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# “SUNSET PARK IS NOT FOR SALE”: GENTRIFICATION, REZONING, AND DISPLACEMENT IN BROOKLYN’S SUNSET PARK

DIANISBETH ACQUIE

## ABOUT THE AUTHOR

Dianisbeth Acquie, J.D. is a graduate of Harvard Law School, *cum laude*. During law school, she served as a student attorney for the Harvard Legal Aid Bureau and had the opportunity to work alongside clinical instructors, colleagues, and community organizers on housing, workers’ rights, and family law cases. She received an A.B. in English, *summa cum laude*, from Harvard College.

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**INTRODUCTION**

*Sunset Park, Brooklyn: Not Quite Trendy* – NEW YORK TIMES, January 24, 2016<sup>1</sup>

*This Brooklyn Neighborhood Is Cool—and Still Affordable* – NEW YORK POST, September 26, 2018<sup>2</sup>

*Sunset Park Is Primed for Gentrification, New Map Shows* – PATCH, May 22, 2019<sup>3</sup>

A classmate once asked me if I was from the part of Brooklyn where the protagonists of *Girls* lived, referencing the wildly popular show that launched right as I started college. The answer was a firm *no*. To me, *Girls*—which depicted a curiously homogenous version of the borough where I had spent my entire life—was like looking in a fun-house mirror.<sup>4</sup> Instead, my experience of living in Brooklyn has been defined by the neighborhood where I was raised: Sunset Park.

Sunset Park boasts the highest point in Brooklyn and offers sweeping views of New York City. A sunny day in the park for which the neighborhood is named offers an unrivaled vista of New York Harbor, the glittering skyscrapers of Manhattan’s Financial District, and the bustling bodegas, clothing stores, and hair salons that serve as community pillars on the sloping avenues surrounding the park. Sunset Park is

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<sup>1</sup> C. J. Hughes, *Sunset Park, Brooklyn: Not Quite Trendy*, N.Y. TIMES (Jan. 20, 2016), <https://www.nytimes.com/2016/01/24/realestate/sunset-park-brooklyn-not-quite-trendy.html>.

<sup>2</sup> Adam Bonislawski, *This Brooklyn Neighborhood Is Cool—and Still Affordable*, N.Y. POST (Sept. 27, 2018, 11:24 AM), <https://nypost.com/2018/09/26/this-brooklyn-neighborhood-is-cool-and-still-affordable>.

<sup>3</sup> Anna Quinn, *Sunset Park Is Primed for Gentrification, New Map Shows*, PATCH (Mar. 22, 2019, 1:40 PM), <https://patch.com/new-york/sunset-park/sunset-park-primed-gentrification-new-map-shows>.

<sup>4</sup> The protagonists of *Girls* lived in Greenpoint, which has become heavily gentrified over the last decade. For an examination of how the displacement of the Eastern European community in Greenpoint evolved as young urban professionals moved in over the last two decades, see generally Matthew L. Schuerman, *NEWCOMERS: GENTRIFICATION AND ITS DISCONTENTS* (2019). For a cultural commentary on how *Girls* failed to adequately represent gentrification in the neighborhood where it was set, see Jenn&, *A Brooklyn Habitus: The Image of Gentrification in HBO’s Girls*, MEDIUM (Oct. 23, 2017), [https://medium.com/@jenster\\_ng/a-brooklyn-habitus-the-image-of-gentrification-in-hbos-girls-7d2d9b961321](https://medium.com/@jenster_ng/a-brooklyn-habitus-the-image-of-gentrification-in-hbos-girls-7d2d9b961321).

home to a vibrant Chinatown that stretches across Eighth Avenue and a lively Latinx community, mostly clustered around Fourth and Fifth Avenues. In 2017, about one third of the population identified as Asian; almost 40 percent identified as Latinx/Hispanic; 22 percent identified as white; and slightly over 2 percent identified as Black.<sup>5</sup> Sunset Park has long been a haven for immigrant communities. Once home to large Polish, Norwegian, and Finnish contingents, Sunset Park has since evolved to house substantive Chinese, Dominican, Mexican, and Puerto Rican populations.<sup>6</sup>

At its core, Sunset Park is a working-class and working-poor neighborhood. Sunset Park’s median household income in 2017 was \$57,870.<sup>7</sup> The poverty rate is about 22 percent, five percentage points higher than the rate across New York City.<sup>8</sup> Yet there is no doubt that the neighborhood is rich with community. Almost one hundred and fifty thousand people belong and make a living here. They experience bitter defeats and profound joys. The people of Sunset Park buy *tres leches* cakes from Ines Bakery, practice *tai chi* in the park, and rush home to their loved ones before the sun sets on Sunset Park. The neighborhood is a microcosm that showcases the expansiveness and multiculturalism that draw millions of people to New York every year.

Over the course of the last few years, Sunset Park has served as the setting for a turbulent, devastating fight over the future of the community. The crux of this struggle involved the potential rezoning of Industry City, Brooklyn’s last working waterfront. Industry City—the southwestern edge of Sunset Park—is a complex of sixteen buildings made up of factories, warehouses, commercial enterprises, and a handful of residential units. Several years ago, executives announced their plans to rezone Industry City and add 1.46 million square feet of mixed-use space to the area. This space would have made room for parking garages, new retail spaces, education spaces, and a pair of hotels.<sup>9</sup> This new

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<sup>5</sup> The following year, most numbers remained the same. However, the Asian population comprised under 30 percent of the community and the white population increased four percentage points in 2018. See N.Y.U. Furman Ctr., *State of the City 2019: Sunset Park BK07* (Jan. 15, 2020), <https://furmancenter.org/neighborhoods/view/sunset-park>.

<sup>6</sup> See Nina Agrawal, *Brooklyn’s Sunset Park, Built and Rebuilt by Immigrants, Sees Change Once Again*, L.A. TIMES (Apr. 20, 2018, 3:00 AM), <https://www.latimes.com/nation/la-na-sunset-park-gentrification-2018-story.html>.

<sup>7</sup> See N.Y.U. Furman Ctr., *supra* note 5.

<sup>8</sup> See *id.*

<sup>9</sup> See Curtis Brodner, *Activists Shut Down Brooklyn Borough President’s Hearing on*

retail space would have joined the food halls and craft furniture stores that have already set up shop in Industry City. Industry City executives requested the following: a zoning text amendment to establish the Special Sunset Park Innovation District; a special permit to modify bulk, use, parking, and public access area requirements; a special permit for hotel use; and an amendment to the City Map to de-map 40th Street between 1st and 2nd Avenues, the two avenues closest to the waterfront.<sup>10</sup> Corporate interests also requested a change to the zoning designation of the area.<sup>11</sup> The proposal would have increased Industry City's total usable square footage from 5.3 million to 6.6 million square feet.<sup>12</sup>

Those in favor of rezoning Industry City argued that the jobs generated would support thousands within Sunset Park while revitalizing a faded waterfront in the shadow of the Gowanus Expressway.<sup>13</sup> This line of argument became accentuated during the global COVID-19 pandemic, as hundreds of thousands of New Yorkers lost their jobs.<sup>14</sup> Those who opposed the rezoning contended that gentrification would march forward in a vulnerable neighborhood, sending rents skyrocketing and displacing Latinx and Asian communities. Marcela Mitaynes, a lifelong Sunset Park tenant, community organizer, and incoming Assemblymember for District 51, spoke to me about the deep concern that hotels would spring up in Industry City and remain vacant. During the rezoning of

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*Industry City Rezoning*, BKLYNER. (Jan. 15, 2020, 1:49 PM), <https://bklyner.com/activists-industry-city-rezoning>.

<sup>10</sup> See *Learn About the Green Resilient Industrial District (GRID)!*, UPROSE, <https://www.uprose.org/the-grid> (Nov. 1, 2020).

<sup>11</sup> Industry City is currently zoned as an M3-1 district, and the rezoning applicants petitioned to change Industry City to an M2-4 district, which would allow more commercial and retail use.

<sup>12</sup> See Jaime DeJesus, *CB 7 Hosts Heated Town Hall on Industry City Rezoning Plans*, BROOKLYN REPORTER (Nov. 16, 2018, 4:16 PM), <https://brooklynreporter.com/2018/11/cb-7-hosts-heated-town-hall-on-industry-city-rezoning-plans>.

<sup>13</sup> Former Councilmembers Ritchie Torres and Donovan Richards, for example, penned an op-ed in favor of the rezoning that emphasized the need for job creation and job training. Ritchie Torres and Donovan Richards, *Keep Building Industry City: The Council Must Support This Job-Creating Project in Brooklyn*, NEW YORK DAILY NEWS (Aug. 3, 2020), <https://www.nydailynews.com/opinion/ny-oped-keep-building-industry-city-20200803-3bopnwdvzfj3pwwdov5t3xue-story.html>.

<sup>14</sup> When the rezoning proposal failed, comparisons were made to the failed fight over bringing Amazon headquarters to Long Island City in 2019. Those who supported the Amazon proposal later complained that not bringing Amazon to Queens had cost New Yorkers thousands of jobs. See J. David Goodman, *Amazon Pulls Out of Planned New York City Headquarters*, N.Y. TIMES (Feb. 14, 2019), <https://www.nytimes.com/2019/02/14/nyregion/amazon-hq2-queens.html>.

Downtown Brooklyn, she says, hotels cropped up and were later converted into luxury residential units when there was not enough demand from tourists.<sup>15</sup> Tenants and small business owners also worried that the twenty thousand new jobs that Industry City CEO Andrew Kimball claimed would result from the rezoning would go to highly-educated, highly-paid individuals, whose presence would incentivize landlords to raise rents.<sup>16</sup> These anxieties were not unfounded; prior New York City rezonings triggered both initial waves of evictions and secondary waves of displacement after landlords began raising rents. Jessica Rose, Executive Director of Brooklyn Legal Services Corporation A, has seen landlords “change rent-stabilized housing to market-rate housing” in the wake of rezonings to evict existing tenants and welcome higher-paying ones.<sup>17</sup> As Bethany Li, an attorney with Greater Boston Legal Services, writes, “[this] potential for higher profit margins in gentrifying neighborhoods results in secondary displacement pressures, including high rent, rising evictions, tenant harassment, excessive housing code enforcement, increased policing, and loss of small businesses.”<sup>18</sup> In aggregate, the consequences are devastating.

Sunset Park deserves particular attention. There are fewer places across the City where the foundation is riper for massive housing crises and mass displacement. Even before the debates over Industry City began, the Sunset Park housing stock was steadily growing more unstable to the point of being untenable. A prior rezoning in Sunset Park, fallout from other nearby rezonings, and dwindling low-income housing stock in New York City contributed to form a perfect tempest of unaffordability. Between 2000 and 2017, the median sales price in a one-family building in Sunset Park increased from \$346,000 to approximately \$1.3 million.<sup>19</sup> A report by the South Brooklyn community organization, the Fifth

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<sup>15</sup> Telephone Interview with Marcela Mitaynes, Sunset Park tenant, Community Organizer at Neighbors Helping Neighbors, and Assemblymember for District 51 (Jan. 18, 2020). At the time of her interview, Mitaynes was a candidate for public office.

<sup>16</sup> See Caroline Spivack, *Industry City Rezoning Begins Official Review Process Despite Local Ire*, CURBED NEW YORK (Oct. 28, 2019, 5:57 PM), <https://ny.curbed.com/2019/10/28/20935481/industry-city-rezoning-review-process-carlos-menchaca>.

<sup>17</sup> Telephone Interview with Jessica Rose, Executive Director of Brooklyn Legal Services Corporation A (Jan. 13, 2020).

<sup>18</sup> Bethany Y. Li, *Now is the Time! Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 FORDHAM L. REV. 1189, 1208–09 (2016).

<sup>19</sup> Agrawal, *supra* note 6.

Avenue Committee, found that median rent in 2018 amounted to \$2,400.<sup>20</sup> spurts of growth in Industry City over the last few years have played no small part in these skyrocketing prices. Sunset Park “has begun to be reshaped by the forces of rising property values and a growing educated, middle- to upper-class population. The redeveloped buildings along the waterfront and the people they attract are the face of that change.”<sup>21</sup> Though some Industry City owners have distinguished the complex from the rest of the neighborhood, it is difficult to deny that when Industry City sneezes, the entirety of Sunset Park catches a cold.

Legal scholars and sociologists have explored the dynamics of gentrification in New York City. Yet, comparatively fewer scholars, among them Professor Tarry Hum, Chair of the Queens College Department of Urban Studies, have written about the matrix of class, immigration, and displacement in Sunset Park.<sup>22</sup> No legal scholarship currently looks into the fight for Industry City. This Article seeks to document the processes of gentrification and rezoning as they have manifested in Sunset Park, vis-à-vis the fight to rezone Industry City. Parts I and II provide a primer on gentrification and rezoning before narrowing in on Industry City and arguments against rezoning that are particular to this area. Though I focus on the uniqueness of Sunset Park, I argue that the fight over Industry City is not a one-off example of corporate entrepreneurship lured by the promise of a working waterfront. Rather, this rezoning proposal is the natural progeny to decades of government failures and corporate lobbying efforts and is a successor in interest to the fraught rezoning proposals that have reshaped the City since the start of the new millennium. Part III offers potential solutions and strategies to combat displacement and gentrification in Industry City and throughout the New York area.

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<sup>20</sup> FIFTH AVENUE COMMITTEE, INC., 2020 SUNSET HOUSING REPORT 12 (2020), <http://www.fifthave.org/index.cfm?fuseaction=document.viewDocument&documentid=218&documentFormatId=224&vDocLinkOrigin=1&CFID=1970241&CFTOKEN=f62803a367f18e8f-2202C61A-1C23-C8EB-80D6F482063BA1D7>. For reference, the median gross rent for units in Sunset Park was \$1,630 in 2018. *See id.* This implies that unoccupied (and likely newer) apartments in Sunset Park are fetching higher prices.

<sup>21</sup> Agrawal, *supra* note 6.

<sup>22</sup> *E.g.*, Tarry Hum, MAKING A GLOBAL IMMIGRANT NEIGHBORHOOD: BROOKLYN'S SUNSET PARK (2014); Mark Treskon, *Constructing an Oppositional Community: Sunset Park and the Politics of Organizing Across Difference*, in *THE WORLD IN BROOKLYN: GENTRIFICATION, IMMIGRATION, AND ETHNIC POLITICS IN A GLOBAL CITY* (Judith N. DeSena & Timothy Shortell eds., 2012).

There is a valid issue of mootness in this Article. During the writing process of this Article, it was announced that the Industry City executives had withdrawn their application for rezoning.<sup>23</sup> Yet, I argue that despite the current failure of the Industry City proposal, the dynamics explored in this piece will continue to reappear—likely with increasing vehemence. It is quite possible that there will be other concerted efforts in the future to ensure that the area is rezoned. Even if developers turn their eyes away from the working waterfront, the slate of rezonings in New York City over the last decade proves that other low-income neighborhoods are at high risk of being rezoned. There will always be another Sunset Park.

This Article also preserves the legacy of the fight for Sunset Park in black and white. In addition to considering the legal and environmental effects of gentrification and rezoning, this Article takes a humanist approach. It combines personal narratives and interviews, social and cultural commentary derived from local news media, and history. I also attended a live hearing on the rezoning at Brooklyn’s City Hall, where I heard the refrain “Sunset Park is not for sale” for the first time and discovered social media pages dedicated to this slogan.<sup>24</sup> Yet for all of its varied sources, the heart of this Article is its interviews with legal advocates, tenants (both past and present), community organizers, and scholars. I had the opportunity to interview City Councilmember Carlos Menchaca, who at the time represented Sunset Park, and Marcela Mitaynes, who was running for the New York State Assembly and won her election a few months later.

Personal narratives were critical to shaping this Article and have been instrumental to the legal field. Over the last few decades, many legal scholars have showed renewed interest in studying the intersection of law and social sciences and have aimed to bring more storytelling into their work.<sup>25</sup> As Jane Baron writes, “the notion that storytelling is ubiquitous in the law . . . has recently attained something like the status

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<sup>23</sup> See Rose Adams, *Breaking: Industry City Withdraws Rezoning Application*, Brooklyn Paper (Sept. 22, 2020), <https://www.brooklynpaper.com/industry-city-withdraws-rezoning-application>.

<sup>24</sup> This hearing took place at City Hall on January 14, 2020 and will be referred to in this Article as the “Hearing.”

<sup>25</sup> See Rebecca R. French, *Review: Of Narrative in Law and Anthropology (review essay)*, 30 LAW & SOC’Y REV. 417 (1996).

of a truth universally acknowledged.”<sup>26</sup> Critical legal theorists have espoused the importance of storytelling in legal academia with increased vigor for years.<sup>27</sup> Articles published in this journal have paved the way in not shying away from personal narrative in legal academia.<sup>28</sup> Storytelling, which broadly encompasses oral histories and written stories about lived “experiences of life,” offers a unique perspective on the law.<sup>29</sup> This Article makes use of what Kim Scheppelle calls “the power of ‘I.’”<sup>30</sup> The intention is to “engage [the reader] in a conversation with the author, this real person, whose struggles and thoughts are revealed in the words on the page . . . to make larger points about social arrangements, about conventional wisdom and its unwisdom, and how things might be.”<sup>31</sup> This “power” reflects the fact that I am a researcher as well as a subject of this study; this unique perspective has allowed me to consider more context and delve into nuanced issues. The arguments and conclusions in this Article are woven into the fabric of property law, housing law, and local government law, but they are also intimately connected to my status as an insider. After all, I too am part of the gentrified.

## I. THE LANDSCAPE OF GENTRIFICATION AND REZONING IN BROOKLYN

### A. *Gentrification: Buzzword, Reality, and Trauma*

In Brooklyn, gentrification has perhaps overtaken all other cultural narratives about the borough. *The New York Times* made the process so synonymous with Brooklyn that its stylebook editor, Philip B. Corbett, complained to newsroom reporters about overusing *hipster* in 2010 and comparing every gentrifying city to Brooklyn in 2014.<sup>32</sup> *Condé Nast Traveler* wrote a piece about “The Brooklynization of the World,” referring to the homogenization of Brooklyn and the similar processes

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<sup>26</sup> Jane B. Baron, *The Many Promises of Storytelling in Law: An Essay Review of Narrative and the Legal Discourse: A Reader in Storytelling and the Law*, 23 *RUTGERS L.J.* 79, 79 (1991).

<sup>27</sup> See, e.g., Clare Dalton, *An Essay in the Deconstruction of Contract Doctrine*, 94 *YALE L.J.* 997 (1985).

<sup>28</sup> See Margaret E. Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 *CHICANX-LATINX L. REV.* 1 (1994).

<sup>29</sup> Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 *MICH. L. REV.* 2320, 2324 (1989).

<sup>30</sup> Kim L. Scheppelle, *Foreword: Telling Stories*, 87 *MICH. L. REV.* 2073, 2074 (1989).

<sup>31</sup> *Id.*

<sup>32</sup> Peter Moskowitz, *How to Kill a City: Gentrification, Inequality, and the Fight for the Neighborhood* 4 (2017).

occurring in cities around the globe.<sup>33</sup> This phenomenon is not limited to the four corners of newspapers or magazines. The effects of gentrification are painfully tangible. Jessica Rose, for example, was raised between the Prospect Heights and Ditmas Park — Flatbush neighborhoods of Brooklyn. She says that the changes in Prospect Heights have converted a formerly working-class community of color into a high-income, white neighborhood.<sup>34</sup> The displacement of the original residents has been permanent, with secondary displacement often uprooting more individuals and families than originally anticipated. As Ms. Rose reflects: “If you left [because of changes in the neighborhood], you didn’t come back.”<sup>35</sup>

Bethany Li aptly writes, “Gentrification is notoriously difficult to define because of the term’s evolution and the contention it incites.”<sup>36</sup> I have already used the word multiple times in this Article before offering a definition, and yet it is likely that most readers will already have a general sense of what the word means and, depending on their relationship to property, have their own relationship with the word. Seemingly straightforward definitions actually exclude more than they might appear at first glance. Judith DeSena and Timothy Shortell define the process of gentrification as “the displacement of lower status communities by higher status populations.”<sup>37</sup> The succinctness and truth of the statement make it appealing. The focus on “status” emphasizes the essentially classist struggle of gentrification. Yet, the focus on “populations” drops the blame squarely on the shoulders of individuals rather than considering the corporate interests and government policies that facilitate and enable gentrification. Matthew Schuerman neutrally describes gentrification as the process by which a low-income neighborhood becomes a wealthy neighborhood.<sup>38</sup> Again, this is a possible definition, but this is one that omits the displacement of individuals from the neighborhood and focuses instead on the entities of neighborhoods themselves. This definition has the added, illusive effect of making the process appear passive.

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<sup>33</sup> Peter Jon Lindberg, *The Brooklynization of the World*, CONDÉ NAST TRAVELER (Aug. 19, 2015), <https://www.cntraveler.com/stories/2015-08-19/the-brooklynization-of-the-world>.

<sup>34</sup> Interview with Jessica Rose, *supra* note 17.

<sup>35</sup> *Id.*

<sup>36</sup> Li, *supra* note 18, at 1190.

<sup>37</sup> Judith DeSena & Timothy Shortell, eds., *THE WORLD IN BROOKLYN: GENTRIFICATION, IMMIGRATION, AND ETHNIC POLITICS IN A GLOBAL CITY 1* (2012).

<sup>38</sup> Schuerman, *supra* note 4, at 3.

For the purposes of this Article, I do not pretend to advocate for a single definition, though Peter Moskowitz's description of gentrification as "the displacement, the loss of culture, the influx of wealth and whiteness into New York City's neighborhoods" approaches a fuller picture.<sup>39</sup> His definition also reckons with the violence associated with it rather than seeing the process as a passive development. Moskowitz writes, "Gentrification is a trauma, one caused by the influx of massive amounts of capital into a city."<sup>40</sup> Listening to stories of people in Sunset Park who are afraid for their homes and livelihoods has made it clear how this process festers like trauma. It is hard to find a definition that can capture the late nights worrying about rents, the tears at public hearings, and the general anxiety whenever another storefront closes or longtime neighbor leaves. Sarah Schulman calls the psychological underpinnings of the process "a gentrification of the mind, an internal replacement that alienate[s] people from the concrete process of social and artistic change."<sup>41</sup> Gentrification does not only manifest through increased rents and home prices, fewer numbers of Brown and Black individuals in a community, or new storefronts that abide by a middle-class *habitus*. The alienation and active disengagement of residents are also present.

This language of alienation is particularly relevant in the context of Sunset Park. Alienation can occur with something as simple as naming. Despite being intricately tangled with the fate of Sunset Park, Industry City is set apart from the rest of the neighborhood because it has a separate name. This is not a new name, but the distinction carries increased weight as the debate focuses on Industry City and only mentions Sunset Park as collaterally affected despite the fact that it is all one neighborhood. Naming new portions of the neighborhood has become more common over the last few years. Greg Baltz, a staff attorney with TakeRoot Justice, noticed that new neighborhood names were popping up to distinguish certain sections of land from Sunset Park proper.<sup>42</sup> Consider the case of Greenwood Heights. Though Greenwood Heights, the name for the area encircling the famous Green-Wood Cemetery, has technically existed for decades, it has only recently shaped itself into a

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<sup>39</sup> Moskowitz, *supra* note 32, at 4.

<sup>40</sup> *Id.* at 5.

<sup>41</sup> Sarah Schulman, *THE GENTRIFICATION OF THE MIND: WITNESS TO A LOST IMAGINATION* 14 (2012).

<sup>42</sup> Telephone Interview with Gregory Baltz, attorney with Take Root Justice (Jan. 8, 2020).

separate entity despite being originally considered part of Sunset Park. One persuasive hypothesis for the growth of the neighborhood is that the 2003 height restriction rezoning in Park Slope (north of Sunset Park) pushed newcomers into southern Brooklyn, incentivizing developers to construct further south and to rename this part of “ethnic Sunset Park” in order “to increase real estate potential.”<sup>43</sup> The residents of this burgeoning neighborhood are able to rely on ostensible naming differences in order to alienate themselves from Sunset Park as a whole.

It is easy to blame individuals for creating waves of gentrification, as the aforementioned DeSena and Shortell definition offers, but that is a limited perspective. The process of gentrifying a neighborhood is advanced not only by the actions of private individuals and the whims of the market, but also by government policies that reward developers for building in low-income areas but fail to prioritize housing the homeless and working-poor; private lobbyists and developers who invest in communities only under certain conditions; and the actions of landlord corporations that prey on vulnerable tenants when housing demand rises. Local government laws invite particularly close scrutiny. The 421a property tax exemption allowed developers of new market-rate housing production to obtain substantial tax breaks after its creation in 1971. The purpose of the exemption was, in principle, to promote mixed-income neighborhoods and provide affordable housing for New York’s most vulnerable tenants. Unfortunately, the program mostly benefited luxury real estate developers and provided \$1.1 billion in tax breaks to produce comparatively few affordable units.<sup>44</sup> On a federal level, we may look to the Opportunity Zones program, which permits corporations and developers to get relief from capital gains taxes if they invest money in high-poverty census tracts. This was created by the 2017 Tax Cuts and Jobs Act and has potential to shoehorn more capital into neighborhoods like Sunset Park, which has eleven census tracts designated as Opportunity Zones. Projects such as these can become an avenue for the influx of

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<sup>43</sup> See Keith Williams, *The Evolving Name and Boundaries of Greenwood Heights*, CURBED (Aug. 28, 2013, 1:55 PM), <https://ny.curbed.com/2013/8/28/10204514/the-evolving-name-and-boundaries-of-greenwood-heights>.

<sup>44</sup> The Association for Neighborhood and Housing Development released a report in January 2015 detailing the inefficiencies of the tax break policy. See Ass’n for Neighborhood & Hous. Dev., *421A Developer’s Tax Break*, [https://www.anhd.org/wp-content/uploads/2011/07/ANHD-421a-Analysis-Maps\\_-012815.pdf](https://www.anhd.org/wp-content/uploads/2011/07/ANHD-421a-Analysis-Maps_-012815.pdf) (last visited Nov. 1, 2020).

investment dollars into gentrifying neighborhoods.<sup>45</sup> The jury is still out on the long-term consequences of these Opportunity Zones. For now, we will keep these factors and definitions in mind as we consider how all of these complicated dynamics work together in the rezoning process.

### **B. *The Process and Pains of Rezoning in New York City***

Over one hundred years ago, New York City passed the country's first zoning laws and permanently changed the landscape of the metropolis.<sup>46</sup> It is a convincing argument that “zoning is one of the most prominent tools local governments use to gentrify.”<sup>47</sup> Rezoning is defined as designating a zone, town, city, or borough for a new purpose or use through a change in the applicable law.<sup>48</sup> Changes might impact height restrictions for buildings, usage restrictions on the types of homes that can be built in a neighborhood, or bulk requirements for parking lots. Rezoning sheds light into how governments and corporate developers are either tacitly or actively involved in advancing gentrification within communities. Like gentrification, it is a comprehensive process that involves dozens of moving parts. Leo Goldberg, Policy and Research Manager at the Center for New York City Neighborhoods, wrote his master's thesis in City Planning at the Massachusetts Institute of Technology about zoning in New York City; the complexity of rezoning merited hundreds of pages of research.

For the purposes of this Article, we will rely on relatively straightforward definitions. Rezoning is divided into two subcategories. “Upzoning” allows for higher-value or more dense use, while “downzoning” permits formerly high-density land usage to be reduced to lower-density development.<sup>49</sup> A change in zoning from a manufacturing district to a residential or mixed-use district is classified as an upzoning because it permits more development and density.<sup>50</sup> Upzoning has often

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<sup>45</sup> Approximately one hundred Opportunity Zones exist in Brooklyn. See Telephone Interview with Tarry Hum, Professor & Chair of Queens College Department of Urban Studies (Jan. 10, 2020).

<sup>46</sup> See David W. Dunlap, *Zoning Arrived 100 Years Ago. It Changed New York City Forever*. N.Y. TIMES (Jul. 26, 2016), <https://www.nytimes.com/2016/07/26/nyregion/new-yorks-first-zoning-resolution-which-brought-order-to-a-chaotic-building-boom-turns-100.html>.

<sup>47</sup> Li, *supra* note 18, at 1191.

<sup>48</sup> *Rezoning*, <https://www.merriam-webster.com/dictionary/rezone> (last visited Nov. 1, 2020).

<sup>49</sup> Tom Angotti & Sylvia Morse eds., *ZONED OUT! RACE, DISPLACEMENT, AND CITY PLANNING IN NEW YORK CITY* 21 (2017).

<sup>50</sup> See *id.*

been heralded as a tool to create more affordable housing in high-density cities, but it has yielded mixed results.

Within the upzoning of avenues and downzoning of side streets, rezoning has definitively shaped land usage in Brooklyn over the last twenty years. In 2009, the New York City Department of City Planning’s homepage boasted that over one hundred neighborhood rezonings had been completed in accordance and promotion of the City’s policies over a span of just a few years.<sup>51</sup> Several rezonings in Brooklyn are in process; a few are stalled due to community pressures, legal advocacy, or policy-makers’ involvements. Perhaps the most famous (or infamous) Brooklyn rezoning was the Williamsburg-Greenpoint rezoning plan. Williamsburg was once a mixed-use community with multiple industrial spaces. When the uses of such spaces declined, many white and middle-class residents left the area.<sup>52</sup> The late twentieth century saw artists flocking to the neighborhood, with galleries, studios, and shops following them. Rents remained fairly consistent. The neighborhood remained relatively low-income for decades.

At the turn of the new millennium, corporate developers began to think about how the waterfront area might be revitalized and renewed. Puerto Rican residents, among others, took up the battle against corporate interests and a pro-development City government. The New York City Council approved a rezoning plan in 2005 to transform the waterfront and approved another rezoning plan in 2008. Community feedback was present in Williamsburg during the entire rezoning debate, and yet startlingly little of it was incorporated into the final rezoning. Many residents still recall the “fight for the waterfront,” when the Bloomberg administration promised that the region would receive more community investment with minimal displacement.<sup>53</sup> Following the passage of the rezoning plan, the neighborhood began to change gradually, and then dramatically. Those who originally lived in the neighborhood received few of the benefits proposed during the rezoning debates because they were almost entirely priced out of the places they once referred to as

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<sup>51</sup> See Treskon, *supra* note 22, at 296.

<sup>52</sup> Rezoning, South Williamsburg Project, <http://southwilliamsburgproject.weebly.com/rezoning.html> (last visited December 27, 2020).

<sup>53</sup> Alex Williamson, *Rezoning Retrospective: Activists look back on the battle for the North Brooklyn waterfront*, BROOKLYN DAILY EAGLE (Nov. 21, 2019), <https://brooklyneagle.com/articles/2019/11/21/rezoning-retrospective-activists-look-back-on-the-battle-for-the-north-brooklyn-waterfront>.

their homes. As Tom Angotti writes, “The new zoning, supported by powerful real estate interests, was a slap in the face to advocates of the community plan . . . Within a mere decade, Williamsburg had become a haven for new wealth.”<sup>54</sup> One community organizer referred to the displacement as “almost violent,” hearkening back to Peter Moskowitz’s coupling of gentrification with themes of violence and trauma.<sup>55</sup> Though the Williamsburg rezoning was supposed to implement inclusionary zoning in order to provide more affordable housing for low and middle-class families, the area instead became flush with luxury rentals and high-rise buildings. The neighborhood has since become synonymous with gentrification and displacement, though many remain unaware of the rezoning that triggered the massive changes. Today, the Latinx population is almost thirty percent lower in the rezoned area than it was prior to the rezoning, while the white population has increased by forty-four percent.<sup>56</sup> Rents have risen steeply: the median price for an apartment in Williamsburg is now over three thousand dollars a month.<sup>57</sup>

There is an existing blueprint for rezonings in New York City. The process is fairly long and can be arduous.<sup>58</sup> Either the Department of City Planning (DCP) or private property owners can apply to rezone an area. Following the passage of a new city charter in 1975 that granted neighborhoods more agency in the zoning process, every zoning since has required public hearings and multiple layers of nonbinding review by community boards and other actors. This process is called the Uniform Land Use Review Process (ULURP), which lasts between six to eight months. The focus is on reviewing architectural plans and performing environmental reviews of the development’s potential impact. The complete application must be submitted to DCP, which ensures that

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<sup>54</sup> Tom Angotti, *Zoned Out in the City: New York City’s Tale of Race and Displacement*, 26 POVERTY & RACE RESEARCH ACTION COUNCIL 1, 3 (2017).

<sup>55</sup> Williamson, *supra* note 53.

<sup>56</sup> *See id.*

<sup>57</sup> See Libertina Brandt, *In the 1940s, you could rent a Brooklyn apartment for \$20 a month. Today, the median rent has skyrocketed to \$3,000*, BUSINESS INSIDER (Aug. 22, 2019), <https://www.businessinsider.com/brooklyn-median-rent-increase-3000-a-month-2019-8>.

<sup>58</sup> Other neighborhoods have faced change as a result of overrides of city zoning overseen by the Empire State Development, a state agency. If land is owned by the state, the long process associated with rezoning does not need to be carried out. For a more detailed analysis of ESD and the exercise of eminent domain in reshaping Brooklyn, see Amy Lavine & Norman Oder, *Urban Redevelopment Policy, Judicial Deference to Unaccountable Agencies, and Reality in Brooklyn’s Atlantic Yards Project*, 42 URB. LAW. 287 (2010).

the zoning comports with environmental laws under the City Environmental Quality Review (CEQR) and the State Environmental Quality Review Act (SEQRA) by writing an Environment Impact Statement (EIS).<sup>59</sup> Industry City’s rezoning proposal was classified as a Type 1 project, meaning that it required an Environmental Impact Statement.<sup>60</sup> Once DCP certifies the plan, the Community Board (appointed by the Borough President), Borough President, and City Planning Commission weigh in with their recommendations on the zoning proposal. City Councilmembers then vote on the proposal, generally deferring to the Councilmember who represents the area to be zoned.<sup>61</sup> The Mayor has five days to veto the City Council’s approval before it becomes law, but generally refrains from doing so, as the Mayor usually provides comments to the City Planning Commission, which falls under his jurisdiction.<sup>62</sup>

Despite the alleged community participation through public hearings and Community Board attendance, the process remains frustratingly opaque and technical. Professor Tarry Hum believes that rezoning “is still very limited in terms of community participation.”<sup>63</sup> Concerted efforts to promote true democracy in rezoning have not been successful. This does not mean, however, that the practice is set in stone and that democratic principles are forever destined to fail in the world of rezoning. Some community organizations and activists are proposing a moratorium on all rezoning until the ULURP is more seriously reevaluated, for example.<sup>64</sup> Elected officials have also been cognizant of the procedural failures. Councilmember Carlos Menchaca, who represents Sunset Park on the New York City Council, also believes that “we need to reform the whole ULURP process to give more voice and power to neighborhoods.”<sup>65</sup> When the process fails to prioritize community input from the beginning, it is easy to understand why residents feel resentful and alienated from the process going on around them.

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<sup>59</sup> See Mark A. Chertok & Jonathan Kalmuss-Katz, *Environmental Law*, 62 SYRACUSE L. REV. 661 (2012).

<sup>60</sup> See UPROSE, *supra* note 10.

<sup>61</sup> See Keith Williams, *Breaking Down the City’s Rezoning Process*, N.Y. TIMES (Mar. 15, 2018), <https://www.nytimes.com/2018/03/15/nyregion/breaking-down-the-citys-rezoning-process.html>.

<sup>62</sup> See DeJesus, *supra* note 12.

<sup>63</sup> Interview with Tarry Hum, *supra* note 45.

<sup>64</sup> *Id.*

<sup>65</sup> Telephone Interview with Carlos Menchaca, City Councilmember for Sunset Park (Jan. 28, 2020).

Corporate interests have tremendous authority in determining which neighborhoods will go through ULURP. Government partnerships with these corporations can either be the death blow to rezoning efforts or smooth the path to rezoning. As Leo Goldberg writes, “Land use policy is primarily determined by a coalition of development interests and their allies in government.”<sup>66</sup> A series of early agreements begins to define the floor and ceiling of what rezoning can accomplish. Professor Hum believes that many of the agreements “that are made between developers and the City take place during the pre-certification process,” thus excluding those most affected by the potential rezonings.<sup>67</sup> There are usually repeat losers in the process — Black, Brown, and low-income tenants and small business owners who do not have the opportunity to draft or edit the agreements themselves. Often, there are repeat players who push for rezonings as well. As one Fort Greene resident, Joe Gonzalez, said at the Hearing: “Every single rezoning pushes Latinos and Blacks out of the Neighborhood . . . It’s the same rat pack of figures.”<sup>68</sup>

New construction that arises from rezonings often “sends families seeking shelter to converted basements or accessory units.”<sup>69</sup> In other circumstances, families are forced to leave the neighborhood altogether. Yet, some neighborhoods have not experienced this phenomenon. Government policies explain why some Brooklyn neighborhoods are seemingly immune to rezoning. In early January 2020, I visited the Fifth Avenue Committee offices. The Fifth Avenue Committee is a Brooklyn-based community organization that aims to develop affordable housing and community facilities, create economic stability, organize residents and workers, and combat displacement, among other goals.<sup>70</sup> The organization hosted an exhibit called “Segregated by Design.” It traced the history of gentrification and displacement in New York City. One of the most alarming and eye-opening parts of the exhibit was a redlined map of Brooklyn in the 1930s. This map showed the neighborhoods that were most and least likely to receive federal loans. It also demonstrated which

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<sup>66</sup> Leo Goldberg, *Game of Zones: Neighborhood Rezonings and Uneven Urban Growth in Bloomberg’s New York City* (2015) (M.C.P. thesis, Massachusetts Institute of Technology) (on file with the Institute Archives & Special Collections).

<sup>67</sup> Interview with Tarry Hum, *supra* note 45.

<sup>68</sup> Brodner, *supra* note 9.

<sup>69</sup> See Goldberg, *supra* note 66, at 31.

<sup>70</sup> See *FAC Mission*, FIFTH AVE. COMM., <http://www.fifthave.org> (last visited January 2, 2021).

neighborhoods would not have homeowners’ loans available to them. Many of the neighborhoods given “D”s at the time are today either predominantly-minority communities or almost completely gentrified. Many of the communities that received top marks from the Home Owners’ Loan Corporation are today still wealthier neighborhoods per capita and are majority white. Sunset Park, for example, received a fairly low grade (“C”). The most loan-friendly part of Brooklyn at the time of the map’s creation was deemed to be Bay Ridge, which was and still is a predominantly white neighborhood with a relatively low poverty rate. Neighborhoods like Bay Ridge are generally not the ones being rezoned to build luxury apartments. This is not necessarily because they have community activists who have fought harder against corporate interests. Rather, neighborhoods such as Windsor Terrace and Cobble Hill, which Mr. Baltz refers to as “a historically white and Italian neighborhood that got yuppified a couple of years ago,” have historically kept people of color and low-income residents out.<sup>71</sup> Rezoning permits more luxury development in lower-income neighborhoods, generally majority-minority ones, while restricting that development in “affluent and predominantly white neighborhoods.”<sup>72</sup>

Those in favor of rezoning point to the affordable housing proposals that often accompany rezoning petitions. However, the requirements for affordable housing that give developers tax breaks (and thus make it worthwhile for them to include affordable housing in rezoning petitions) calculate rents based on average median income for the entire City, a number that is far beyond the reach of most working-poor individuals.<sup>73</sup> Thus, when developers and real estate interests pounce on the idea of affordable housing as a way to appease concerned community members in the gentrification process, they do so while being fully aware that many of the neediest people will be left homeless or unable to pay the “affordable” rents. Karen Blondel, a lifelong Brooklyn tenant, also stresses: “Public housing is not the same as affordable housing.”<sup>74</sup> She argues that public housing has fallen to the wayside in the midst of so-called affordable housing in rezoning debates, which often raises the

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<sup>71</sup> Interview with Gregory Baltz, *supra* note 42.

<sup>72</sup> Li, *supra* note 18, at 1191.

<sup>73</sup> *See id.*

<sup>74</sup> Interview with Karen Blondel, Environmental Organizer, Fifth Avenue Committee, Brooklyn, New York (Jan. 8, 2020).

question: “Affordable for whom?” Leo Goldberg agrees, saying, “In the face of a homeless crisis and the fact that there is a huge number of low-income people who are housing insecure, it feels inadequate to not be building down to that very low income level.”<sup>75</sup> In these and other ways, rezoning proposals and agreements usually fail to meet the needs of the most vulnerable in New York City.

## II. A SPOTLIGHT ON INDUSTRY CITY

To see how these patterns and dynamics have played out in this particular rezoning battle, we must turn to the history of Industry City. It reveals how city governments can play an outsized role in condemning neighborhoods and entire populations, leaving them susceptible to speculation, predatory lending, and eventual gentrification. Executives and rezoning advocates painted Industry City as akin to *The Great Gatsby*'s Valley of Ashes: a forgotten strip of land with little to offer. Over the course of the rezoning battles, they touted the new businesses that sprang up in Industry City over the last few years as a sign of progress through corporate development. While it may be true that there is more foot traffic in Industry City today than there was ten years ago, the image ignores the thousands of blue-collar, mostly manual jobs that have continually operated within Industry City. Furthermore, this portrayal conveniently ignores that the decline of Industry City (at least, compared to its energetic presence in the mid-twentieth century) was not accidental, nor was it solely attributable to the fall of the maritime industry.

Industry City's access to and views of New York Harbor symbolize a community's strength and evolution over time. In the twentieth century, the waterfront offered employment to thousands of immigrants who worked as shipbuilders, sailors, and dock workers.<sup>76</sup> Industry City even briefly served as a United States Navy base. A vibrant maritime industry began to take shape. Most of these workers chose to live in Sunset Park, which was affordable and welcoming to immigrants. Yet the maritime industry came upon difficult times. A boom during the Second World War eventually busted, with the decline of the local maritime industry leading to the devitalization of the area.<sup>77</sup> When it became clear that the shipping industry was not going to pick back up, the City of New York

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<sup>75</sup> Telephone Interview with Leo Goldberg, Policy and Research Manager, Center for New York City Neighborhoods (Jan. 17, 2020).

<sup>76</sup> See Agrawal, *supra* note 6.

<sup>77</sup> See *id.*

failed to invest money in this part of the neighborhood, leaving it to its own devices rather than attempting to reinvigorate it with funding. In the face of indifference by the City, the people of Sunset Park tried to keep the waterfront alive. As Professor Hum writes, “Immigrants’ capital and sweat equity has pumped new life into [the neighborhood] and, in the process, has transformed decaying urban space into vibrant marketplaces and streetscapes.”<sup>78</sup> Latin American immigrants were “central to the revitalization” of this area following the Second World War; they worked in factories, opened restaurants and bakeries, and raised families.<sup>79</sup> They also lived and worked on leafy streets that offered movie theaters, restaurants, and stores, even as Robert Moses, who singlehandedly reshaped land usage in New York, determined that “Sunset Park was a slum not particularly worth saving.”<sup>80</sup>

Three years ago, Richard Rothstein’s publication of *The Color of Law* offered a groundbreaking look into how federal, state, and city governments have historically worked to enforce and protect housing laws in ways that contribute to discrimination and devastation. This is made abundantly clear in the context of Industry City. Robert Moses who made the key decision to place the Gowanus Expressway in the neighborhood; since it was built, the Expressway “has maintained absolute domination over the southwest Brooklyn waterfront, the local skyline, and local ears and lungs.”<sup>81</sup> The creation of the Expressway and its devastation of an entire community in the name of urban renewal led to the isolation of Industry City from the rest of the neighborhood and the image of it that developers have presented during rezoning. City and state policies “facilitate[d] and accelerate[d] the gentrification of the same neighborhoods previously suffering from government disinvestment.”<sup>82</sup> Today, private development is being called upon to “fix” a problem that was actually aggravated by corporate interests and an unsympathetic, unyielding government in the age of Robert Moses.

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<sup>78</sup> Tarry Hum, *Asian and Latino Immigration and the Revitalization of Sunset Park, Brooklyn*, in CONTEMPORARY ASIAN AMERICAN COMMUNITIES: INTERSECTIONS AND DIVERGENCE 27 (Linda Trinh Vo & Rick Bonus, eds., 2002).

<sup>79</sup> HIGHWAY ROBBERY: TRANSPORTATION RACISM AND NEW ROUTES TO EQUITY 77 (Robert Doyle Bullard, Glenn Steve Johnson & Angel O. Torres eds., 2004).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 81.

<sup>82</sup> Li, *supra* note 18, at 1195.

Notably, though the focus of many conversations about Industry City has been the industrial aspects, there are still residential spaces and homes there. Marcela Mitaynes believes that these residents should be prioritized, despite their small numbers: “Approximately 26 families face displacement, but because that’s less than 1% [of the total community population], that’s fine [with the Department of City Planning and to developers]. But that’s not okay with us.”<sup>83</sup> With their homes at stake, these residents should have had their voices prioritized and elevated during the rezoning process, but found few welcoming fora to express their concerns.

I have alluded to the forces of gentrification that are beginning to sweep over Sunset Park. Over the last few years, the Industry City area has begun changing dramatically. Industry City now offers dozens of retail and food options, from a restaurant that serves trendy avocado-based dishes to designer furniture and hand-crafted rugs. Some openings have landed substantial media coverage that has brought patrons flocking to the industrial complex.<sup>84</sup> Some refer to the complex as the “SoHo” of Sunset Park, an alarming comparison when one considers the rapid gentrification of SoHo decades ago.<sup>85</sup> Recently, more branded shuttles that transport workers and visitors from the 36th Street Subway Station—the transportation hub of Sunset Park—to Industry City have cropped up to transport individuals two avenues downwards.<sup>86</sup>

At the Hearing, CEO Andrew Kimball espoused his vision for the “Innovation Economy” aspects of Industry City.<sup>87</sup> As he spoke, organizers and tenants stood up and turned their backs to him. Both his language and the petition for rezoning itself are reminiscent of Richard Florida’s 2002 bestseller, *The Rise of the Creative Class*. While Florida

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<sup>83</sup> Interview with Mitaynes, *supra* note 15.

<sup>84</sup> See, e.g., Madison Flager, *This ‘Shark Tank’ Hit Restaurant is Opening Stores Nationwide*, DELISH (Mar. 19, 2018), <https://www.delish.com/food-news/news/a58240/this-shark-tank-hit-restaurant-is-opening-stores-nationwide>.

<sup>85</sup> *Industry City, the “SoHo” of Sunset Park and fear of Gentrification*, TRAVELING CIRCUS OF URBANISM (Dec. 26, 2018), <https://www.travelingcircusofurbanism.com/new%20york/industry>.

<sup>86</sup> During the hearing, one tenant who was opposed to the rezoning noted that these shuttles add unnecessary pollutants to the air of Sunset Park. Since researchers have found increased risks of asthma in minority and low-income communities, often traceable to public transportation, this raises issues of environmental justice. See Phil Brown, et. al., *The Health Politics of Asthma: Environmental Justice and Collective Illness Experience in the United States*, 57 SOCIAL SCIENCE & MEDICINE 453, 458 (2003).

<sup>87</sup> Brodner, *supra* note 9.

praised technology, talent, and tolerance as ways to draw educated and creative professionals to neighborhoods that struggled financially, his formula “has proven to benefit the already rich, mostly white middle class; fuel rampant property speculation; displace the bohemians [Florida] so fetishizes; and see the problems that once plagued the inner cities simply move out to the suburbs.”<sup>88</sup> Thus, there is good reason to be wary of “innovation” buzzwords and of the mentality that made Florida famous. Several Sunset Park tenants at the Hearing decried that “Innovation Economy” was a euphemism and instead thinly masked a desire to bring in individuals who were wealthier than the current residents. UPROSE, a Latinx community organization based in Sunset Park, states that a chief concern with an Industry City rezoning is that the “higher paying jobs in an innovative economy” would mostly go to people who are not Sunset Park residents, and current proposals do not make any mention of workforce development for these residents.<sup>89</sup>

The proposed revamping fell in line with the City’s desires for an increased innovation economy, as Professor Hum states.<sup>90</sup> She believes that the City is a cooperator in building these expansive commercial developments regardless of the loss to residents and small business owners of color: “Much of what the City does is premised on maximizing commercial real estate as a way to develop jobs and improve neighborhoods.”<sup>91</sup> This was particularly true during the administration of Mayor Michael Bloomberg, when over forty percent of New York City was rezoned. But even today, in the midst of the fifteen rezonings proposed by Mayor Bill de Blasio’s administration, this still holds some unfortunate truths.

Curiously, some high-level City officials were conspicuously absent from many of the debates around Industry City. Neighborhood organizers, with support from Councilmember Menchaca, asked Mayor de Blasio to support bringing the Right to Counsel program immediately to Sunset Park and issuing Certificates of No Harassment — documents that certain landlords must apply for before receiving building permits

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<sup>88</sup> Oliver Wainwright, *Everything is Gentrification Now: but Richard Florida Isn’t Sorry*, THE GUARDIAN (Oct. 26, 2017, 2:15 PM), <https://www.theguardian.com/cities/2017/oct/26/gentrification-richard-florida-interview-creative-class-new-urban-crisis>.

<sup>89</sup> UPROSE, *supra* note 10.

<sup>90</sup> Interview with Tarry Hum, *supra* note 45.

<sup>91</sup> *Id.*

to change the use or occupancy of a building.<sup>92</sup> These changes would not have alleviated all the problems associated with the prospective rezoning but would have sent a critical message to tenants and small business owners that they had the support of local government officials. Yet, a spokesperson for the Mayor refused to indicate whether the City would support any or all of the requests, stating that the rezoning was a “private application.”<sup>93</sup> Technically, the rezoning was indeed a private application. However, the amount of public input and the potential effects on the public were substantial. By the time that Andrew Kimball withdrew the rezoning application in late September 2020, the Mayor had not publicly opined.

### III. RESISTING REZONINGS: PERSPECTIVES, COMMUNITY ORGANIZING, AND LEGAL POSSIBILITIES

Despite the success of community organizations such as UPROSE in preventing the immediate rezoning of Industry City, it is easy to be jaded when examining the systemic injustices that local government policies have helped inflict on communities of color like Sunset Park. The withdrawn Industry City proposal is not dispositive of future rezoning efforts. Even before this battle, Sunset Park was no stranger to rezoning. In 2007, the “City government’s desire to update its land use planning and channel population growth in particular ways, resulted in the undertaking of a neighborhood rezoning process.”<sup>94</sup> The 2007 contextual rezoning of Sunset Park was intended to preserve the residential nature of one hundred and twenty-eight blocks in Sunset Park while allowing developers to build new construction. Community members argued that the rezoning would have significant socioeconomic effects and that DCP’s Environmental Impact Statement (EIS) “had not adequately analyzed the impacts of new commercial districts.”<sup>95</sup> In *Chinese Staff & Workers’ Ass’n v. Burden*, 2011 N.Y. Slip Op. 0641 (1st Dep’t Sept. 8, 2011), state courts ultimately upheld the sufficiency of the EIS and permitted the

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<sup>92</sup> See Caroline Spivack, *Sunset Park officials push de Blasio admin for Industry City rezoning commitments*, CURBED NEW YORK (Nov. 7, 2019, 11:34 AM), <https://ny.curbed.com/2019/11/7/20953110/sunset-park-industry-city-rezoning-mayor-de-blasio>.

<sup>93</sup> *Id.*

<sup>94</sup> Treskon, *supra* note 22 at 289.

<sup>95</sup> *Split Court Upholds Sunset Park Rezoning Plan*, NEW YORK LAW SCHOOL CENTER FOR NEW YORK CITY LAW (June 28, 2012), <https://www.citylandnyc.org/split-court-upholds-sunset-park-rezoning-plan-update-court-of-appeals-affirms>.

rezoning.<sup>96</sup> This history colored residents’ perspectives on the proposed Industry City rezoning.

Yet, there is a silver lining to the dozens of rezonings during the Bloomberg administration and the several proposed rezonings under the de Blasio administration. Because of this rezoning activity, many organizers and tenants can learn a great deal from each other. The Williamsburg rezoning in 2005 was the canary in the coalmine, or what Dr. Frances Lucerna refers to as “ground zero for what you do not want to have happen in our community.”<sup>97</sup> Greg Baltz states that rezonings are going on all over the City, and everyone is learning from one another through local newspapers, podcasts covering oral histories [such as *There Goes the Neighborhood*, which covers the East New York and Williamsburg rezonings], and community conversations about the stalled rezonings in Bushwick and in Staten Island’s Bay Street corridor.<sup>98</sup> As Marcela Mitaynes notes, “Learning from other rezonings that have come through is important.”<sup>99</sup> Thus, in this Part, I propose recommendations for both the Sunset Park community and other neighborhoods that may face the same rezoning battles.

#### A. *The Pivotal Role of Community Activism*

The official motto of the borough of Brooklyn is “Eenndraght Maeckt Maght,” which translates from Dutch as “unity makes strength.” In other words: *la unión hace la fuerza*. There is power in numbers. This has become evident in the case of Industry City’s rezoning. One of Sunset Park’s greatest strengths is its active tenant community. Tenants, organizers, and activists pushed back successfully on the encroaching demands of Industry City executives and pressure from pro-development city officials. If neighborhoods are going to resist corporate development, having a strong group of individuals who are willing to rally against these developers is crucial. As Ms. Rose says, “Neighborhoods with the most mobilized communities are the most successful [in combatting gentrification].”<sup>100</sup> Working alongside grassroots organizations can empower tenants as well. Ms. Mitaynes remembers, “There was someone who bought [the rent-stabilized apartment where

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<sup>96</sup> *See id.*

<sup>97</sup> Williams, *supra* note 43.

<sup>98</sup> Interview with Gregory Baltz, *supra* note 42.

<sup>99</sup> Interview with Marcela Mitaynes, *supra* note 15.

<sup>100</sup> Interview with Jessica Rose, *supra* note 17.

I grew up] and within six months was able to displace half the tenants. Neighbors Helping Neighbors [a nonprofit organization whose mission is to empower low- and moderate-income Brooklyn residents to secure quality housing, and where Ms. Mitaynes worked at the time she was interviewed] was trying to come in and start organizing the building.”<sup>101</sup> These organizations are critical to organizing a movement if we are to enact meaningful anti-gentrification and anti-displacement efforts in the face of rezoning. There should also be communications across different organizations. For example, the Brooklyn Anti-Gentrification Network and other organizations have demonstrated the power of grassroots organizing through “know your rights” presentations for tenants, mass-calling elected officials, and supporting families that have been displaced financially or emotionally.<sup>102</sup>

Successful grassroots coalitions require solidarity across different populations. In order to be successful in this rezoning and in others, there must be a sense of community across working-class and activist groups. During the Hearing, several union members testified in favor of rezoning Industry City. Jessica Ortiz, a tenant and union member, testified to how the twenty thousand jobs that Industry City could provide would be welcome and could provide financial stability for many in Sunset Park. Yet, Ms. Mitaynes, who also testified, urged union workers to stand in solidarity with tenants and with small business owners. Industry City’s jobs would likely open primarily to highly-educated, highly-paid white-collar workers. In other words, many of the union representatives who were advocating for the rezoning would not be eligible for most of the new jobs. There is a false dichotomy between union workers on one end and tenants at the other, or a battle of residential versus commercial. Ms. Rose highlights that gentrification and rezoning can significantly affect commercial tenants — particularly long-term small businesses owned by people of color.<sup>103</sup> Spaces for community conversations that occur among residents, small business owners, and workers about the actual effects of this rezoning would help shape and fortify working-class coalitions. Because of the language barriers that separate many Sunset Park

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<sup>101</sup> Interview with Marcela Mitaynes, *supra* note 15.

<sup>102</sup> Interview with Dora Novey-Buttfield, Community Organizer, Brooklyn Anti-Gentrification Network, Brooklyn, New York (Jan. 14, 2020).

<sup>103</sup> Interview with Jessica Rose, *supra* note 17.

residents, materials and conversations should be available in English, Spanish, and both Cantonese and Mandarin, among other languages.

**B. Environmental Impact Statements: One Potential Avenue to Progress**

There are several legal avenues which advocates can pursue in order to mitigate the damage from rezonings or to enjoin them from occurring — ideally joined by movement lawyers who prioritize the voices of the communities most affected by government decisions.<sup>104</sup> Lawsuits that capitalize on Environment Impact Statements (which, as aforementioned, are drafted by DCP) are one route to combat displacement, should rezonings pass the City Council. These Article 78 lawsuits against the City could potentially overrule any unfavorable City Council decisions that are in favor of rezoning. The standard for these suits involves a determination of whether “a governmental agency’s determination was made in violation of a lawful procedure, affected by an error of law, was arbitrary and capricious, or was an abuse of discretion.”<sup>105</sup> The court must ensure that the agency has satisfied SEQRA<sup>106</sup> and determine whether the agency took a “hard look” at relevant areas of environmental concern and reasonably elaborated on its reasoning.<sup>107</sup> Courts will also review whether the agency has followed the CEQR Technical Manual guidelines.

Until fairly recently, precedent had been overwhelmingly unfavorable to tenants and community activists. The petitioners in *Chinese Staff* alleged that the City’s Statement had underestimated the displacement effects of a proposed Sunset Park rezoning. According to rezoning proponents, this “contextual zoning” was intended to “meet the needs of addressing outmoded zoning which no longer fits the existing land uses.”<sup>108</sup> The petitioners argued that these needs had not been met and challenged the entire foundation by honing in on the Environment

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<sup>104</sup> See, e.g., Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 CLINICAL L. REV. 147, 155–60 (2016).

<sup>105</sup> *N. Manhattan Is Not for Sale v. City of New York*, No. 161578/2018, 2019 WL 6916075, at \*1 (N.Y. Sup. Ct. Dec. 19, 2019).

<sup>106</sup> *Matter of Jackson v. N.Y. State Urban Dev. Corp.*, 494 N.E.2d 429 (N.Y. 1986).

<sup>107</sup> *Aldrich v. Pattison*, 486 N.Y.S.2d 23, 29 (App. Div. 1985).

<sup>108</sup> Elizabeth S. Natrella, *The Contextual Rezoning of Sunset Park, Brooklyn, and the Decision in Chinese Staff & Workers’ Association v. Burden: The Basic Principles Governing Limited Judicial Review of Environmental Challenges in New York Endure*, 76 ALB. L. REV. 1239, 1242 (2013).

Impact Statement. The appellate division reviewed and rejected each of the challenges to the zoning, including the argument that the Department of City Planning ignored socioeconomic impact and neighborhood character.<sup>109</sup> It was key to the court’s opinion that a socioeconomic analysis had been conducted under guidance from the CEQR Technical Manual. The methodology had been previously approved by New York courts, and only the dissent authored by the late Judge Sheila Abdus-Salaam found that the City had not adequately examined socioeconomic impact on the residents of Sunset Park.<sup>110</sup>

The calculus only recently began to shift. At the end of December 2019, the rezoning of Inwood (northern Manhattan) that had been passed by the City Council in 2018 was annulled by New York State Supreme Court Justice Verna Saunders, and the rezoning was enjoined.<sup>111</sup> Inwood Legal Action argued successfully that the environmental review process for the upzoning had failed to analyze how several aspects of the plan would impact neighborhood residents.<sup>112</sup> These environmental effects included many of the issues raised in this Article and issues that activists and organizers have brought to the forefront for decades: the socioeconomic consequences of the rezoning; the racial impact of the rezoning and its effects on racial displacement; the rezoning’s effect on minority and women-owned businesses; deviations between the rezoning’s predicted effects and the actual effects of prior rezonings; and speculative real estate purchase plans in Inwood during the rezoning process.<sup>113</sup>

In her order, Judge Saunders found that the City of New York had failed to take a “hard look” at these effects and thus violated SEQRA and CEQR.<sup>114</sup> Overnight, these environmental regulations became judicially-approved mechanisms for halting unfavorable rezonings. Mr. Goldberg says that the decision was heartening: “For years, people have been saying the environmental review process needs to take displacement more seriously and so it’s cool to see this validated by a judge.”<sup>115</sup>

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<sup>109</sup> *See id.* at 1245.

<sup>110</sup> *See* Chertok & Kalmuss-Katz, *supra* note 59, at 722.

<sup>111</sup> *See* Brendan Krisel, *Inwood Rezoning Overturned by Judge*, PATCH (Dec. 19, 2019, 6:10 PM), <https://patch.com/new-york/washington-heights-inwood/inwood-rezoning-overturned-judge-court-documents>.

<sup>112</sup> *See id.*

<sup>113</sup> *See id.*

<sup>114</sup> *In re N. Manhattan Is Not for Sale v. City of New York*, 2019 NY Slip Op 33698(U) (Sup. Ct.)

<sup>115</sup> Interview with Leo Goldberg, *supra* note 75.

Ms. Mitaynes says that being conscious of such tenant-friendly precedent is critical.<sup>116</sup> This decision is important because it indicates that courts may be more willing to consider the racial impact of rezoning. Ms. Rose points out that this could be a potential legal strategy as Brooklyn combats rezoning and gentrification.<sup>117</sup>

Unfortunately, the momentum behind this avenue seemed to be quashed by July 2020. The State Supreme Court’s Appellate Division for the First Judicial Department overturned the lower-court’s ruling and reinstated the rezoning. The Court held that the City “took the requisite ‘hard look’ at all the issues requiring study under SEQRA/CEQR” and was entitled to rely on the aforementioned CEQR Technical Manual affirmed by *Chinese Staff*.<sup>118</sup> The City Council’s approval of the rezoning was deemed proper. Nonetheless, advocates were unwilling to completely rule this pathway out. In August 2020, the Inwood group filed a motion asking for leave to appeal to the New York Court of Appeals. This motion was denied in November 2020, signaling that the Inwood rezoning will likely take place.<sup>119</sup>

There is no guarantee that Article 78 actions will allow a proper avenue for tenants and organizers to combat rezoning, considering the case in Inwood. Yet, the original decision opened a path to scrutinize Environment Impact Statements that was once deemed untenable. Further litigation in this arena may prove meaningful. After all, it was discovered in 2019 that CEQR projections have been wildly inaccurate in the past and that these inaccurate projections have opened Pandora’s box for monumental (and often controversial) rezoning projects.<sup>120</sup> For example, during its 2001 rezoning, the Long Island City environmental review process predicted that the rezoning would create 300 new housing units. Instead, the rezoning led to the development of over 10,000 new apartments — many of them located in luxury buildings.<sup>121</sup> The

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<sup>116</sup> Interview with Marcela Mitaynes, *supra* note 15.

<sup>117</sup> See Interview with Jessica Rose, *supra* note 17.

<sup>118</sup> *In re N. Manhattan Is Not for Sale v. City of New York*, 128 N.Y.S.3d 483, 487 (App. Div. 2020).

<sup>119</sup> See Kathryn Benzel, *Inwood Rezoning is a Done Deal*, *THE REAL DEAL* (November 23, 2020, 11:41 A.M.), <https://therealdeal.com/2020/11/23/inwood-rezoning-is-a-done-deal>.

<sup>120</sup> See Caroline Spivack, *Rezonings transform NYC neighborhoods—but the city doesn’t meaningfully study their impacts*, *CURBED NEW YORK* (May 28, 2019, 9:50 AM), <https://ny.curbed.com/2019/5/8/18535693/nyc-neighborhood-rezonings-ceqr-environmental-review-city-council>.

<sup>121</sup> See *id.*

environmental review for Downtown Brooklyn predicted that 979 new apartments would result from the 2004 rezoning. However, as of 2018, more than 8,000 housing units have been built, most of which skew towards renting for high amounts.<sup>122</sup>

The inaccuracies of such predictions do not just affect algorithms or budgets; they also demolish pre-existing communities, displace tenants from their homes, and shutter storefronts. The CEQR Technical Manual, which “serves as a general guide on the methodologies and impact criteria for evaluating the potential effects of the Proposed Actions on the various environmental areas of analysis,” should be further examined for pro-development biases.<sup>123</sup> It is quite possible that the manual itself does not fully consider the human aspect of rezoning. For example, in the case of Industry City, the EIS found that “the Proposed Project would not result in significant adverse socioeconomic impacts,” which contradicts many of the patterns that we have seen in previous Brooklyn rezonings and also stands in opposition to the personal narratives from tenants and organizers.<sup>124</sup> This needs to be explored further both through empirical research and legal theories.

### C. *The Fair Housing Act and State Constitutions*

The Fair Housing Act of 1968 might also be a way to explore anti-gentrification efforts and to mitigate the effects of rezoning. New York City Public Advocate Jumaane Williams proposed a bill in May 2019 that would require all Environment Impact Statements prepared and subject to City Planning Commission review to include “an analysis of racial and ethnic impacts and whether the proposed action would further fair housing within the meaning of the Fair Housing Act.”<sup>125</sup> Because New York City has never “seriously looked at the potential discriminatory impact of its rezoning,” these analyses would provide a

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<sup>122</sup> *See id.*

<sup>123</sup> New York City Dep’t of City Planning, *Project Description*, <https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/industry-city/01-deis.pdf> (last visited Nov. 1, 2020).

<sup>124</sup> New York City Dep’t of City Planning, *Socioeconomic Conditions*, [https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/riverside-galleria/03\\_deis.pdf?r=1](https://www1.nyc.gov/assets/planning/download/pdf/applicants/env-review/riverside-galleria/03_deis.pdf?r=1) (last visited Nov. 1, 2020).

<sup>125</sup> N.Y.C. Council, N.Y., Int. No. 1572-2019 (as introduced May 29, 2019), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3963886&GUID=D2C9A25B-0036-416E-87CD-C3AED208AE1B&Options=ID|Text|&Search=1572> (last visited Jan. 29, 2021).

more race-conscious perspective on rezoning practices.<sup>126</sup> This information could help elected officials, city planners, and activists make better informed assessments about when rezonings are more likely to harm a community than benefit it.

The FHA has historically desegregated neighborhoods and furthered fair housing. More than one individual who testified at the Hearing mentioned the Fair Housing Act’s mission to eradicate discrimination in housing. Bethany Li writes that the Fair Housing Act is “well poised to challenge zoning and other large redevelopment plans that spur gentrification in cities,” pointing to judicial precedent where courts have struck down local government actions such as redlining, excluding affordable housing through zoning, or providing less-than-standard city services to neighborhoods of color by relying on the language of the Fair Housing Act.<sup>127</sup> Rezoning could be a natural successor to these disparate local government actions.

It is true that disparate impact protections have been weakened across the United States due to the actions of the Department of Housing and Urban Development under Ben Carson. For example, the Affirmatively Furthering Fair Housing Act was repealed in 2020, setting the stage for increased housing segregation and inequities in the name of preserving federalist ideals. Yet state judges can also choose to interpret the Fair Housing Act in a way that would allow them to strike down zonings that result in disparate racial impact. Furthermore, a more progressive HUD administration could promote federal support for tenant-friendly legislation.

In addition to the Fair Housing Act, New York State may also strengthen its disparate impact claim protections for tenants within the state constitution.<sup>128</sup> State constitutions are often unexplored avenues to litigate and could prove fruitful in anti-displacement work.<sup>129</sup> Though the Fair Housing Act may offer a promising route depending on the admin-

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<sup>126</sup> Angotti & Morse, *supra* note 49, at 41.

<sup>127</sup> Li, *supra* note 18, at 1216.

<sup>128</sup> Following the announcement of the proposed rule change by HUD, New York state agencies, including the Division of Human Rights, confirmed that any changes to the federal standard for bringing disparate impact claims in regard to housing cases would not impact how these cases are analyzed under state law. *See Governor Cuomo Announces New York’s Opposition to Federal Government’s Proposed Rule Change*, NEW YORK STATE: DIVISION OF HUMAN RIGHTS (Oct. 18, 2019), <https://dhr.ny.gov/nys-disparate-impact-comments>.

<sup>129</sup> *See* Li, *supra* note 18, at 1216.

istration and political landscape, we must think beyond the Fair Housing Act to litigate effectively and creatively in New York; state constitutions seem like a fine way to begin exploring these legal inroads.

#### **D. *The Role of Elected Officials and Community Boards***

Moving forward, elected officials will be key in the fight against rezonings and gentrification. One clear way to alleviate the damage from rezonings is to elect officials who are willing to fight for the community rather than defer to corporate interests and pro-development strategies within the government. Following the rezoning of Williamsburg, “Councilmembers are being responsive to their communities, who are demanding much more out of rezonings than they did in the Bloomberg times.”<sup>130</sup> Mr. Baltz recalls that there were no substantial provisions during the rezoning proposal for Williamsburg under the Bloomberg administration.<sup>131</sup> Since then, Councilmembers have expressed their reluctance to vote yes for proposals that do not offer substantial benefits for the communities that they represent. We might look at other neighborhoods for inspiration. Of the approximately dozen neighborhoods that the de Blasio administration has attempted to rezone, East New York is one of few that has actually been rezoned, with a substantive package of community-facing benefits for the neighborhood negotiated by their City Councilmember, Rafael Espinal. Councilmember Espinal touted the fact that millions of dollars will pour into East New York to repave streets, design public parks, and open a community center.<sup>132</sup>

Councilmember Menchaca stated that he would have wanted a comprehensive Community Benefits Agreement from Industry City before he agreed to vote yes on the rezoning, and voiced strong opposition to the rezoning by the time that the petition was withdrawn.<sup>133</sup> “Getting to elect someone [Councilmember Menchaca] who was coming in and wanted to be that change that was missing” in Sunset Park was crucial in this fight, says Ms. Mitaynes.<sup>134</sup> Councilmembers who are

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<sup>130</sup> Interview with Leo Goldberg, *supra* note 75.

<sup>131</sup> Fourth Avenue in Brooklyn, which runs into Sunset Park, was also rezoned under the Bloomberg administration. Mr. Baltz comments that there are no affordability requirements in these buildings. Interview with Gregory Baltz, *supra* note 42.

<sup>132</sup> *See id.*

<sup>133</sup> *See* Scott Enman, *Sunset Park residents move toward agreement with Industry City*, BROOKLYN REPORTER (NOV. 29, 2019, 2:15 AM), <https://brooklynreporter.com/2019/11/sunset-park-residents-move-toward-agreement-with-industry-city>.

<sup>134</sup> Interview with Marcela Mitaynes, *supra* note 15.

sensitive to the anxieties over rezoning can pressure developers and city officials for more inclusive Community Benefits Agreements (CBAs). Any Community Benefits Agreements should, as Ben Margolis, the executive director of the Sunset Park Business Improvement District says, “hold its property owners accountable and advance planning for the long term.”<sup>135</sup> These Agreements can provide for substantial investments into communities while mitigating the blunt impact of rezoning.

We must also be willing to look beyond Community Benefits Agreements. There are situations where original developers have signed and promised benefits in agreements and then failed to meet their obligations as developers experience turnover.<sup>136</sup> The blueprints for such Agreements also keep corporate interests and city governments from debating other, potentially more progressive plans. As Mr. Goldberg says, agreements of hypothetical benefits from developers can justify more density but detract attention from alternatives, like committing land to public housing or community land trusts.<sup>137</sup> Ms. Mitaynes also expresses doubts regarding the effectiveness of Community Benefits Agreements in the Industry City context.<sup>138</sup> These agreements are not one size fits all — they must be tailored to the individual community. Even commonly included clauses in these Agreements, such as mandatory inclusionary zoning, are not truly progressive if “[they don’t] reach down far enough.”<sup>139</sup> We cannot judge the success of agreements solely on how much money developers are willing to give or what services are provided to a large number of residents. We must not be complacent with seeking benefits for a majority while leaving a silent minority without protections.

Policymakers across the City and State must also be willing to pass more protective laws that favor tenants. Ms. Mitaynes believes that historically, laws in New York have benefited landlords more than they ever benefited tenants. Moving beyond the rezoning of Industry City, stronger tenant protections can mean the difference between a family staying in its home and living on the street. Mr. Goldberg notes that “Right to Counsel [the program which grants New York City residents

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<sup>135</sup> *Id.*

<sup>136</sup> Interview with Leo Goldberg, *supra* note 75.

<sup>137</sup> *Id.*

<sup>138</sup> Interview with Marcela Mitaynes, *supra* note 15.

<sup>139</sup> Interview with Leo Goldberg, *supra* note 75.

below certain poverty thresholds access to counsel in eviction proceedings, scheduled to be fully rolled out within the next two to three years] is a really big deal and is a really significant achievement. Evictions are down.”<sup>140</sup> Mr. Baltz says that with recent changes in the New York State legislature, it has become possible to pass massive reforms to the rent-stabilization system: “Most of the provisions that allow landlords to raise rents after these tenants leave have been stripped away.”<sup>141</sup> The Housing Stability and Tenant Protection Act of 2019 certainly afforded more protections and rights for tenants.<sup>142</sup> While it is critical to remember that the new package of rent laws and tenant protections can lower the economic motivation to displace tenants, “[they are] not the silver bullet to stop gentrification.”<sup>143</sup> Furthermore, many evictions are shrouded in secrecy even from the courts — Ms. Mitaynes pointed out that in housing court, it may not seem like there is displacement in Sunset Park because the displacement that’s going on is illegal.<sup>144</sup> Again, similar to thinking beyond the current blueprint of Community Benefits Agreements, we must be willing to look beyond the existing framework of what the law currently affords to vulnerable tenants.

The role of the Community Board in the rezoning process is worth exploring. Ideally and theoretically, Community Boards represent the interests of the people of a district without being beholden to other interests. Yet, Community Boards are appointed by the Borough President, meaning that members are often extensions of their politics. For example, a pro-development Borough President could appoint multiple pro-development Community Board members. On January 16, 2020, Community Board 7 (which covers Sunset Park) recommended rejecting the special zoning permit unless developers met certain height restrictions and voted to recommend not demapping part of 40th Street unless the developers agreed to additional community demands.<sup>145</sup> However,

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<sup>140</sup> *Id.*

<sup>141</sup> Interview with Gregory Baltz, *supra* note 42.

<sup>142</sup> The Housing Stability and Tenant Protection Act of 2019 provided a slew of new rights for tenants. See Legal Serv. of the Hudson Valley, *New Rights for Tenants: Housing Stability and Tenant Protection Act of 2019*, N.Y. STATE SENATE (Sept. 19, 2019), <https://www.nysenate.gov/newsroom/articles/2019/new-rights-tenants-housing-stability-and-tenant-protection-act-2019>.

<sup>143</sup> Interview with Jessica Rose, *supra* note 17.

<sup>144</sup> Interview with Marcela Mitaynes, *supra* note 15.

<sup>145</sup> See Caroline Spivack, *Contested Industry City Rezoning Splits Community Board Vote*, CURBED NEW YORK (Jan. 16, 2020, 3:01 PM), <https://ny.curbed.com/2020/1/16/21068771/>

the Community Board was at a stalemate with other critical portions of the zoning application. The Board could not decide on the special innovation district or on the zoning text that would ultimately permit greater commercial and retail usage in Industry City.<sup>146</sup> This indecisiveness is indicative of the deep tensions amongst Community Board Members regarding rezonings. We must also wonder aloud whether the structure of the Community Board is the most effective way to provide community feedback to the City Council and to the Borough President. It would be more powerful to have Community Boards elected rather than appointed; this might lend greater credence to the idea that they represent the community’s wishes. Ms. Blondel remarked that there were problems with the Residential Council in her New York City Housing Authority (NYCHA) building because she felt as though the Residential Council was the only way to reach those at the top.<sup>147</sup> Alienation runs rampant. Ms. Rose believes that there is “a fundamental problem with the existing framework and how the City actually implements the framework in terms of incorporating community feedback.”<sup>148</sup> Reforming the Community Board structure is certainly possible, and community-based planning remains an option.<sup>149</sup>

As a caveat, approximately fifty percent of the individuals who live in Sunset Park are foreign-born and cannot vote.<sup>150</sup> This means that seeking the support of elected officials must operate in conjunction with grassroots organizing and community efforts in which foreign-born residents can have a voice. As Councilmember Menchaca emphasizes, the goal is to get all people reflected in decision-making.<sup>151</sup>

### ***E. An Environmentally Friendly Future for Industry City***

Those who advocated for the rezoning often questioned what the alternative would be if the area was not rezoned. As the proposal has been withdrawn, the future of Industry City will almost certainly come under greater scrutiny in the coming months. I would like to use this

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contested-industry-city-rezoning-splits-community-board-vote.

<sup>146</sup> *See id.*

<sup>147</sup> Interview with Karen Blondel, *supra* note 74.

<sup>148</sup> Interview with Jessica Rose, *supra* note 17.

<sup>149</sup> Angotti & Morse, *supra* note 49 at 155.

<sup>150</sup> *See* Interview with Carlos Menchaca, *supra* note 65.

<sup>151</sup> *Id.*

Subpart to elevate one proposal for the future of the area that stems directly from community organizers and activists.

The GRID—Green Resilient Industrial District—is UPROSE’s holistic and comprehensive recommendation for how Industry City can maintain its legacy as a maritime area and still address the modern needs of its citizens. Its plan has been proposed to preserve the industrial character of the area and produce new jobs while at the same time confronting current challenges produced by climate change. UPROSE proposes on-site renewable energy and electric vehicles; support for off-shore wind staging, production, and transport facilities; expanded solar collection techniques; green construction; and preferential marketing for green industries and businesses that hire locally.<sup>152</sup> The organization has a comprehensive plan for how this would maximize benefits for community members, workers, and tenants. This shift towards green energy is not unreasonable; in fact, it mirrors shifts in the maritime industry as a whole. In April 2018, the International Maritime Organization brought together hundreds of international representatives to work on cutting shipping emissions and eliminating fossil fuels.<sup>153</sup> Its intention was to make sure that renewable energy played a role in the future of the maritime industry. Industry City could become a green port that would offer jobs to Sunset Park residents while also increasing the overall health of the community. UPROSE points to ports in Los Angeles and Long Beach, among others, as clear examples of successful green ports and potential models for Industry City. Such a novel idea would require city planners and corporate developers to look beyond typical rezoning proposals. It might also require legal strategies to ensure that the green development plans are honored by future developers.

This plan comes full circle with Industry City’s history as a working waterfront. Its focus on environmental justice is particularly meaningful for a low-income community like Sunset Park. Asthma rates tend to be higher in low-income and minority communities; researchers have traced this to higher pollution rates in these neighborhoods.<sup>154</sup> As Councilmember Menchaca says, Industry City has the potential to be “an economic engine for an immigrant population and working families.”<sup>155</sup> This can

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<sup>152</sup> UPROSE, *supra* note 10.

<sup>153</sup> *Id.*

<sup>154</sup> See Phil Brown, et. al., *supra* note 90, at 458.

<sup>155</sup> Interview with Carlos Menchaca, *supra* note 65.

be done without sacrificing the nature of the area, with its rich history, or commitments to environmental justice.

### CONCLUSION

This Article was intended to shed a light on the complex factors that go into rezoning, the dynamics that lead to gentrification in Brooklyn, and recommendations for how the effects of rezoning can be mitigated, all through the lens of Industry City. Yet, I also hoped to bring a more intimate perspective into a neighborhood whose history has been woefully underrepresented in academia, legal and otherwise. When I look at Sunset Park, I see resilience and strength. The technicalities of rezoning and gentrification are substantial, but they do not overwhelm the spirit of the community. We might look to Paul Auster’s novel, *Sunset Park*, for a more poetic view of the neighborhood. The author depicts the neighborhood as: “Home to more than a hundred thousand people, including Mexicans, Dominicans, Poles, Chinese, Jordanians, Vietnamese, American whites, American blacks, and a settlement of Christians from Gujarat, India. Warehouses, factories, abandoned waterfront facilities, a view of the Statue of Liberty, the shut-down Army Terminal where ten thousand people once worked, a basilica named Our Lady of Perpetual Help, biker bars, cash-checking places, Hispanic restaurants, the third-largest Chinatown in New York, and the four hundred and seventy-eight acres of Green-Wood Cemetery, where six hundred thousand bodies are buried.”<sup>156</sup> David Sosa, a Sunset Park resident, testified at the Hearing that he has witnessed the beauty and strength of this community during this battle over rezoning. “This community deserves better,” he said to resounding applause. I agree. This community deserves the public investment of which it was deprived for decades, and it will not achieve that through a private rezoning proposal.

In January 2020, I visited the Bush Terminal Post Office in Industry City to send a package. The building blends in with the remaining complex of Industry City: it is a nondescript gray cement block on Third Avenue. Despite general financial woes for the United States Postal Services over the last few years, this branch has been there since I was a child. Taped to one of the glass windows in the Post Office was a letter stating that this branch would soon be moved to another location

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<sup>156</sup> Paul Auster, *SUNSET PARK* 28 (2010).

because of an inability to secure a longtime lease with the landlord. I was left wondering how quickly this would play out. I was not left wondering for long; in August 2020, plans were announced to relocate the post office from its original home.<sup>157</sup> Activists have organized to protest the relocation. The withdrawal of the Industry City rezoning proposal may play a role in the future of the Post Office. Yet only time will tell what will be left standing the next time I visit the waterfront, and what will be cloaked in the shadow of the Gowanus Expressway in its stead.

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<sup>157</sup> Ben Verde, *Sunset Park Post Office Relocation Sparks Outrage from Locals*, BROOKLYN PAPER (Aug. 21, 2020), <https://www.brooklynpaper.com/sunset-park-post-office-relocation>.