

# IDEA BANK FOR NEW YORK CITY’S CHIEF PUBLIC REALM OFFICER: IMAGINING A BROAD, EQUITY-ENHANCING ROLE FOR CREATING ACCESS TO PUBLIC SPACE

*Tara Eisenberg, Althea Lamel, Lindsay Matheos, Carolyn Weldy, and  
Andrea McArdle<sup>†</sup>*

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<sup>†</sup> Tara Eisenberg is a 3L at CUNY School of Law studying criminal law and environmental justice. She previously worked in public policy and urban planning. Althea Lamel is a 3L at the CUNY School of Law studying workers’ rights, housing policy, and economic human rights more broadly. She previously served on the executive board for the Housing Rights Project student group. Lindsay Matheos is a 3L at CUNY School of Law studying environmental law. She thanks the CUNY Law Review team and her co-authors particularly Professor McArdle for her inspiration and encouragement. Carolyn Weldy graduated from CUNY School of Law in May 2023, where she was also a member of Equality for Flatbush, an anti-gentrification group in Brooklyn. She now works as a tenant attorney in Chicago. Andrea McArdle is a Professor of Law at CUNY School of Law. In addition to designing and teaching the Land Use and Community Lawyering seminar, she teaches Property, Real Estate Transactions, Lawyering, and seminars on judicial writing. She thanks her collaborators on this project and draws inspiration from them and all her Land Use students for the ideas and critical questioning they bring to the seminar.

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## INTRODUCTION

By executive order on February 16, 2023, New York City Mayor Eric Adams created the position of the City’s Chief Public Realm Officer, a role responsible for promoting a more centralized and coordinated approach to public realm policy, including projects that implicate the City’s roadways, sidewalks, and green space.<sup>1</sup> To fill this newly created position, Mayor Adams appointed a chief strategy officer from his own staff, Ya-Ting Liu.<sup>2</sup>

The idea for the position grew, in part, from an initiative for a “New” New York spearheaded by Mayor Adams and New York State Governor Kathy Hochul that impaneled a group of civic and business leaders primarily charged with reimagining the City’s business districts following the impact of COVID-19.<sup>3</sup> In December 2022, the “New” New York Panel (the “Panel”) responded to this task with a report titled “Making New York Work for Everyone” that both addressed its initially assigned reimagining of the City’s business districts<sup>4</sup> and added a recommendation to create a Director of Public Realm position.<sup>5</sup> Beyond its executive charge, the Panel identified two additional goals: (1) improving New Yorkers’ transportation options to make it easier to access their jobs,<sup>6</sup> and (2) fostering inclusive growth<sup>7</sup> in ways that recognize and seek to address longstanding racial inequity and segregation of opportunity<sup>8</sup> due to “legacies of historic disinvestment and structural racism [that] have had generational impacts that continue to influence the level of economic opportunity accessible to non-white New Yorkers.”<sup>9</sup>

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<sup>1</sup> Exec. Order No. 27 (Feb. 16, 2023), N.Y.C. Off. of the Mayor Chief Pub. Realm Officer, § 2 (Feb. 16, 2023), <https://perma.cc/J5Z5-CXT3>.

<sup>2</sup> See Press Release, City of N.Y., Mayor Adams Appoints Ya-Ting Liu as NYC’s First-Ever Chief Public Realm Officer (Feb. 16, 2023), <https://perma.cc/JK2H-DDB6>.

<sup>3</sup> See NEW N.Y., MAKING NEW YORK WORK FOR EVERYONE 3-4 (2022), <https://perma.cc/EYS3-5YKD>.

<sup>4</sup> *Id.* at 51-84.

<sup>5</sup> *Id.* at 73-74. Identified in the panel report as “Director of Public Realm,” the position was renamed “Chief Public Realm Officer” in Executive Order 27. See Exec. Order No. 27 (Feb. 16, 2023), N.Y.C. Off. of the Mayor Chief Pub. Realm Officer, § 2 (Feb. 16, 2023), <https://perma.cc/J5Z5-CXT3>.

<sup>6</sup> NEW N.Y., *supra* note 3, at 85-105.

<sup>7</sup> *Id.* at 106-31.

<sup>8</sup> *Id.* at 9-10, 26-28, 41, 108.

<sup>9</sup> *Id.* at 26.

As members of the Land Use & Community Lawyering seminar at CUNY School of Law who have studied the implications of New York City's land use processes,<sup>10</sup> we are encouraged by the equity-informed possibilities that this "Making New York Work for Everyone" report envisions. We see the potential for the now-existing Chief Public Realm Officer position to advance a more inclusive vision of the City by enhancing equitable access to its public spaces. The need for this more inclusive vision is particularly urgent because, as the Panel's report makes clear, racial inequity is deeply reflected in the patterns of New Yorkers' racially disparate access to and use of the public realm—ranging from public parks,<sup>11</sup> other green spaces that promote health and mitigate the escalating risks of urban heat,<sup>12</sup> and even well-resourced public educational opportunities<sup>13</sup> that create the conditions for communities to flourish. Race-based inequity exacerbated by public land use, housing, and (dis)investment policies that are rooted in a history of redlining neighborhoods<sup>14</sup> also

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<sup>10</sup> See generally Andrea McArdle, *Learning in Context: Land Use and Community Lawyering*, 2 PACE ENV'T L. REV. 135 (2011). The Land Use and Community Lawyering seminar was developed by co-author and CUNY School of Law professor Andrea McArdle as a New York City-focused seminar addressing legal issues relevant to representing community stakeholders in controversies related to urban redevelopment that involve the State's power of zoning, eminent domain, police power, and economic development, or that implicate the environmental impact of land use decisions. *Id.* Drawing on the perspectives of law, urban planning and politics, critical geography, environmental racism, and public health, the seminar places contemporary contests over urban land use in historical context, relating them to legal issues generated by post-war urban renewal, displacement, fiscal crisis, community-based efforts to reclaim disinvested land, including the community gardens and squatting/homesteading movements, and the racial and class-based impacts of gentrification. See *id.*

To develop a situated knowledge of how law intersects with questions of political economy, the dynamics of community formation, and the built environment, the seminar models a literally grounded study of urban space by a guided walk for students through a New York City neighborhood that has been impacted by fiscal crisis, disinvestment, community activism and reclamation efforts, and gentrification. See *id.* at 143. Guided by this grounded approach, seminar students participate in small-group case studies to generate knowledge about, and potential approaches to, a contested local land use issue. See *id.* at 141-43. The seminar addresses the various roles of law as a conservatizing force, mechanism for determining claims to resources, and strategic tool for mobilizing community advocacy in contests over equity and access. See *id.*

<sup>11</sup> NEW N.Y., *supra* note 3, at 9.

<sup>12</sup> See generally JUAN DECLET-BARRETO ET AL., SUMMER IN THE CITY: IMPROVING COMMUNITY RESILIENCE TO EXTREME SUMMERTIME HEAT IN NORTHERN MANHATTAN 5-13 (2021), <https://perma.cc/JZ3B-TVZH> (discussing vulnerability to urban heat island effect).

<sup>13</sup> See NEW N.Y., *supra* note 3, at 9; see also DANIELLE COHEN, NYC SCHOOL SEGREGATION 52-86 (2021), <https://perma.cc/L8H7-SKRR> (providing statistics regarding segregation in New York City public schools).

<sup>14</sup> See NEW N.Y., *supra* note 3, at 41; see also KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 197-218 (1985) (discussing race-based federal government redlining policies and how they set standards for real estate appraisals and loan guarantees).

accounts for the segregation and dangerous proximity of communities of color to poorly maintained public infrastructure and polluting facilities like waste transfer stations that present serious environmental health risks.<sup>15</sup>

We expect that newly appointed Chief Public Realm Officer Liu will likely primarily focus on implementing projects that the City is either considering or has already committed to, rather than initiating sweeping land use policy decisions. Nonetheless, we believe that maximizing the impact of this position calls for a broad and engaged understanding of what it entails, in keeping with the Panel’s animating vision. Officer Liu’s choice of *which* projects to prioritize and *how* they will be implemented will communicate the considerations guiding the work of the Public Realm Office to policymakers and community stakeholders; her discretion in doing so can help ensure that the City’s use of its public spaces will be inclusive, equitable, and environmentally sensitive.

In this new role, Officer Liu has pledged to work with city agencies, community groups, and the private sector to build “vibrant, attractive, and inclusive public spaces.”<sup>16</sup> As the Public Realm Office considers its portfolio of projects, we invite it to view this role expansively and proactively, and we offer the following proposals as a bank of ideas that can help the City achieve meaningful, equity-enhancing progress in stewarding public space. The proposals include a constellation of ideas for opening up and greening vacant spaces, even for temporary use, while simultaneously urging approaches to address the paradox that adding green infrastructure to environmentally degraded areas often imposes the side effects of gentrifying them, elevating land values, drawing in new residents, and driving out the very community members who should have benefited from the initial improvements. The ideas developed here also discuss the benefit of enhancing support—both financial and logistical, including through the donation of public land—for the expansion of community land trusts (“CLTs”) that function outside of the speculative market. Lastly, this idea bank offers proposals for using the public realm to enhance digital equity.

## I. ORIGINS OF THE POSITION

In August 2020, two city-based nonprofits, the Municipal Art Society and New Yorkers for Parks, developed a comprehensive proposal for the creation of a Director of the Public Realm position in their report titled

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<sup>15</sup> See, e.g., Rebecca Bratspies, “*Underburdened*” *Communities*, 110 CAL. L. REV. 1933, 1955-67 (2022) (describing the disparate locations of waste transfer stations across New York City).

<sup>16</sup> Press Release, City of N.Y., *supra* note 2.

“Policy Brief: A Public Champion for the Public Realm.”<sup>17</sup> The authors envisioned a position that would centralize and coordinate the work of overlapping city agencies to ensure, among other goals, the equitable allocation of open space across the City and the preservation of public space from private development.<sup>18</sup> As previously noted, the recommendation for a Director of Public Realm position later appeared in the Panel’s report under the goal of reinventing the City’s business districts.<sup>19</sup> Acknowledging the need for agency coordination and managing communication,<sup>20</sup> the Panel’s report also contemplated that this Director position would lead a Public Realm Advisory Council, advance reforms of the public realm, and propose public realm best practices.<sup>21</sup> The Mayor’s subsequent February 2023 executive order creating the position amplified these functions, providing that

The Chief Public Realm Officer shall: (a) serve as a central point of contact for external partners that work with the City to improve public spaces; (b) lead inter-agency coordination and collaboration to advance policies and projects that improve public spaces throughout New York City; and (c) drive reform and innovation in the City’s public realm strategy to improve the user experience and pilot new ways to create beautiful, vibrant public spaces.<sup>22</sup>

We believe that, as envisioned, the New York City’s Chief Public Realm Officer position can have a significant impact if City policymakers embrace and support it with the requisite imagination, sense of urgency, and adequate funding.

Both internationally and within the United States, there is ample precedent for socially inclusive public realm initiatives for the Chief Public Realm Officer to consider. In fact, other municipalities have also typically advanced these initiatives through their mayoral office. The City of

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<sup>17</sup> STEPHEN ALBONESI ET AL., MUN. ART SOC’Y & NEW YORKERS FOR PARKS, POLICY BRIEF: A PUBLIC CHAMPION FOR THE PUBLIC REALM 4 (2020), <https://perma.cc/4MK8-W5ZX>.

<sup>18</sup> See *id.* at 5-6.

<sup>19</sup> See NEW N.Y., *supra* note 3, at 51-84.

<sup>20</sup> *Id.* at 74.

<sup>21</sup> *Id.* The report provides that the Director of Public Realm position will: [e]ngage and amplify the Mayor’s vision for the public realm, serving as the primary point of contact for external inquiries, meetings, and requests related to the public realm[:]; [c]reate and manage a new Public Realm Advisory Council, composed of key stakeholder groups that meet quarterly to discuss projects, programs, and policies[:]; and [a]dvance reforms that improve the user experience (e.g., permitting and maintenance agreements) for all New Yorkers and entities using the public realm and drive innovation and public realm best practices across the city. *Id.*

<sup>22</sup> Exec. Order No. 27 (Feb. 16, 2023), N.Y.C. Off. of the Mayor Chief Pub. Realm Officer, § 2 (Feb. 16, 2023), <https://perma.cc/J5Z5-CXT3>.

London, for example, produced public realm planning for the design and management of public space and, under the mayoralty of Sadiq Khan, established a commission dedicated to ensuring diversity and inclusion in commemorating individuals and historical events through public art and landmarks.<sup>23</sup> The Mayor of Paris, Anne Hidalgo, has created two deputy mayor positions, one focused on urban planning and design and the other on promoting carbon reduction by encouraging pedestrian use of public space.<sup>24</sup> Mayor Hidalgo has also launched a campaign to remove discriminatory advertising in the public realm.<sup>25</sup> On a smaller scale, the mayors of Bogotá over the past two decades committed to increasing access to public space by upgrading public transportation and green spaces, in addition to encouraging civic participation in the process.<sup>26</sup> Though it has since been disbanded, Mexico City's Public Space Authority was tasked with addressing social inequality.<sup>27</sup> Within the United States, the Seattle Mayor's Office of Planning and Community Development launched an equity-based project to increase access to the city's outdoor spaces in 2015.<sup>28</sup> Similar to New York, Boston and Los Angeles have consolidated public space planning and implementation functions in a director position.<sup>29</sup> In Los Angeles, former mayor Eric Garcetti appointed a chief design officer whose equity-enhancing focus included design initiatives attentive to the impact of climate change and to achieving sustainable, affordable housing.<sup>30</sup> The first chief design officer, Christopher Hawthorne, worked with stakeholders to develop a more inclusive approach to memorializing those who inhabited and shaped public space,<sup>31</sup> a commitment also evident in London's commission.<sup>32</sup> Boston's Public Realm directorship has also focused heavily on initiatives guided by community-based data that have increased public space for pedestrians and bicyclists.<sup>33</sup>

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<sup>23</sup> See ALBONESI ET AL., *supra* note 17, at 14.

<sup>24</sup> *Id.* at 15.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 13.

<sup>27</sup> *Id.* at 14-15.

<sup>28</sup> *Id.* at 15.

<sup>29</sup> See *id.* at 13-14.

<sup>30</sup> See *id.* at 12.

<sup>31</sup> See Winnie Hu, *As Demand for Open Space Soars, New York Gets a Public Realm Czar*, N.Y. TIMES (Feb. 16, 2023), <https://www.nytimes.com/2023/02/16/nyregion/public-realm-officer-nyc.html> (on file with CUNY Law Review). Hawthorne has since left the chief design officer position. *Profile of Christopher Hawthorne: Senior Critic*, YALE UNIV. SCH. OF ARCHITECTURE, <https://perma.cc/VR6Q-9G6V> (last visited Dec. 18, 2013).

<sup>32</sup> See ALBONESI ET AL., *supra* note 17, at 13.

<sup>33</sup> *Id.*

A broad, equity-based foundation for New York City's Chief Public Realm Officer position is consistent with the way most cities with public realm offices have approached programming: as an opportunity to address long-standing inequitable access to the benefits of public space. The Panel's decision to extend the scope of its project beyond its initial charge to include acknowledging and addressing the lasting effects of structural racism reflects this same equity-informed strategy.<sup>34</sup>

Mayor Adams' Chief Public Realm Officer designee, Officer Liu, also serves as Chief Strategy Officer to Deputy Mayor for Operations Meera Joshi, who oversees the City's infrastructure projects.<sup>35</sup> These interconnected roles suggest the potential reach of Officer Liu's influence over public space planning. Mindful of this potential, we propose equity-affirming priorities for Officer Liu's consideration that directly address social inequality and reflect environmentally sensitive stewardship of public space. Section II. A of this idea bank begins with ideas for greening and increasing access to currently vacant spaces. Section II.B follows with proposals for: (1) addressing the risks of "green gentrification" that accompany adding green infrastructure, (2) increasing community input on proposals to develop green spaces as one strategy for reducing that risk, and (3) providing a framework of public support for CLTs. Lastly, in Section II.C, we discuss using public land and infrastructure to enhance digital equity.

## II. IDEA BANK FOR THE CHIEF PUBLIC REALM OFFICER

### A. *"Green in the Meantime": Prioritize the Greening of Vacant or Warehoused Lots, Even for Temporary Use, Particularly in Underserved, Vulnerable Communities, Through a Series of Initiatives Encompassing Tax and Land Use Policy.*

New York City has a great need for accessible and clean green spaces. Historically disadvantaged communities in particular could benefit from more attention and funding for greening vacant lots. Multiple studies have shown how adding green space to a neighborhood can provide a multitude of community benefits. For instance, the University of Pennsylvania published a study in 2018 that showed how greening vacant urban land could significantly improve overall mental health for

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<sup>34</sup> See NEW N.Y., *supra* note 3, at 4, 7, 27, 41.

<sup>35</sup> Press Release, City of N.Y., *supra* note 2.

surrounding residents.<sup>36</sup> Another study conducted by the Columbia University Mailman School of Public Health revealed that, in addition to improved mental health, cleaning up vacant lots reduces residents' perception of violent crime by 37%, vandalism by 39%, and safety concerns by 58%.<sup>37</sup> Under the banner of a new initiative that we propose to be called "Green in the Meantime," we respectfully encourage Officer Liu to consider the following approaches to empower city agencies and incentivize developers to address this problem.

1. *Permanently abolish the tax lien sale.* The City's tax lien sale program has been responsible for letting investor-backed trusts accumulate tax-burdened properties for unchecked profit gain.<sup>38</sup> Although this program expired in 2022, the legislature is at an impasse with regards to replacing it.<sup>39</sup> There is an opportunity to permanently abolish tax lien sales with a better strategy, but the City Council has yet to formalize this into law.<sup>40</sup> New legislation, if proposed and passed, could enable Officer Liu to leverage a new alternative system of tax collection to promote neighborhood stability and equity through community land trusts ("CLTs") and other strategies.<sup>41</sup>

2. *Put land into community land trusts.* Transitioning the tax lien sale process into a structure where neglected and abandoned vacant properties go into CLTs would benefit communities.<sup>42</sup>

3. *Create a NYC land bank.* As proposed by the NYC Office of the Comptroller in 2016,<sup>43</sup> Officer Liu could also support the creation of an NYC land bank to help direct better uses of the City's warehoused vacant land into either green spaces or affordable housing. As of December 31, 2023, there is a bill for the land bank being considered by the City Council

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<sup>36</sup> See Eugenia C. South et al., *Effect of Greening Vacant Land on Mental Health of Community-Dwelling Adults: A Cluster Randomized Trial*, JAMA NETWORK OPEN 1 (2018), <https://perma.cc/G3YF-KYH2>.

<sup>37</sup> Charles C. Branas et al., *Citywide Cluster Randomized Trial to Restore Blighted Vacant Land and Its Effects on Violence, Crime, and Fear*, 115 PROC. NAT'L ACAD. SCI. U.S. OF AM. 2946, 2496 (Mar. 20, 2018), <https://perma.cc/FP8P-SMCN>.

<sup>38</sup> See Samar Khurshid, *Majority of City Council Declares Opposition to Reauthorizing NYC Tax Lien Sale*, GOTHAM GAZETTE (May 31, 2022), <https://perma.cc/5BNN-NUVY>.

<sup>39</sup> *Id.*

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

<sup>41</sup> See, e.g., *Abolish the NYC Tax Lien Sale Coalition*, N.Y.C. CMTY. LAND INITIATIVE, <https://perma.cc/927Q-WTCA> (last visited Nov. 20, 2023).

<sup>42</sup> See JULIA DURANTI-MARTÍNEZ ET AL., N.Y.C. CMTY. LAND INITIATIVE, "COMMODYFING OUR COMMUNITIES": THE CASE FOR ABOLISHING NYC'S TAX LIEN SALE AND PRIORITIZING COMMUNITY LAND TRUSTS IN A NEW TAX COLLECTION AND PROPERTY DISPOSITION SYSTEM 4-9 (2020), <https://perma.cc/MTH3-626C>.

<sup>43</sup> See BRIAN COOK & ANDREW L. KALLOCH, OFF. OF THE N.Y.C. COMPTROLLER SCOTT M. STRINGER, BUILDING AN AFFORDABLE FUTURE: THE PROMISE OF A NEW YORK CITY LAND BANK (2016), <https://perma.cc/T6EN-LNY6>.



with thirty-one sponsors; the Council held a committee hearing on the bill, but it has not yet been voted on or signed into law.<sup>44</sup>

4. *Incentivize the creation of green space, if only for temporary use.* When it comes to incentivizing the creation of green space, the perfect has tragically been the enemy of the good. It is notoriously difficult to convince a developer that turning their vacant lot into a community amenity would be a worthwhile endeavor when warehousing the lot may seem easier and more lucrative.<sup>45</sup> However, the City can better incentivize this outcome by creating a tax designation that provides exemptions to developers for providing temporary community benefits. The New York State Senate already has a law drafted to amend New York's real property tax law to this effect, but it has not been picked up yet by the State Assembly.<sup>46</sup> The bill would allow a public use exemption that would provide an incentive to property owners who are unable to presently develop their lots to instead transform them into public amenities, at least temporarily.<sup>47</sup> If Officer Liu championed even one of these initiatives, the City's vacant lot issues<sup>48</sup> would significantly shrink as the potential for massive public benefit expands.

The cities of Philadelphia and Baltimore already have thriving programs that achieve similar ends. Philadelphia's Department of License and Inspection ("L&I") serves as the legal mechanism for the Philadelphia LandCare Program ("PLC").<sup>49</sup> Once a property is deemed to be in violation of city ordinances about vacancy, L&I attempts to contact the owner.<sup>50</sup> If the owner fails to respond within a specified timeframe, L&I gains the authority to allow PLC to enter the property and green the lot.<sup>51</sup> Similarly, in Baltimore, a nonprofit called the 6th Branch<sup>52</sup> uses the City's

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<sup>44</sup> A Local Law to Amend the Administrative Code of the City of New York, in Relation to Creating a Land Bank, N.Y.C. Council, Int. No. 0714-2022 (N.Y.C. 2022), <https://perma.cc/YQ4C-GP9W>.

<sup>45</sup> See Hannah Frishberg, *New Map Shows Every City-Owned Lot Sold for \$1 Since De Blasio Became Mayor*, CURBED N.Y. (Mar. 13, 2018, 2:00 PM), <https://perma.cc/L57L-FCFK>. See generally *Championing Resident Stewardship of Land to Build Just and Equitable Cities*, 596 ACRES, <https://perma.cc/GKT8-MJAN> (last visited Dec. 19, 2023) (describing vacant lots throughout New York City).

<sup>46</sup> S.B. 2116, 2023-2024 Leg., Reg. Sess. (N.Y. 2024).

<sup>47</sup> See *id.*

<sup>48</sup> See, e.g., South et al., *supra* note 36; Branas et al., *supra* note 37.

<sup>49</sup> John M. MacDonald & Charles C. Branas, *Cleaning Up Vacant Lots Can Curb Urban Crime*, MANHATTAN INST. (Sept. 25, 2019), <https://perma.cc/32HR-LEFS>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> THE 6TH BRANCH, <https://perma.cc/TK7D-2W59> (last visited Nov. 20, 2023).

adopt-a-lot program to offer community greening.<sup>53</sup> The 6th Branch does this by working with neighborhood leaders to clean and improve vacant lots that the City owns, the majority of which previously housed row-houses.<sup>54</sup> The 6th Branch then leases these lots for free in exchange for an agreement with their lessees to maintain them.<sup>55</sup> Participating in the adopt-a-lot program provides the free lease so long as the lessee keeps it trash-free and with a caveat that the City may repossess the lot at any time with thirty days' notice.<sup>56</sup> Nonetheless, the 6th Branch's executive director, Scott Goldman, has stated that the City has not exercised this repossession right in the first twelve years of The 6th Branch's existence.<sup>57</sup>

Accordingly, we respectfully urge Officer Liu to prioritize addressing the issue of vacant lots in New York City, particularly in already underserved, vulnerable communities that lack access to green space. For the relatively small investment of adopting similar programming to cities like Philadelphia<sup>58</sup> and Baltimore,<sup>59</sup> initiatives addressing vacant lots would make a big difference in millions of New Yorkers' lives by making the proven benefits<sup>60</sup> of green space accessible to everyone.

*B. Expanding Green Spaces & Countering the Paradox of "Green Gentrification"*

i. Address the Displacement Risks of "Green Gentrification" in Green Infrastructure Projects in Environmentally Degraded Areas by Prioritizing Sustainability over High-end Development

The public realm encompasses many spaces, including public parks, walkways, bike lanes, and transit corridors. It is vital that New Yorkers from all socioeconomic backgrounds have access to such spaces and that the City invests in green infrastructure by building parks and planting trees in a climate-conscious and equity-focused way. A lack of trees has been directly connected to hotter streets, higher levels of pollution, poor

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<sup>53</sup> See Hallie Miller, *How Successful Are Baltimore's Vacant Lot Remediation Programs? City Officials Say It's About Quality, Not Quantity.*, BALT. BANNER (Sept. 6, 2022, 6:00 AM), <https://perma.cc/RC3W-W7PQ>.

<sup>54</sup> Telephone Interview of Scott Goldman, Executive Director, The 6<sup>th</sup> Branch (Dec. 8, 2022).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> See MacDonald & Branas, *supra* note 49.

<sup>59</sup> See THE 6TH BRANCH, *supra* note 52.

<sup>60</sup> See, e.g., South et al., *supra* note 36.

health of residents, and even death.<sup>61</sup> Decades of environmental racism and disinvestment in Black and Brown neighborhoods have caused vast disparities in how New Yorkers are affected by heat.<sup>62</sup> At the same time, building green infrastructure in historically disinvested neighborhoods often has the paradoxical effect of increasing property values and displacing low-income residents, denying community members the opportunity to benefit from the environmental improvements that were meant for them.<sup>63</sup> This “green gentrification” paradox creates a unique challenge for cities seeking to remedy the harms of past environmental racism caused by their historical neglect of working-class neighborhoods as well as communities of color.<sup>64</sup>

New York City faces this challenge as it decides whether to develop a stretch of abandoned railroad track connecting Southwest and Central Queens into an elevated park, a subway line, or nothing at all.<sup>65</sup> The Rockaway Beach branch of the Long Island Rail Road was abandoned in 1962 and has since been acquired by the City.<sup>66</sup> It stretches three and a half miles and runs adjacent to the neighborhoods of Forest Hills, Rego Park, Glendale, Woodhaven, Ozone Park, and Richmond Hill.<sup>67</sup> For the last sixty years, the northern part of the track has become overgrown, and while some describe it as a “hidden gem,” others refer to it as a “blight.”<sup>68</sup> A group of Forest Hills residents have mobilized in recent years around converting the track into a highline park, but transit advocates and commuters in Southwest Queens would prefer that the tracks be refurbished for their original use with some park space below.<sup>69</sup> Other community members fear that development from either project will displace

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<sup>61</sup> See John Leland, *Why an East Harlem Street Is 31 Degrees Hotter Than Central Park West*, N.Y. TIMES (Aug. 20, 2021), <https://www.nytimes.com/2021/08/20/nyregion/climate-inequality-nyc.html> (on file with CUNY Law Review).

<sup>62</sup> See *id.*

<sup>63</sup> See Etienne C. Toussaint, *Black Urban Ecologies and Structural Extermination*, 45 HARV. ENV'T L. REV. 447, 471-72 (2021).

<sup>64</sup> See Sarena Malsin, Note, *Unveiling the “Trojan Horses” of Gentrification: Studies of Legal Strategies to Combat Environmental Gentrification in Washington, D.C. and New York*, N.Y., 38 PACE ENV'T. L. REV. 147, 152-54 (2020).

<sup>65</sup> See Max Rivlin-Nadler, *Queens Is Probably Getting a ‘High Line’ Instead of a Subway Line*, HELL GATE (Sept. 20, 2022, 4:57 PM), <https://perma.cc/CS82-U7QJ>.

<sup>66</sup> *About*, QUEENSWAY, <https://perma.cc/UPJ9-SXP9> (last visited Dec. 19, 2023).

<sup>67</sup> Winnie Hu, *What Does Queens Need More, a New Park or a New Train Line?*, N.Y. TIMES (Nov. 26, 2022), <https://www.nytimes.com/2022/11/26/nyregion/queens-high-line.html> (on file with CUNY Law Review).

<sup>68</sup> See *id.*; QUEENSWAY, *supra* note 66.

<sup>69</sup> See Hu, *supra* note 67; QUEENSWAY, *supra* note 66; *Who We Are*, QUEENSLINK, <https://perma.cc/265W-E6C4> (last visited Dec. 19, 2023).

residents, and they prefer that the tracks be left alone.<sup>70</sup> Both Manhattan's High Line and Second Avenue subway extension led to such outcomes of extreme gentrification and displacement, suggesting that these Queens residents are right to be wary.<sup>71</sup>

Housing policy and urban planning analyst Samuel Stein writes that gentrification arose as a "'spatial fix' for capitalism's urban crisis: a way to profit from previous disasters and to find new places for investors to turn money into more money."<sup>72</sup> However, if the City were to adopt policies that allow projects like the QueensWay park<sup>73</sup> or the QueensLink rail<sup>74</sup> to go forward with a deliberate aim at preventing displacement, residents may be able to enjoy the benefits of better transit options and park spaces without being pushed out of their homes.

In order to prevent displacement, New York City should adopt policies from a sustainability standpoint. Melissa Checker, an anthropologist and urban environmental scholar, theorizes that many green projects fail to further environmental goals because of the kind of development that follows them.<sup>75</sup> Several urban green projects in recent years have used sustainability as a selling point while doing little to actually address any of the underlying causes of climate change.<sup>76</sup> While increasing park space and improving public transit would offset both the use of cars and other fossil fuels in Queens, big projects like a linear park or a train line come with their own environmental costs—and any high-end development that follows will likely contribute to a larger-than-expected environmental footprint.<sup>77</sup> Checker suggests that "neighborhood improvements without neighborhood displacement" would be achievable if cities were to simply increase affordable housing not just as an incentive to developers but,

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<sup>70</sup> See Domenick Rafter, *'Queens High Line' Faces Woodhaven Opposition*, QUEENS CHRON. (Oct. 25, 2012), <https://perma.cc/FQW3-J322>; Carina Snow (Carina S2), *Impacts on Rent, Property Values, Minorities, People of Color?*, THE QUEENSWAY PLAN, <https://perma.cc/MP2D-DSHR> (Dec. 18, 2023) (displaying the archive of a 2013-2014 internet forum created by proponents of the QueensWay to gather community input on the plan).

<sup>71</sup> See Katie Jo Black & Mallory Richards, *Eco-Gentrification and Who Benefits from Urban Green Amenities: NYC's High Line*, 204 LANDSCAPE & URB. PLAN. 103900 (2020); Kimiko de Freytas-Tamura, *A New \$6 Billion Subway? Great, as Long as Rents Don't Rise*, N.Y. TIMES (Oct. 28, 2019), <https://www.nytimes.com/2019/10/28/nyregion/second-avenue-subway-east-harlem.html> (on file with CUNY Law Review).

<sup>72</sup> SAMUEL STEIN, CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE 48 (2019).

<sup>73</sup> See QUEENSWAY, *supra* note 66.

<sup>74</sup> See QUEENSLINK, *supra* note 69.

<sup>75</sup> Brienne Berry & Melissa Checker, *Greening, Browning, and the Myth of Sustainability: A Conversation with Melissa Checker and Brie Berry*, HOME/FIELD, <https://perma.cc/2THH-56R5> (last visited Dec. 19, 2023).

<sup>76</sup> See *id.*

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

more broadly and concretely, to expand rent stabilization.<sup>78</sup> If cities refused to allow, or at least meaningfully limit, market-rate development around green projects, fewer people would be displaced.

Developing green spaces need not always lead to developmental and environmental harms, as demonstrated in Trina Hamilton and Winifred Curran's concept of "just green enough."<sup>79</sup> Hamilton and Curran, both geographers and gentrification scholars, focus on initiatives like environmental cleanup as an alternative to larger development projects.<sup>80</sup> Perhaps, under this "just green enough" concept, abandoned spaces like the tracks in Queens could be cleaned up enough for the community to use without implementing a high-end urban project.<sup>81</sup> As a result, market-rate developers might not be so attracted to the area and residents would not be displaced.<sup>82</sup>

Some of the policies suggested by organizers who tried to fight gentrification when Chicago built the 606—a similar elevated trail—could also serve as models for preventing harms to the public realm in future projects like the ones being considered in Queens.<sup>83</sup> Raising demolition fees drastically in the surrounding area could act as a sanction or deterrent on high-end, market-rate developers that, coupled with affordable housing requirements, might dissuade these developers from building.<sup>84</sup> Creating CLTs *before* the projects take place could be another way of preventing displacement.<sup>85</sup> All of these proposed solutions require the City to prioritize sustainability as a guiding policy. Whether one project wins over the other or community groups can reach a compromise that allows for the building of both, Officer Liu can play a pivotal role in implementing green projects in a way that both supports environmental sustainability goals and pays attention to the interests of the community in curbing displacement.

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<sup>78</sup> *See id.*

<sup>79</sup> Trina Hamilton & Winifred Curran, *Sustainable Cities Need More Than Parks, Cafes, and a Riverwalk*, BROOKLYN DAILY EAGLE (Oct. 4, 2022), <https://brooklyneagle.com/articles/2022/10/04/sustainable-cities-need-more-than-parks-cafes-and-a-riverwalk/> (on file with CUNY Law Review).

<sup>80</sup> *See id.*

<sup>81</sup> *See id.*

<sup>82</sup> *Id.*

<sup>83</sup> *See* Curtis Black, 'Green Gentrification' and Lessons of the 606, CHI. REP. (Jan. 30, 2020), <https://perma.cc/8QLF-BXE3>.

<sup>84</sup> *See id.*

<sup>85</sup> *See id.*

ii. Expand Community Involvement in Planning Green Spaces to Contain the Risk of Displacement.

It is inspiring to consider how Officer Liu's agenda can promote the creation and expansion of more inclusive public spaces across the City, especially by enhancing green spaces in neighborhoods that lack them. However, it is worth sounding a cautionary note: Even the most well-intentioned, equity-informed public realm projects that are sited in low-income neighborhoods of color often generate high developer interest and present a risk of accelerating "green gentrification."<sup>86</sup> This phenomenon is a double-edged sword: When public realm projects provide neighborhoods that have long borne the brunt of contamination and noxious uses with much-needed amenities like parks, the residents who benefit most from these new amenities are often wealthy newcomers, while longtime residents are displaced.<sup>87</sup> Underserved communities undoubtedly deserve and need high-quality public spaces.<sup>88</sup> However, if these spaces are developed with heavy input from the real estate industry rather than from their surrounding community, the community is often left empty-handed, and these public spaces' initial goals of equity and inclusion are not met.

One way that Officer Liu can help prevent green gentrification is by building in greater community involvement from the inception of these project plans to their ultimate implementation, starting with the City Environmental Quality Review ("CEQR") process. Before city agencies undertake any discretionary action, including any land use proposals, they must go through the CEQR process to identify potential adverse impacts

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<sup>86</sup> Green gentrification is "the convergence of urban redevelopment, ecologically-minded initiatives and environmental justice activism in an era of advanced capitalism" that "appropriates [the urban environmental justice movement] to serve high-end redevelopment that displaces low income residents." Melissa Checker, *Wiped Out by the "Greenwave": Environmental Gentrification and the Paradoxical Politics of Urban Sustainability*, 23 CITY & SOC'Y 210, 212 (2011).

<sup>87</sup> For examples of green gentrification in various New York City neighborhoods, see, for example, *id.* (discussing green gentrification in the context of urban redevelopment in Harlem); Kenneth A. Gould & Tammy L. Lewis, *From Green Gentrification to Resilience Gentrification: An Example from Brooklyn*, 17 CITY & CMTY. 12 (2018) (describing green gentrification and climate change-driven "resilience gentrification" along Brooklyn's toxic Gowanus Canal); Black & Richards, *supra* note 71, at 1 (assessing the High Line as an agent of green gentrification in Chelsea).

<sup>88</sup> See, e.g., Emma Urofsky & Robbie M. Parks, *Public Green Spaces: Racism, Heat, and Barriers to Access*, WE ACT FOR ENV'T JUST., <https://perma.cc/S9M6-EPCG> (last visited Dec. 9, 2023); Kira Bruno, *NYC Green Spaces: A Health Necessity Few Can Enjoy*, BARD CTR. FOR ENV'T POL'Y ECO READER (May 9, 2022), <https://perma.cc/QT5V-MUX3>; Winnie Hu & Nate Schweber, *New York City Has 2,300 Parks. But Poor Neighborhoods Lose Out.*, N.Y. TIMES, <https://www.nytimes.com/2020/07/15/nyregion/nyc-parks-access-governors-island.html> (July 15, 2020, 7:46 AM) (on file with CUNY Law Review).

on the environment.<sup>89</sup> Those unfamiliar with CEQR may be surprised to learn that its methodologies for assessment expand far beyond the natural world to include analyses of the human impacts of the action in question. For example, the City's CEQR Technical Manual lists "socioeconomic conditions" as one factor that may be included in its analysis.<sup>90</sup> However, this analysis is not required; rather, the Technical Manual provides that it should only "be conducted if a project may be reasonably expected to create socioeconomic changes within the area affected."<sup>91</sup> In a city where low-income neighborhoods are rapidly gentrifying,<sup>92</sup> the City's current lackluster approach toward the inclusion of socioeconomic analyses in the CEQR process is woefully inadequate to prevent displacement.

Further, the CEQR framework does not provide an avenue for affected populations or concerned members of the public to provide input. While "characterizing existing [socioeconomic] conditions in a study area includes examination of census data and may warrant consideration of additional data sources, interviews, surveys, and fieldwork,"<sup>93</sup> there is no CEQR requirement that the residents and workers most affected by the agency's action actually be consulted. In fact, there are very few opportunities for any member of the public to provide input, with most occurring toward the end of the process when the plan is mostly formed.<sup>94</sup>

Community involvement in the land use planning process can be essential to the fight against green gentrification. Early opportunities for participation enable residents and workers to "use land use planning to articulate visions for what they want their communities to be, and

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<sup>89</sup> See N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, CEQR: CITY ENVIRONMENTAL QUALITY REVIEW TECHNICAL MANUAL 1-2 (2021) [hereinafter MOEC] ("The environmental assessment analyzes the project that is facilitated by the action or actions. An action is a discretionary agency decision (approval, funding, or undertaking) needed in order to complete a project."); N.Y.C. RULES PROC. CITY ENV'T QUALITY REV. tit. 62, §§ 5-01 to 5-11 (2014).

<sup>90</sup> MOEC, *supra* note 89, at 5-1.

<sup>91</sup> *Id.* For examples of projects that would typically require socioeconomic analysis, see *id.* at 5-3.

<sup>92</sup> See *New York – Gentrification and Displacement*, URB. DISPLACEMENT PROJECT, <https://perma.cc/S84P-3STS> (last visited Dec. 19, 2023) ("In 2016, over one third of low-income households lived in low-income neighborhoods at risk of or already experiencing displacement and gentrification pressures, comprising 24% of the New York metro area's census tracts."). Of course, the socioeconomic side of gentrification is only one side of the coin: In New York City, as in other cities across the country, race and poverty rates are correlated. See *A Brief History of Redlining*, CITY OF N.Y. ENV'T & HEALTH DATA PORTAL (Jan. 6, 2021), <https://perma.cc/UR35-TQ4H>. This correlation is due in large part to the persistent effects of redlining, among other de jure and de facto modes of racial discrimination. See *id.*

<sup>93</sup> MOEC, *supra* note 89, at 5-13.

<sup>94</sup> See generally *CEQR Basics*, N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, <https://perma.cc/E22T-FP4F> (last visited Nov. 15, 2023).

negotiate land use regulations to implement these visions.”<sup>95</sup> This involvement ensures that local residents and workers are not just “late participants in using existing rules to stop (or attempt to stop) current proposals for unwanted land uses, but also pre-siting participants in developing the rules that will determine what will and will not go in their neighborhoods.”<sup>96</sup> When communities are involved in planning from the beginning of the land use process, rather than just at the tail end, we can shift our vision of achieving environmental justice in the public realm from reactionary, one-off occasions to adaptive, continual processes that empower communities to advocate for the continued health of their neighborhoods.

While the Chief Public Realm Officer position does not have the authority to unilaterally change the CEQR Technical Manual, Officer Liu can play an important role in updating it to expand opportunities for community involvement, particularly in light of her ambitious agenda for building public space.<sup>97</sup> Officer Liu should therefore work with the Mayor’s Office of Environmental Coordination to mandate that socioeconomic analysis be conducted for all actions undergoing CEQR and to require community involvement in this analysis. Allowing community members to become active participants in the planning of their neighborhoods can help ensure that the City’s public spaces are actually benefiting the public.<sup>98</sup> By incorporating more meaningful community involvement in the CEQR process, Officer Liu and other city officials have the chance to address environmental justice concerns and foster a positive, constructive relationship between the government and the people, particularly low-income communities of color.

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<sup>95</sup> Craig Anthony Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 DENV. L. REV. 1, 8 (1998).

<sup>96</sup> *Id.*

<sup>97</sup> See Press Release, City of N.Y., *supra* note 2.

<sup>98</sup> The Newtown Creek Nature Walk, located in Greenpoint, Brooklyn along the industrial Newtown Creek Superfund Site, presents an alternative public space model that did not contribute to green gentrification. See Winifred Curran & Trina Hamilton, *Just Green Enough: Contesting Environmental Gentrification in Greenpoint, Brooklyn*, 17 LOC. ENV’T 1027, 1033-35 (2012). What set this project apart from other gentrifying green space projects was its embrace of the area’s industrial use—in part due to community demands—rather than its attachment to a new residential or commercial development. *Id.* at 1034 (“While green space projects are often tied explicitly to residential and commercial redevelopment of industrial sites, and hence to environmental gentrification, the nature trail represents a significant victory of long-term residents’ battles for amenities independent of entrepreneurial redevelopment processes.”).



iii. Provide Support Infrastructure for Local Community Land Trusts

As previously discussed, dedicating public lands and other public resources to the development of CLTs enhances the promise of inclusivity in the use of the public realm.<sup>99</sup> Expanding land trust holdings affirmatively increases community access to the City's vacant properties while also mitigating the displacement risks of green gentrification.<sup>100</sup> In light of these benefits, we propose that Officer Liu use her role to strengthen the relationship between New York City's CLTs and relevant city agencies—such as the Department of Housing, Preservation, & Development (“DHPD”) and the Department of Citywide Administrative Services (“DCAS”)—so that the impact of the City's CLTs on providing inclusive, affordable, and environmentally protected uses of public resources may be maximized.

Increasingly, localities that seek to create more communal, interdependent neighborhood environments have turned to establishing CLTs.<sup>101</sup> As nonprofit organizations that “hold[] land on behalf of a place-based community,” CLTs serve “as the long-term steward[s] for affordable housing, community gardens, civic buildings and other community assets.”<sup>102</sup> New York City in particular has embraced CLTs as a method for removing land from the speculative real estate market to provide a source of affordable housing.<sup>103</sup> CLTs have the following five defining features that serve community goals: (1) they are owned by a nonprofit; (2) they lease the land they own while transferring ownership of improvements on the land to individuals (lessee-owners); (3) they establish income-based restrictions on entry; (4) they set similar restrictions on exit to preserve affordability of the improvements; and (5) they are governed by a Board of Directors composed in equal proportions of lessee-residents, non-lessee residents of the community, and members of the broader community

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<sup>99</sup> See generally THE COMMUNITY LAND TRUST READER (John Emmeus Davis ed., 2010), <https://perma.cc/CW26-X9X8> (reflecting on the origins of CLTs and what can be learned from them moving forward).

<sup>100</sup> See Kimberly Burrowes et al., *Centering Community Ownership and Voice to Combat Green Gentrification*, HOUS. MATTERS (May 4, 2022), <https://perma.cc/TS86-6YUQ>.

<sup>101</sup> See, e.g., DAVID M. GREENBERG, LOC. INITIATIVES SUPPORT CORP., COMMUNITY LAND TRUST & COMMUNITY DEVELOPMENT: PARTNERS AGAINST DISPLACEMENT 11-17 (2019), <https://perma.cc/ZN2G-2J8R>.

<sup>102</sup> *What Is a Community Land Trust?*, CTR. FOR CMTY. LAND TR. INNOVATION, <https://perma.cc/P2HQ-JKLL> (last visited Nov. 15, 2023).

<sup>103</sup> See Abigail Savitch-Lew, *The New York City Land Trust Movement Wants to Go Big*, CITY LIMITS (Jan. 8, 2018), <https://perma.cc/2SRA-7DUN>.

and public at large.<sup>104</sup> Advocates point to public land as an important source of the real estate that CLTs assemble.<sup>105</sup>

Starting with the Cooper Square CLT established in 1994,<sup>106</sup> more than twenty CLTs are now active across New York's five boroughs.<sup>107</sup> Most have received, or look to receive, financial and organizational support from the City government.<sup>108</sup> Interboro Community Land Trust ("Interboro") is an especially interesting example as a *citywide* CLT with current projects in eastern Brooklyn, the South Bronx, and Southeast Queens.<sup>109</sup> Interboro was founded in 2017 as a collaboration among the Center for NYC Neighborhoods, Habitat for Humanity NYC, Mutual Housing Association of New York Management Inc., and the Urban Homesteading Assistance Board.<sup>110</sup> These organizations have committed to assigning every homeownership unit they develop moving forward to the CLT, which means that Interboro expects to add 476 new units to the trust within the next three to four years.<sup>111</sup> Interboro is also engaging in a less common way of adding housing to its stock via its "preservation project," which gives families facing foreclosure the opportunity to sell their property to the CLT and then continue living there.<sup>112</sup>

In addition to being a practical tool for achieving affordable housing, CLTs more generally offer a new way to think about property ownership by encouraging us to view property through a "relational lens."<sup>113</sup> This perspective emphasizes an awareness that humans, as social creatures, are inherently vulnerable to and dependent on each other for our wellbeing.<sup>114</sup> As John Lovett puts it: "A person's ability to flourish constantly requires the support of others. A property owner cannot enjoy his property without

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<sup>104</sup> John A. Lovett, *Community Land Trusts: Institutionalizing the Human Flourishing Theory of Property*, 29 CORNELL J.L. & PUB. POL'Y 621, 625-627, 629 (2020).

<sup>105</sup> See Abigail Savitch-Lew, *New York City Considers a Bold Idea to Keep People from Being Pushed out of Their Homes*, APPEAL (Mar. 29, 2021), <https://perma.cc/L5N2-TVN8>.

<sup>106</sup> See *Cooper Square CLT Is Born out of the Revised Plan*, COOPER SQUARE COMTY. LAND TR., <https://perma.cc/3Q3Q-YH3Z> (last visited Dec. 19, 2023).

<sup>107</sup> *Advancing Community Land Trusts*, NEW ECON. PROJECT, <https://perma.cc/NTT6-K247> (last visited Nov. 15, 2023).

<sup>108</sup> See Abigail Savitch-Lew, *supra* note 105.

<sup>109</sup> *A New Model for Affordable Homeownership in NYC*, INTERBORO COMTY. LAND TR., <https://perma.cc/MWP2-DADZ> (last visited Nov. 15, 2023).

<sup>110</sup> See Aaron Kunkler, *Interboro CLT: A Committed Pipeline from Powerhouse Community Development Groups*, SHELTERFORCE (July 13, 2021), <https://perma.cc/DXZ8-ZK6E>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* As of July 13, 2021, Interboro had made two preservation purchases. *Id.*; see also GREENBERG, *supra* note 101, at 10-11 (describing Interboro's approach).

<sup>113</sup> Lovett, *supra* note 104, at 635.

<sup>114</sup> See *id.* at 641.

the cooperation of neighbors and the contributions of others to the civil and social infrastructure of community.”<sup>115</sup>

Still in its early stages, the development of the citywide Interboro CLT offers an opportunity for Officer Liu to pursue the goal of building inclusive public spaces. As previously mentioned, Officer Liu can take steps to ensure that the nonprofit organizations forming Interboro work productively with relevant city agencies such as the DHPD and the DCAS to provide an infrastructure of support for CLTs. These steps would include, where possible, facilitating the transfer of public land for CLTs, as is contemplated by a pending City Council bill: the Public Land for Public Good Act.<sup>116</sup> This bill would require that the City prioritize not-for-profit developers and CLTs when disposing of land for affordable housing or other public uses.<sup>117</sup> Officer Liu can also use her role in coordinating public space projects to assist in delineating the community that Interboro will serve, given its unique position as a citywide CLT with property spread out across the city.

The potential for CLTs to empower a neighborhood, rather than to gentrify it for the benefit of outsiders, is demonstrated by the early revitalization efforts of Boston’s Dudley Street Neighborhood Initiative (“DSNI”).<sup>118</sup> The DSNI was founded over thirty-five years ago by residents of the Dudley Street neighborhood in response to decades of disinvestment, illegal waste dumping, and arson.<sup>119</sup> This group of determined community members gained eminent domain authority, formed a CLT, and slowly started to transform the desolate neighborhood properties.<sup>120</sup> The Dudley Street Neighborhood is now home not only to affordable housing, but also parks, playgrounds, and spaces for community action.<sup>121</sup>

In a documentary about the DSNI produced in 1996, some of the original activists reflected on what made the project so special and successful.<sup>122</sup> When politicians and developers from outside the Dudley Street community wanted to impose their own agendas, the governance structure of the CLT allowed the actual neighborhood residents to retain decision-making power about what types of housing, parks, and other

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<sup>115</sup> *Id.* at 635.

<sup>116</sup> A Local Law to Amend the New York City Charter, in Relation to the Disposition of Real Property of the City, N.Y.C. Council, Int. No. 0637-22 (N.Y. 2023), <https://perma.cc/FPS4-YA9D>.

<sup>117</sup> *Id.*

<sup>118</sup> *See About Us*, DUDLEY ST. NEIGHBORHOOD INITIATIVE, <https://perma.cc/V48M-E2A4> (last visited Nov. 27, 2023).

<sup>119</sup> *See id.*

<sup>120</sup> *See id.*

<sup>121</sup> *Id.*

<sup>122</sup> HOLDING GROUND: THE REBIRTH OF DUDLEY STREET (New Day Films 1996).

opportunities would be introduced into the community.<sup>123</sup> As community members saw their own families benefit from safer streets, job creation, enrichment opportunities for children, and the removal of toxic waste, involvement in the CLT increased in an ever-strengthening cycle of empowerment.<sup>124</sup> Today, a board of thirty-four directors governs the more than 3,600 active members of the DSNI.<sup>125</sup> Decision-making power remains in the hands of the locals as the board is elected by residents every two years and must represent the community's four major racial and ethnic groups as well as the local youth, businesses, nonprofits, and churches that support the initiative.<sup>126</sup> Interboro holds similar possibilities for New York City. Officer Liu has a role to play in connecting city institutions and nonprofit organizations to strengthen this prospect that local land can thrive as affordable and inclusive space under meaningful neighborhood control.

*C. Use the City's Equitable Development Data Tool to Support Its Digital Equity Goals*

The issue of equitable digital access is both a City priority and a federal policy imperative. Section 60506 of the recently adopted Infrastructure Investment and Jobs Act (the "Infrastructure Act") charges the Federal Communications Commission ("FCC") with taking action to "ensure that all people of the United States benefit from equal access to broadband," including steps to target "digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin."<sup>127</sup> As a preliminary step of meeting this charge, the FCC recognized digital discrimination as a consequence of the legacy of redlining.<sup>128</sup> The FCC also defined digital discrimination as "policies or practices, not justified by genuine issues of technical or economic feasibility," that may either "differentially impact" or that are "intended to differentially impact consumers' access to broadband internet access service" based on traditionally protected categories.<sup>129</sup>

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<sup>123</sup> See *id.*

<sup>124</sup> See *id.*

<sup>125</sup> STEVEN D. SOIFER ET AL., COMMUNITY ECONOMIC DEVELOPMENT IN SOCIAL WORK 441-42 (2014).

<sup>126</sup> See *id.* at 442.

<sup>127</sup> 47 U.S.C. § 1754.

<sup>128</sup> See generally JACKSON, *supra* note 14, at 197-218 (discussing origins of race-based federal government redlining policies setting standards for real estate appraisals and loan guarantees).

<sup>129</sup> Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, 88 Fed. Reg. 3681, 3683 (proposed Jan. 20, 2023); see also *FCC Takes Steps to Combat Digital Discrimination*, PERKINS COIE (Jan. 25, 2023), <https://perma.cc/MLM8-LZ4C>.

As the City takes initiative to reduce the “digital divide”<sup>130</sup> by, for example, expanding and subsidizing access to the internet in public space and public housing, mapping and assessment tools used in other domains can further support this equity-based goal. For instance, the City created an equitable development data tool in connection with legislation adopted in 2021 that requires public and private applicants for large-scale land use actions under the City’s Uniform Land Use Review Procedure (“ULURP”)<sup>131</sup> to address the potential impact of their actions on racial equity.<sup>132</sup> This equitable development data tool empowers the public to access and study data bearing on housing, demographic information, public health, and other concerns.<sup>133</sup> It also allows the public to consider the implications of the data for displacement across City neighborhoods and in relation to racial and ethnic groups.<sup>134</sup> Although this initiative is relatively new, applying an impact study requirement to digital access projects would help illuminate factors that affect digital equity.<sup>135</sup> With regard to the public space, access to the internet must be provided in a manner that is secure, private, and robust to be truly equitable.

To better address internet access needs, the City should prioritize neighborhoods and business corridors that reflect patterns of historic disinvestment. Rather than challenging “discriminatory decisions *after* they have been made,” the City should adopt the approach that “modern racial inequality [is] a neutral baseline” and take affirmative steps to “redress the decades of accumulated structural racism” that has shaped the country’s infrastructure.<sup>136</sup> This set of conditions will likely also apply to

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<sup>130</sup> See, e.g., *Link5G*, LINKNYC, <https://perma.cc/N83N-L3WV> (last visited Nov. 27, 2023) (describing the citywide expansion of 5G networks through Link5G kiosks); see also *Big Apple Connect*, N.Y.C. OFF. OF TECH. & INNOVATION, <https://perma.cc/PV5J-F5AG> (last visited Nov. 27, 2023) (listing the provisions of cable and high-speed internet to New York City Public Housing Authority households); see also NEW N.Y., *supra* note 3.

<sup>131</sup> *Step5: Uniform Land Use Review Procedure (ULURP)*, N.Y.C. DEP’T OF CITY PLAN., <https://perma.cc/562G-BJ4Q> (last visited Nov. 27, 2023); see also *ULURP Explained*, CITY LIMITS, <https://perma.cc/7S25-Q7YX> (last visited Nov. 27, 2023).

<sup>132</sup> A Local Law to Amend the New York City Charter, in Relation to Requiring a Citywide Equitable Development Data Tool and Racial Equity Reports on Housing and Opportunity, N.Y.C. Council, Int. No. 1572-2019 (N.Y.C. 2021), <https://perma.cc/3BY2-2QXH>.

<sup>133</sup> See Press Release, N.Y.C. Hous. Pres. & Dev., N.Y.C. Seeks Public Input for a New Data Tool That Can Help Communities Plan a More Equitable Future (Feb. 22, 2022), <https://perma.cc/A8DM-FBE8>.

<sup>134</sup> *Id.*

<sup>135</sup> See generally Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259 (2020) (discussing the value of using racial impact assessments in gauging the race-based effects of interstate highway construction).

<sup>136</sup> *Id.* at 1271 (emphasis added); see also *id.* at 1305-07 (discussing the limits of Title VI in this context).

broadband infrastructure planning and implementation, as the burden of proving discriminatory outcomes typically lives with the “impacted community rather than on government agencies, and [is] applied against a legal backdrop that focuses on intent and ignores structural and systemic concerns.”<sup>137</sup> As Deborah Archer proposes for interstate highway construction, “jurisdictions exploring infrastructure projects should be required to complete comprehensive racial equity impact studies prior to commencing.”<sup>138</sup> Similarly, equity impact assessments for internet access, affordability, and adoption should also be considered part of establishing “equal access.” Through existing data structure, tools, and practices that include racial justice efforts, the City has an opportunity to collect new data that can drive equitable connectivity while proactively preventing digital discrimination.

In this way, equity impact assessments can serve as a meaningful, localized tool to support the City’s equity-enhancing goals stated in the Panel’s report. In her new role, Officer Liu should consider using the City’s equitable development data tool to collect and analyze data that can support planning for public access to Wi-Fi, in addition to ensuring that the City is well poised to address interconnected local and national policy goals for achieving digital equity.

#### CONCLUSION

Given the critical importance of public realm planning, creating the Chief Public Realm Officer position is a crucial first step toward making the City’s public spaces more accessible, environmentally sustainable, and supportive of community stability and well-being. Achieving these goals calls for creative, proactive, and collaborative approaches that bring together community stakeholders, civic organizations, and local public institutions. The Panel’s report appropriately connects the reality of social and economic inequality to the larger public realm. The Panel’s report also acknowledges that disinvestment, exclusionary land use policies, and structural barriers to opportunity clearly contribute to the unequal availability of the benefits of the City’s public spaces for its residents. With the goal of eradicating these persistent inequities in mind, we call upon Officer Liu to use the opportunity that this new role presents to carry out her promise to build inclusivity into the City’s public realm.

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<sup>137</sup> *Id.* at 1305 n.276 (citing Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 2014-20 (2015) (discussing the failure of courts to address discriminatory effects of neighborhood design and construction and proposing that effective solutions lie in legislation)).

<sup>138</sup> *Id.* at 1272.