the city is “ill equipped to address the existential threats that face our city today and over the next several decades,”²³⁰ including threats posed by persistent and widening racial income and wealth inequality²³¹ and the new “normal” of extreme weather events brought about by climate change.²³² The city’s land use policy and budget decisions should align with a comprehensive planning framework based on community-led participation and review of baseline studies of current conditions of our city, formulation of proposals to address challenges and opportunities, and strategies to build a just and equitable city for all New Yorkers.

Recommendations

1. Support inclusive community-led planning—including planning that incorporates input from more than just community boards—by providing technical and financial assistance. The DCP should assign planners to local neighborhoods to assist with community-led planning initiatives. Financial assistance to support community engagement in comprehensive planning by providing translation, materials, technical support, independent consultants, etc., should be available through a simple application to the Mayor’s Community Affairs Unit.
2. The development of a citywide comprehensive planning framework should build on community plans and initiatives such as the 2013 Chinatown Working Group (CWG) Plan.²³³ Formed in late 2008, the CWG is comprised of over 50 member organizations, including civic, community, and cultural groups, three Community Boards (Manhattan CB 1, 2, and 3), and other stakeholders. Based on a five-year

additionally, having declared a conflict of interests, there would reasonably be an appearance of impropriety in the eyes of the public should the member sit on the [local planning] board.” *Titan Concrete, Inc. v. Town of Kent*, 63 Misc. 3d 564, 574 (N.Y. Sup. Ct. 2019) (quoting 1995 Op. N.Y. Atty. Gen. No. 95-2).

²³⁰ See *Planning Together: A New Comprehensive Planning Framework for New York City*, N.Y.C. Council (Dec. 16, 2020), <https://council.nyc.gov/news/2020/12/16/planning-together/>.

²³¹ See generally Michael Williams, *Life in New York City During COVID-19*, Robin Hood (Feb. 2021), https://www.robinhood.org/wp-content/themes/robinhood/images/poverty-tracker/pdfs/POVERTY_TRACKER_REPORT24.pdf.

²³² *New York, States at Risk*, <https://statesatrisk.org/new-york/all> (last visited Nov. 19, 2021).

²³³ See *The Chinatown Working Group Plan*, Chinatown Working Grp, <https://www.chinatownworkinggroup.com/the-plan> (last visited Nov, 19, 2021).

community planning process assisted by a consultant group, the Pratt Center for Community Development, the CWG completed a comprehensive planning study and zoning proposals to protect Lower Manhattan’s last remaining historically diverse, working class neighborhoods.²³⁴

3. A community-led comprehensive planning framework should set goals regarding future land use and development of the natural and social environment for climate resiliency; strong democratic institutions and processes; and the advancement of an equitable city that provides opportunities for and protection of our most vulnerable residents.
4. Prioritize plans and projects that support the city’s implementation of the New York State Climate Leadership and Community Protection Act and the Biden Climate and Infrastructure Plans, especially in environmental justice communities. UPROSE’s Green Resilient Industrial District (GRID) is a frontline community-led, place-based comprehensive plan for a just transition to build a green economy in one of New York City’s largest remaining industrial waterfront neighborhoods.²³⁵ GRID exemplifies the type of plan and process that should be integrated in a citywide planning framework.

²³⁴ *Id.*

²³⁵ *Learn About The Green Resilient Industrial District (GRID)!*, Uprose, <https://www.uprose.org/the-grid> (last visited Dec. 8, 2021).

X. Economic Development

Problem Statement

The New York City Economic Development Corporation (NYCEDC) is the economic development arm of the city. The mission of NYCEDC is to drive and shape the city's economic growth and job creation by: (1) owning and operating over 66 million square feet of commercial real estate, making NYCEDC the largest landlord in New York City;²³⁶ (2) providing tax incentives and abatements to private businesses (in growth sectors with potential for job creation), issuing tax-exempt bond financing, and offering discretionary financial assistance to private businesses and non-profit organizations; and (3) overseeing planning and interagency coordination for commercial development and infrastructure projects.

The COVID-19 pandemic has exposed and deepened long-standing patterns of racial economic inequality, including persistent high levels of working and jobless poverty among New York City's Black, brown, and Asian populations. Since NYCEDC's mission is to leverage city resources to create good paying jobs for all New Yorkers and make the city "a fairer place for all,"²³⁷ reforming NYCEDC must be an essential instrument in advancing economic and social justice.

NYCEDC is a mayoral-controlled, quasi-public agency that is organized as a not-for-profit under state law. The NYCEDC Board of Directors is made up of 27 mayoral appointees, of which the Mayor appoints 16 directly, five upon nomination by the Borough Presidents, five upon nomination by the City Council Speaker, and one (the Chairperson) appointed directly by the Mayor "after consultation with New York City Partnership Inc. or its successor."²³⁸ NYCEDC also administers the New York City Industrial Development Agency (NYCIDA), a public benefit corporation that acts as a conduit organization for financing in the bond market and grants financial incentives (e.g., tax reductions, payments in lieu of taxes) to private businesses and Build NYC Resource Corporation, a local development corporation that is incorporated as a not-for-profit that assists 501(c)(3) non-profits such as hospitals and universities and other

²³⁶ *Note on the Fiscal 2022 Executive Budget for the Department of Economic Development*, N.Y.C. Council Finance Division (2021), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2021/05/NYCEDC-Budget-Note.pdf>; *Real Estate*, N.Y.C. Econ. Dev. Corp., <https://edc.nyc/industry/real-estate> (last visited Dec. 7, 2021); *Asset Management*, N.Y.C. Econ. Dev. Corp., <https://edc.nyc/asset-management> (last visited Dec. 7, 2021).

²³⁷ *New York Works, But for Whom? Examining the New York Works Jobs Plan: Hearing before the Committee on Oversight and Investigations 2*, N.Y.C. Council (March 18, 2019) (testimony of James Patchett, NYCEDC President and CEO), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=7137875&GUID=225438C9-8378-46CB-8BA5-63443A6D229A>.

²³⁸ *Board Structure*, N.Y.C. Econ. Dev. Corp., https://edc.nyc/sites/default/files/filemanager/About_NYCEDC/Financial_and_Public_Documents/Annual_Report/Board_Structure.pdf (last visited Dec. 8, 2021).

exempt facilities operators to access capital through tax-exempt and taxable bond financing.²³⁹

NYCEDC is self-described as a “bridge between city agencies, private businesses, and local communities”²⁴⁰ but has long been criticized for subsidizing private corporations and commercial real estate development, and lacking transparency and community accountability while creating few jobs for working class and jobless New Yorkers.²⁴¹ Formed in 1991, NYCEDC has since evolved into a powerhouse. NYCEDC has Master and Maritime contracts with the city that are renewed annually.²⁴² In FY 21, the contracts amounted to more than \$1.5 billion dollars, with the Master Contract totaling \$1.28 billion and the Maritime Contract totaling \$373 million dollars.²⁴³ NYCEDC earned an additional \$4.4 million in management fee income from the NYCIDA and \$2.2 million from Build NYC.²⁴⁴ NYCEDC can retain revenue to a specified maximum threshold, or contract cap, which itself can be increased by the amount of reimbursable expenses received from the city.²⁴⁵

There is little opportunity for public understanding, engagement, or oversight of NYCEDC’s expansive functions and activities. The Master Contract does not include specific measures for public accountability, such as matrices or timelines for outcomes

²³⁹ *Tax Benefits for Your Business*, N.Y.C. Indus. Dev. Agency, <https://edc.nyc/nycida> (last visited Dec. 6, 2021); *Tax-Exempt Bonds for Your Nonprofit*, Build N.Y.C., <https://edc.nyc/build-nyc> (last visited Dec. 6, 2021).

²⁴⁰ N.Y.C. Council, *supra* note 237.

²⁴¹ The March 18, 2019 New York City Council public hearing on New York Works focused on two areas. One is NYCEDC’s methodology of tracking job creation, which then-Councilmember Ritchie Torres described as “uncertain at best and woefully inaccurate.” During questioning about job projections versus actual job creation, NYCEDC’s James Patchett conceded that in the first year of New York Works implementation, \$300 million dollars (of a \$1.3 billion dollar commitment) was spent to create only 300 jobs at a per job cost of \$100,000. The second issue pertained to equity and economic justice. In 2019, the challenge was not job creation per se as a 2018 NYS Comptroller reported the city’s record high of 4.5 million jobs and a low 4% unemployment rate. Rather, the challenge was one of equity and fairness—in other words, job creation for whom? Were the middle class jobs resulting from city investments and land use actions accessible to low-income New Yorkers who typically lack a high school diploma and English language proficiency? See N.Y.C. Council, *supra* note 232. See also *The \$7,000,000,000 Wager: New York State’s Costly Gamble in Economic Development*, All. for a Greater N.Y. (May 2013), <http://www.alignny.org/wp-content/uploads/2013/05/7-Billion-Wager-Web.pdf>.

²⁴² *Audit Report on the Financial and Operating Practices of the New York City Economic Development Corporation and Compliance with Its Master and Maritime Contracts: July 1, 2005-June 30, 2008*, at 7, Off. of the N.Y.C. Comptroller (Apr. 27, 2010), https://comptroller.nyc.gov/wp-content/uploads/documents/FN09_104A.pdf.

²⁴³ Amended and Restated Contract between the City of New York and New York City Economic Development Corporation, dated as of June 30, 2020; Amended and Restated Maritime Contract between the City of New York and New York City Economic Development Corporation, dated as of June 30, 2020.

²⁴⁴ *Notice of Special Meeting of Members and Regular Meeting of Directors of New York City Economic Development Corporation* 50, N.Y.C. Econ. Dev. Corp. (Feb. 3, 2021).

²⁴⁵ N.Y.C. Off. of the Comptroller, *supra* note 242, at 4-5.

measurement. Nor are there built-in safeguards for transparency. The Master Contract does not include measures for public participation or input, and notes only that NYCEDC is “subject to the direction and control of Deputy Mayor . . . in cooperation with the Department of Small Business Services and other city agencies.”²⁴⁶ The public typically learns about NYCEDC request for proposal (RFP) selection and investments criteria through the FOIL process and New York City Council public hearings.²⁴⁷ The lack of transparency extends to the full scope of NYCEDC activities. For example, Section 3.01 of the Master Contract states NYCEDC has a role to “assist in processing zoning changes, street closings and other land use functions,”²⁴⁸ but NYCEDC is not mentioned in the New York City Charter section on city planning and land use.²⁴⁹

NYCEDC has also previously led major land use and development initiatives that completely bypassed the public review and decision-making process, known as the Uniform Land Use and Review Procedure (ULURP). In 2018, NYCEDC signed a nondisclosure agreement with Amazon regarding the proposed development of a 4 million square foot campus for the corporate giant’s planned second headquarters in Long Island City.²⁵⁰ Even though this massive and transformative development proposal involved the sale and long-term leasing of publicly owned land and potential environmental effects, NYCEDC agreed to “subvert” the ULURP process which would have engaged local community boards, the Borough President, the City Planning Commission, and the City Council in public hearings and project approval and oversight.²⁵¹

NYCEDC’s current practices fuel economic inequality by providing tax relief and public subsidies to commercial developers and private businesses in select industry sectors that often fail to create quality jobs or improve neighborhood infrastructure, such

²⁴⁶ Amended and Restated Contract between the City of New York and New York City Economic Development Corporation, dated as of June 30, 2020, § 11.17.

²⁴⁷ NYCEDC owns or manages six million square feet of industrial waterfront in Sunset Park, Brooklyn that includes the South Brooklyn Marine Terminal, Brooklyn Army Terminal, and the Made in NY campus in Bush Terminal. Sunset Park resident John Santore documents his tireless efforts for transparency in his blog, Sunset Park Reports, which also includes documents secured through FOIL processes. See, e.g., John Santore, *Public comments re; future activities for the Sunset Park Task Force*, Sunset Park Reps. (Sept. 16, 2021), <https://sunsetparkreports.wordpress.com/2021/09/16/9-16-21-public-comments-re-future-activities-for-the-sunset-park-task-force/>.

²⁴⁸ Amended and Restated Contract between the City of New York and New York City Economic Development Corporation, dated as of June 30, 2020.

²⁴⁹ See 8 N.Y.C. Charter § 191, *et seq.*

²⁵⁰ See Zoe Rosenberg, *City Council seeks to bar Amazon-style NDAs in future development deals*, Curbed (Dec. 20, 2018), <https://ny.curbed.com/2018/12/20/18150100/amazon-hq2-nda-new-york-city-council>.

²⁵¹ NYC Council Speaker Corey Johnson described NYCEDC subverting the local public review process several times during the December 12, 2018 N.Y.C. Council Economic Development Committee’s oversight hearing titled Amazon HQ2 - Stage 1: Exposing the Closed-Door Process. *Hearing Transcript*, N.Y.C. Council (Dec. 12, 2018), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=6846809&GUID=EBB4B130-A4BF-41E2-9F54-FA0046AC7961>.

as transportation and affordable housing for low-income New Yorkers. Former City Comptroller John Liu described NYCEDC as a “black hole” due to its lack of transparency and accountability.²⁵² In a letter to then-Mayor Bloomberg, Liu wrote: “If the EDC cannot manage its own operations with greater transparency and accountability, produce the number and types of jobs it has promised, and stimulate the City’s economy to a degree commensurate with the public subsidies it receives, then the City must directly reassume those responsibilities.”²⁵³

Some have called for abolishing the NYCEDC and establishing more democratic, transparent processes for approvals and financing of large commercial developments and capital projects.²⁵⁴ In her 2019 report *Fixing Boston’s Broken Development Process*, now-Mayor Michelle Wu observed that the Boston Planning and Development Authority (BPDA)—Boston’s equivalent to the NYCEDC—“acts as a property manager and collects revenue from parcels of land over which the agency holds ownership in place of the City.”²⁵⁵ Since “BPDA gives concentrated control over development to the Mayor of Boston with little to no accountability, giving well-connected developers outsized access to influence decision-making and incentivizing an unhealthy political interdependence,” Wu recommended “returning the property holdings from which the BPDA derives its operating budget to City ownership, and migrating the BPDA’s functions back under City Council oversight.”²⁵⁶

Our recommendations seek to democratize NYCEDC by improving public oversight to maximize transparency and create opportunities for community accountability and participation in NYCEDC decision-making. However, if NYCEDC rejects these recommendations, the city should heed the recommendation of a former City Comptroller to end the master and maritime contracts with NYCEDC and return the city’s property and land assets to ensure full accountability to the public good.²⁵⁷

Recommendations

1. Form a mayoral task force or working group to review and modify the Master and Maritime contracts, which lack language regarding measurement standards, public accountability, and transparency. Outdated references in the Master Contract to

²⁵² *Liu Peels Back the Curtain on EDC’s Finances*, N.Y.C. Comptroller (Dec. 11, 2012), <https://comptroller.nyc.gov/wp-content/uploads/2013/07/PR12-12-132.pdf>.

²⁵³ *Id.*

²⁵⁴ See Avi Garelick & Andrew Schustek, *New York’s Economic Development Corporation Is a Tool for the Rich*, Jacobin Mag. (June 28, 2021), <https://www.jacobinmag.com/2021/06/new-york-city-economic-development-corporation-edc-public-money-democratic-control>.

²⁵⁵ City Councilor At-Large Michelle Wu, *Fixing Boston’s Broken Development Process: Why and How to Abolish the BPDA* 31 (Oct. 2019), <https://assets.ctfassets.net/1hf11j69ure4/4jCdriPnG0tb9gpBvNjqUj/34da92377e5112083e0c998e844589f7/abolish-bpda.pdf>.

²⁵⁶ *Id.* at 3.

²⁵⁷ See N.Y.C. Comptroller, *supra* note 252.

the Public Development Corporation and Board of Estimate indicate that the contract is in need of a comprehensive review and update.

2. All NYCEDC investments and projects (including the leasing and sales of city-owned land) should prioritize ending homelessness and jobless and working poverty; integrate specific measures for climate adaptation, mitigation, and resilience; have clear and measurable standards for job creation, and job quality (with an emphasis on livable wages and opportunities for mobility); target job seekers (including underemployed and unemployed New Yorkers); and contain Minority & Women-Owned Business goals, as well as specific and enforceable clawback provisions to recoup city funds if a project fails to meet those goals.
3. All new mixed-use developments facilitated or financed by NYCEDC must add to or improve necessary neighborhood infrastructure, including, but not limited to, new public schools, public transportation, and public green space/parks and playgrounds.
4. Add community and labor representation on the NYCEDC Board of Directors and in a formal role in the review of the annual Master and Maritime contracts.²⁵⁸ Currently, the representation of community and labor interests is limited, while a powerful business lobbying group, the Partnership for New York City, must be consulted before the Mayor makes his appointment for the NYCEDC chairperson.
5. Facilitate public transparency and accounting for the sources of NYCEDC funding (capital versus operating budgets) and the extent to which NYCEDC is self-sustaining.
6. Create avenues for the community to participate in and oversee the city's economic development agenda (e.g., Sunset Park Task Force) and establish priority projects and initiatives (e.g., City-Wide Ferry Service).
7. Prioritize plans and projects that support the city's implementation of the New York State Climate Leadership and Community Protection Act and the Biden Climate and Infrastructure Plans, especially in frontline communities (e.g., UPROSE's Green Resilient Industrial District²⁵⁹).

²⁵⁸ The current N.Y.C. Industrial Development Agency Board of Directors includes a Director of Research and Global Strategies for the Retail, Wholesale and Department Store Union (RWDSU-UFCW). *Board of Directors*, N.Y.C. Indus. Dev. Agency, <https://edc.nyc/nycida-board-directors> (last visited Dec. 6, 2021).

²⁵⁹ *Learn About the Green Resilient Industrial District (GRID)!*, Uprose, <https://www.uprose.org/the-grid/> (last visited Dec. 6, 2021).

XI. Education

At their best, free public schools have been a gateway to mobility and opportunity for many children of all socioeconomic backgrounds, providing promise of a fair chance for a better life.

But it is also true that for too many, the schools have failed to deliver on that promise. No administration devoted to social justice can fail to address this problem.

In the short time and limited space this Commission has, we cannot responsibly presume to provide a detailed plan of what reforms would be required to remedy this problem. But we do believe that the Adams Administration must take a fresh look at identifying ways to achieve equality of educational opportunity for all students being educated in New York City. In doing so, the Administration should listen to and rely on a wide variety of stakeholders. These include not only the professional interest groups that regularly interact with City Hall on these issues, but also a range of outside scholars and practitioners who are not invested in the system as it currently exists, as well as the parents and students whom the schools are supposed to serve.

A non-exhaustive list of issues in this area to be reviewed—without a prior commitment to any particular result—should include class size, tracking, teacher expectations, testing, teacher assignments, student placement, and specialized schools.

The vision of a society where we are not separated by, or have different opportunities based on, the color of our skin—as the Supreme Court articulated in *Brown v. Board of Education* in 1954—is a vision to which we should still proudly aspire, and that vision should above all be reflected in our schools.

XII. Miscellaneous Recommendations

This section sets forth a number of additional recommendations to Mayor-elect Adams and the Administration to consider that do not fit neatly into any of the other sections.

1. Implement a wider array of educational instruction courses for New York City jails, particularly Rikers Island. In 1991, two commission members—Earl Ward and Norman Siegel—taught a weekly civil rights course to pretrial detainees at Rikers Island. Responding to a question posed at the end of the course, the participants in that program mentioned that the one thing they wanted the outside world to know is that they needed a literacy program so they could learn how to read and write effectively. Years later, the need for such programs for pretrial detainees and inmates remains critical. The Adams Administration should implement instructional programs, including those targeted at improving literacy, so that detainees are able to develop their knowledge during their time in city jails and reenter society successfully.
2. Implement a pilot project creating a Community Comprehensive Center (CCC) that focuses on health, mental health, legal, and food issues in two neighborhoods (potentially Sunset Park, Brooklyn, and Jamaica, Queens). These centers would rely on volunteer staff from city agencies, such as Health and Hospitals Corporation, Mental Health and Addiction Services, Office of the City Corporation Counsel, and the Department of Education. The Mayor’s Office would manage the logistics required to operate the projects. If the pilot program is successful in addressing the above-mentioned areas of concern, the Mayor should consider—with community involvement and approval—expanding it to other neighborhoods during the next four years.
3. Create a mayoral task force to address the rights and needs of disabled New Yorkers. Such rights include, but are not limited to: (1) access to train stations and government buildings that are in compliance with the Americans with Disabilities Act;²⁶⁰ (2) access to equal employment opportunities;²⁶¹ and (3) access to price discounts at New York’s cultural centers, including museums, that other individuals (students, seniors, etc.) currently receive.²⁶²
4. Explore ways to help the yellow cab drivers get back to financial stability, given that the value of their taxi medallions has dropped precipitously. Possible assistance to be explored would include direct financial relief or city tax exemptions to compensate individual yellow cab owners, as well as provision to

²⁶⁰ See Justin Davidson, *New York City Is Still a Disaster for the Disabled*, N.Y. Mag. (Jul. 15, 2019), <https://nymag.com/intelligencer/2019/07/new-york-city-is-still-a-disaster-for-the-disabled.html>.

²⁶¹ See S.E. Smith, *New York City Is a Nightmare for Disabled People*, VICE Mag. (Jul. 17, 2018), <https://www.vice.com/en/article/pawb7b/disabled-people-new-york-city-how-to-fix>.

²⁶² See Norman Siegel, *Seeking rights for the disabled*, Amsterdam News (Feb. 27, 2020), <https://amsterdamnews.com/news/2020/02/27/seeking-rights-disabled/>.

cab owners of some benefit that will encourage people to hail a cab. One meaningful way to help is to allow yellow cabs to use the ever-increasing bus-only lanes when they have a fare. In Paris, Commission member Steven Hyman experienced the benefit of such a rule during a transit strike. Traffic clogged the major arteries, but his hailed cab sailed through using the bus-only lanes. There is no reason that buses and occupied cabs cannot coexist. It would appear that bus traffic has become significantly more efficient with the use of bus-only lanes. Giving yellow cabs the ability to use bus-only lanes when they have a passenger would encourage New Yorkers to use the cabs more often, particularly in high-traffic areas.²⁶³

5. Ensure that New York City's motor vehicle and traffic laws are being enforced with regard to bicycles, electric bikes, and motorized scooters. The Adams Administration should study the safety concerns of residents, particularly seniors, that stem from the increased use of bikes and motorized vehicles. As discussed in the Climate Change and Environment section of this Report, the Administration should encourage the increased use of bicycles. However, the Administration must not only enforce existing traffic laws, but should also explore further avenues for ensuring that the safety of New Yorkers is not compromised by these means of transport, including the expansion of protected bike lanes and state-of-the-art shared street infrastructure.
6. Study whether Chapter 40 of the New York City Charter, which governs the operations of the New York City Human Rights Commission, should be amended. Section 905(d) of that chapter provides that the Commission will have the ability to investigate, among other things, complaints of unlawful discrimination against any person or persons.²⁶⁴ However, if the discrimination alleged was committed by city officials or agencies, the Commission must consult with the Mayor prior to commencing an investigation into the relevant official or agency.²⁶⁵ The Adams Administration should examine (i) whether and how this investigative function can ensure that cases of discrimination caused by city officials or agencies are properly investigated; and (ii) whether it is prudent to have the Human Rights Commission consult with the mayor prior to commencing an investigation of a city official or agency.
7. Engage in an overview of the Board of Correction concerning its mission. As covered at length in the Reforming Rikers section, there are myriad problems with the institutions that the Board is tasked with monitoring.²⁶⁶ The Administration

²⁶³ Paris is one example of a major city that allows taxis and buses to share restricted lanes. See Asha Weinstein Agrawal et al., *Shared-Use Bus Priority Lanes on City Streets: Approaches to Access and Enforcement* 93, Mineta Transp. Inst. (Apr. 2012), https://nacto.org/docs/usdg/shared_use_bus_priority_lanes_on_city_streets_agrawal.pdf.

²⁶⁴ 40 N.Y.C., Charter § 905.

²⁶⁵ *Id.*

²⁶⁶ See Reforming and Closing Rikers, Section IV, *supra* at 17-19.

should review the Board's operations to determine the efficacy of its operations with respect to a number of fundamental issues: Is the Board still meeting its purpose? Does it need an overhaul? Is its budget adequate? Was it missing in action regarding the crisis at Rikers Island?²⁶⁷

8. Street vendors, many of whom are undocumented immigrants, are often the targets of the city and the NYPD. Increasing street vendor permits would allow the vendors to work legally. To the extent possible, the city should also develop a method to monitor the number of street vendor permits and where they are located, so as not to substantially interfere with the needs of neighborhood small businesses.
9. City performers, including those who perform in the subway and above ground, are too often arrested and ticketed by the NYPD. Instead of criminalizing these performers, many of whom are Black and Latino, the city should provide spaces and resources to explore and support their talents. A city program where spaces are available to performers under the age of 25 so that they can train and also film videos to help promote themselves would be much more helpful than committing resources to punish them.
10. Public urination is often showcased as a symbol of the type of disorder that broken windows policing purports to deter.²⁶⁸ New York City has only approximately 1,160 public comfort stations in a city of over 8 million, with several hundreds of thousands of more people either commuting into the city or visiting on a daily basis.²⁶⁹ These restrooms are not open 24/7 and are often not properly staffed or maintained, particularly in poor neighborhoods.²⁷⁰ The way to deal with public urination is to expand access to public restrooms. Poor and homeless New Yorkers are affected most by arrests and ticketing for this "offense."²⁷¹

²⁶⁷ See James Barron, *The Jail Oversight Board That Failed to Sound the Alarm*, N.Y. Times (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/nyregion/board-of-corrections-jails-nyc.html>.

²⁶⁸ See Policing and Criminal Legal System, Section III, *supra* at 15.

²⁶⁹ Julia Carmel, *No Place to Go When You Need to Go? These New Yorkers Have Ideas*, N.Y. Times (July 3, 2021), <https://www.nytimes.com/2021/07/02/nyregion/nyc-bathrooms.html#:~:text=There%20are%20roughly%201%2C160%20public.number%20to%20accommodate%20city%20crowds>.

²⁷⁰ See *id.*; Julie Chou, Kevin Gurley & Boyeong Hong, *Where Are the Public Bathrooms in New York City?*, Urban Omnibus (Feb. 6, 2020), <https://urbanomnibus.net/2020/02/where-are-the-public-bathrooms-in-nyc/>; *Dis-Comfort Stations: The Conditions and Availability of NYC Parks Bathrooms*, N.Y.C. Off. of the Comptroller (June 2019), https://comptroller.nyc.gov/wp-content/uploads/documents/Discomfort_Stations_The_Conditions_and_Availability_of_NYC_Parks_Bathrooms.pdf.

²⁷¹ See Julie Chou, Kevin Gurley & Boyeong Hong, *supra* note 270.

XIII. Conclusion

Over a period of three months, New Yorkers for Social Justice: A Citizens' Commission Making Recommendations to Eric Adams analyzed problems facing New York City and produced a Report containing specific recommendations intended to address these problems. The Commission is hopeful that the Mayor will implement or initiate its recommendations, which are intended to ensure that New Yorkers can live and work in a city in which the government and its elected and appointed officials are committed to the principles and values of social justice.

Toward that end, we respectfully submit the recommendations contained in this Report.

We urge the Mayor and the Administration to meet the challenge. The well-being of the City and its people are at stake.

We conclude with two observations based on our experience during the past three months.

First, there is an exceptional number of extremely talented New Yorkers who are committed to making the city just and fair. We encourage the Mayor and his administration to reach out and consult with this reservoir of individuals, organizations, and groups for assistance in governing.

Second, the Mayor should create a permanent Mayoral Commission on Social Justice so that the work we began will become a lasting goal of future Mayors of New York City.

Thank you.

XIV. Acknowledgements

The Commission thanks the following individuals for their helpful input:

Economic Development

- Eva Hanhardt, Founding member of the Collective for Community, Culture and Environment, and former Adjunct Assistant Professor at Pratt Institute
- Dr. Andrea McArdle, Professor, CUNY School of Law

Climate Change and Environment

- Thomas Matte, Vice President for Environmental Health, Vital Strategies
- Mychal Johnson, Co-Founder South Bronx Unite, Board Member of NYC Waterfront Management Advisory Board, and Board of Directors for the NYC Community Land Initiative
- Arif Ullah, South Bronx Unite
- Dr. Diana Hernández, Associate Professor, Sociomedical Sciences, Columbia University
- Jeanne Bergman, Director of Programs, WE ACT for Environmental Justice
- Markus Hilpert, Columbia University, Dept. of Environmental Health Sciences

Health

- Nick Freudenberg, Distinguished Professor of Public Health at the City University of New York School of Public Health and Health Policy
- Dr. Oxiris Barbot, former N.Y.C. Commissioner of Health
- Dr. Juliet Widoff, Callen-Lorde Community Health Center

Heat

- Thomas Matte, Vice President for Environmental Health, Vital Strategies
- Dr. Diana Hernández, Associate Professor, Sociomedical Sciences, Columbia University

Housing and Homelessness

- Robert Hayes, A Coalition For the Homeless founder, now CEO of the Community Healthfirst Network

- Deborah Berkman, Coordinating Attorney of the Shelter Advocacy Initiative, New York Legal Assistance Group

Land Use

- Margaret Fung, Executive Director, Asian American Legal Defense and Education Fund
- Eva Hanhardt, Founding member of the Collective for Community, Culture and Environment, and former Adjunct Assistant Professor at Pratt Institute
- Dr. Andrea McArdle, Professor, CUNY School of Law
- Rebecca Bratspies, Professor, CUNY School of Law, and founding Director, Center for Urban Environmental Reform

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- Alexanne Neff, graduate student, Columbia University Mailman School of Public Health
- Grace Ward, undergraduate, Emory University
- Danielle Mangabat, undergraduate, Emory University

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- Amitav Chakraborty, Attorney
- Robert Klein, Law Clerk
- Sondra Saporta, Attorney

XV. Biographies

Norman Siegel, Chair

Norman Siegel is a civil rights and civil liberties lawyer. Norman worked with the ACLU's Southern Justice and Voting Law Project where he worked on cases challenging the systemic exclusion of African-Americans and women from jury pools and voting rights cases. Norman was the Project Director of MFY Legal Services. He was the Executive Director of the NYCLU, where he assisted in the creation of an independent Civilian Complaint Review Board, numerous First Amendment cases, and the struggle for improved community-police relations.

In private practice, he advocated and represented families who lost loved ones on September 11, 2001, in their successful quest to obtain 911 emergency tapes, arguing the case in the New York Court of Appeals. He is a founding partner of Siegel Teitelbaum & Evans, LLP, where he was co-counsel in the defense of Kaci Hickox, known as the "Ebola nurse," who was quarantined by the states of New Jersey and Maine and where he, Earl Ward, and others successfully defended Nick Hillary on the charge of murder in St. Lawrence County, New York. Norman is a board member of the Jackie Robinson Foundation.

Dennis Flores

Dennis Flores is a multimedia artist, activist, and educator born and raised in Sunset Park, Brooklyn. He is the founder of El Grito, a grassroots community-based organization that advocates around issues of discriminatory policing. Dennis is also the lead organizer of the Sunset Park Puerto Rican Day Parade, which, entering its sixth year, has created a celebration of Puerto Rican culture safe from police harassment.

In the mid-1990s, influenced by The Young Lords Party, Dennis and the street organization he belonged to—deemed a "gang" by law enforcement officials—began organizing around social justice issues. He and others began to organize with families of victims of the police amid the political unrest of the Rudy Giuliani era in New York City. One of the pioneers of the modern-day cop watch movement in New York, Dennis began to organize patrols of everyday people to film and document police misconduct beginning in 1995. The use of video to not only expose police brutality but to help exonerate those who were arrested and criminally charged, laid the foundation for the growing police accountability movement seen across the country today.

Hon. Marcy S. Friedman

Marcy S. Friedman was a judge in the New York State court system for nearly 30 years until her retirement in January 2021. She is now with JAMS, an alternative dispute resolution provider. As a judge, she sat in Housing Court, then Civil Court, and for over 20 years in Supreme Court, where she heard a wide range of civil cases, including mass torts, challenges to governmental acts, and cases in that Court's Commercial Division

involving mortgage-backed securities and other complex financial instruments. She also sat in arraignment parts and personally observed the impact of broken windows policing.

As a lawyer, she was an associate at a large law firm, then devoted her career to the provision of civil legal services to low-income communities—first as a staff attorney at Legal Aid, then as managing attorney at MFY (now MFJ) Legal Services, Hell’s Kitchen office, where she fought to preserve affordable housing.

Long committed to improving access to justice, while a judge she chaired a task force on Housing Court under the auspices of the New York County Lawyers Association Justice Center and, working with NYCLA and other groups, organized a conference to address the racially disparate impacts of prosecutions. She welcomes the opportunity, through this Commission, to advance social justice recommendations.

Ira Glasser

Ira Glasser served as Executive Director of the American Civil Liberties Union from 1978 until he retired in 2001. Previously, he was Executive Director of the New York Civil Liberties Union from 1970 to 1978.

Prior to his affiliation with the ACLU, Mr. Glasser was a mathematician, taught mathematics at Queens College (CUNY) and was a member of the science and mathematics faculty at Sarah Lawrence College.

He was also associate editor, and later editor, of *Current* magazine, a monthly magazine of political and social affairs, between 1962 and 1967. For more than two decades, and since its inception, he chaired the Board of the Drug Policy Alliance, the leading nationwide organization opposing the so-called war on drugs.

Mr. Glasser is the author of *Visions of Liberty: The Bill of Rights for All Americans*, published in November 1991 by Arcade Publishing, Inc. in New York City. An insightful historical analysis of how our rights developed, *Visions* was written to commemorate the 200th anniversary of the Bill of Rights. He is also the co-author of *Doing Good: The Limits of Benevolence*, published by Pantheon in 1978.

Dr. Tarry Hum

Tarry Hum is Professor and Chair of the Department of Urban Studies at Queens College, City University of New York (CUNY), and an affiliate faculty member at the CUNY Graduate Center. Dr. Hum is an urban planner with a Masters in City Planning from the Massachusetts Institute of Technology and a Ph.D. in Urban Planning from UCLA’s Luskin School of Public Affairs.

Dr. Hum’s book, *Making a Global Immigrant Neighborhood: Brooklyn’s Sunset Park*, received an Honorable Mention for the 2015 Paul Davidoff Book Award from the Association of Collegiate Schools of Planning. She is lead editor of a 2021 volume,

Immigrant Crossroads: Globalization, Incorporation, and Placemaking in Queens, NY. Dr. Hum regularly contributes essays on urban planning and policy, immigrant neighborhoods and housing affordability, and real estate development and gentrification in Gotham Gazette: The Place for New York City Policy and Politics and Progressive City.

She received a 2013 Excellence in Teaching Award, established an Urban Planning minor at Queens College, and convened the CUNY Queens Sustainability Consortium composed of interdisciplinary faculty from Queens' five CUNY campuses including the CUNY Law School. Dr. Hum is currently on leave to complete a manuscript on Chinese transnational capital and city building in immigrant New York.

Steven J. Hyman

Steven J. Hyman is chair of the Litigation Department at McLaughlin & Stern. Mr. Hyman has extensive litigation and trial experience across a broad range of legal issues. He has argued in the Supreme Court of the United States, been counsel in numerous reported decisions in both the federal and state systems and tried a wide variety of cases including capital murder and other criminal charges, employment discrimination, civil rights and constitutional litigation, commercial cases involving a variety of corporate disputes and contract claims, as well as theatre and security arbitrations. Two of his cases, *Flynn v. Goldman Sachs* and *Cherry v. Coudert Brothers* were the subject of Court TV's daily coverage of trials of interest.

In addition, Mr. Hyman was an Associate Adjunct Professor of Law at NYU Law School and has been active in Bar Associations and community organizations. He is a former chair of the New York County Lawyer's Civil Rights Committee and a former President of the Board of Directors of the New York Civil Liberties Union. He also has been a guest lecturer at universities and law schools and has appeared on TV and radio as a legal commentator.

Mr. Hyman received his BA from Lafayette College and his law degree from Columbia Law School.

Dr. Micaela E. Martinez

Dr. Micaela E. Martinez is an infectious disease ecologist. She earned her Ph.D. in Ecology & Evolution in 2015 at the University of Michigan, followed by two years at Princeton, four years as an Assistant Professor at Columbia, and now at Emory University.

Her research aims to understand how ecology, social determinants of health, immunology, Climate Change, and demography intersect to shape health and disease. Her expertise includes vaccination and transmission of epidemic-prone diseases, climate change and human health, and institutionalized racism and health. During the pandemic, Dr. Martinez has been working on how environmental racism and social inequities

manifest COVID-19 health disparities, with particular emphasis on Black and Latinx communities in New York City.

Prof. Terry McGovern

Terry McGovern currently serves as Harriet and Robert H. Heilbrunn Professor and Chair of the Heilbrunn Department of Population and Family Health and the Director of the Program on Global Health Justice and Governance at the Columbia University Mailman School of Public Health. Ms. McGovern founded the HIV Law Project in 1989 where she served as its executive director until 1999.

Ms. McGovern successfully litigated numerous cases against the federal, state and local governments including *S.P. v. Sullivan*, which forced the Social Security Administration to expand HIV-related disability criteria for women and other excluded individuals, and *T.N. v. FDA*, which eliminated a 1977 FDA guideline restricting the participation of women of childbearing potential in early phases of clinical trials. From 2006 until 2012, she was Senior Program Officer in the Gender, Rights and Equality Unit of the Ford Foundation.

Her research focuses on health and human rights, sexual and reproductive rights and health, gender justice, and environmental justice, with publications appearing in journals including *Lancet Child & Adolescent Health*, *Health and Human Rights*, and the *Journal of Adolescent Health*. Ms. McGovern recently co-edited *Women and Girls Rising: Rights, Progress and Resistance: A Global Anthology*.

Harriet R. Michel

After 22 years, Harriet R. Michel retired as president of the National Minority Supplier Development Council (NMSDC) in 2010. NMSDC matches thousands of minority owned businesses with procurement opportunities in Fortune 500 companies. She is now the principal in the business advisory firm HR Michel, LLC, providing services to small businesses and corporations.

Ms. Michel is a noted administrator and public policy expert on minority issues. She has worked for 50 years in the public sector developing and managing programs that address major social concerns.

She was the Vice Chairman of the 1989 NYC Charter Revision Commission.

Before joining NMSDC in September 1988, Ms. Michel was a resident fellow at the Institute of Politics, Kennedy School of Government, Harvard University, where she taught a course on politics and public policy issues and wrote about Black leadership.

From 1983 to February 1988, Ms. Michel was president and chief executive officer of the New York Urban League. As chief administrator, she was responsible for services provided

to over 70,000 New Yorkers annually through more than 20 programs in education, employment, health/social services, and housing.

From 1977 to 1979, Ms. Michel was director of the U.S. Department of Labor's Office of Community Youth Employment Programs/CETA in Washington, D.C., where she supervised the allocation of \$2 billion for employment and training programs.

As executive director of the New York Foundation from 1972 to 1977, Ms. Michel was the first Black woman to head a major foundation. She is a founding member of the Association of Black Foundation Executives and has been a board member of the Council on Foundations.

While serving as an assistant to New York Mayor John Lindsay in 1971 to 1972, Ms. Michel helped coordinate the anti-drug efforts of the city's public agencies.

Aryana Swanson

Aryana Swanson is a third-year student at Columbia University, where she is majoring in Political Science, specializing in American Politics and International Relations. After she graduates from Columbia, she plans to attend law school. Inspired by her internship with Norman Siegel, Aryana aspires to pursue a career as a civil rights attorney. As an intern, she did extensive research and writing on housing rights and disability rights for New Yorkers and contributed to Declaration 17. This year, she will also be working with the NYCLU as a campus organizer on campaigns to advance and protect New Yorkers' civil liberties in addition to conducting educational outreach to her peers at Columbia.

On campus, she is involved in LGBTQIA+ advocacy work as well as the growing animal rights movement. In her free time, she enjoys volunteering with the Ark Immigration Clinic to help asylum seekers navigate the application process and craft compelling personal narratives.

Earl S. Ward, Esq.

Earl S. Ward is a partner with Emery, Celli, Brinckerhoff, Abady, Ward & Maazel where he specializes in criminal defense and civil rights. He served from 1997 until 2003 as a commissioner on the Civilian Complaint Review Board and from 2013 until 2020 he was a member of the NYS Advisory Committee to the United States Commission on Civil Rights. From 1992-1996, he served as both a staff attorney and a supervising attorney for the Neighborhood Defender Service of Harlem, where he represented indigent defendants in criminal matters. Mr. Ward also worked as a staff attorney for the New York Civil Liberties Union from 1989-92, and prior to that as a staff attorney for the Legal Aid Society's Criminal Defense Division.

He is the Chair of the Board of the Bronx Defenders, an indigent defender organization, Housing Works, an organization committed to helping homeless men and women with AIDS/HIV, and Esperanza, an alternative to incarceration program for at risk adolescents.