For the People, by the People

Environmental Justice, Community Engagement, and the Need for a Form-Based Code in New York City

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The Idea: A Citywide Form-Based Code in New York City

New York City must reform its land use policy in an effort to better reflect the needs of residents. The New York City Department of City Planning (DCP) should adopt a citywide form-based code that would enhance community engagement while promoting environmental health across socioeconomic and geographic lines.

Goals and methodology

This study set out to examine alternative land use decision-making mechanisms for remedying environmental injustices across the city. A close examination of the New York City Zoning Resolution would shed light on a fundamental need for reform. Namely, the study looked to explore the role that enhanced forms of community engagement could play in reducing inequities in the distribution of environmentally hazardous facilities.

Recent developments in the struggle against a truck depot in the South Bronx provide a prime case study for exposing the flaws in the New York City planning paradigm. Residents’ testimonies and a qualitative analysis of the profound costs of the current model of land use decision-making offer a textured account of the implications of disproportionately burdensome and unwelcome land uses. Drawing upon the larger themes of environmental justice and land use politics that are at play in the South Bronx, a comparison of the quantitative and qualitative cost-benefit assessments of the status quo and the form-based code demonstrates that residents are better off with a form-based code.

The South Bronx: The epicenter of the struggle for environmental justice

The South Bronx provides a prime case study of the correlation between income and presence of environmental hazards. As of 2006, 20-30% of children 17 years of age and younger suffered from asthma in the South Bronx, a low-income neighborhood in New York that is bisected by 4 interstates, private waste transfer stations, and manufacturing facilities. A recent joint report from the Wagner Graduate School of Public Service at New York University and the Institute for Civil Infrastructure Systems (ICIS) suggests that there is a clear line of causality between the high concentration of trucks and traffic congestion and asthma rates in the South Bronx.


2 Ibid.
Neighborhoods like the South Bronx are unable to preemptively determine the nature of new development. As a result, they are forced to take a defensive stance in each new land-use disagreement between a private developer and the community. That is, because land-use in New York City is not guided by a comprehensive, citywide master plan, development projects must be considered on a case-by-case basis, virtually blind to the aesthetic context of the neighborhood.

**FreshDirect: Asthma for sale in the South Bronx**

The issue of public involvement in battles for environmental justice is particularly salient in New York City at the moment. Fresh Direct is involved in an ongoing land use dispute, as organizations in the South Bronx have aimed to block the firm from constructing its facility in Mott Haven.

FreshDirect is an online grocer that delivers fresh produce to residents of New York City, Nassau County, and Westchester County, as well as Fairfield County in Connecticut and areas in New Jersey. When the 10-year-old company had outgrown its facilities in Long Island City, Queens—for which the firm had received $2 million in public subsidies as an incentive to develop in New York—New Jersey state officials offered a $100 million subsidy package to relocate its operations to New Jersey. This offer initiated a bidding war for the new FreshDirect distribution center, between New York City and State policymakers and the New Jersey Economic Development Authority.

A consortium of actors, including the offices of Mayor Bloomberg and Bronx Borough President Ruben Diaz, Jr., the New York City Industrial Development Agency, the Empire State Development Corporation (the state’s principal economic development agency), the New York Power Authority, and the New York State Energy Research and Development Authority ultimately won out with their offer of $123.3 million in tax credits, grants, incentives, vouchers and loans.

To date, there has been no environmental impact analysis performed that would definitively project the hazards involved in building the 500,547 square-foot facility in the Harlem River Yards along the Bronx waterfront. Still, residents opposed to the proposed facility claim that it would increase truck traffic in the already congested area, without increasing the number of Bronx communities to whom the company delivers fresh produce. Residents claim that this is not in the environmental health interests of residents of the South Bronx, a low-to-mid income region of the borough with a majority minority population that suffers from an extraordinarily high incidence of asthma and obesity.

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6 Ibid.
Community opposition

"[The relocation of the Fresh Direct facility to the Bronx waterfront] demands that the people of the South Bronx bear an inordinate amount of the costs of a deal from which we are guaranteed no real benefit. People in Manhattan get to eat fresh food; we get to eat more exhaust.”
Daniel Wallace, South Bronx Resident

Members of the local Community Board 1 have voiced opposition to the project, claiming that they were only informed of the project after the offices of Mayor Bloomberg, the Bronx Borough President, and Governor Cuomo had already negotiated a deal with the firm. Still, the community has pursued every avenue for opposition, using every available opportunity to testify before the city and the state. Residents’ complaints have typically regarded the potential for increased diesel truck emissions in Mott Haven, and often refer to the inconsistencies between the plans for the new facility and the community’s vision for the waterfront.

Out with the rail, in with the trucks

In a statement before the New York Metropolitan Council, Community Board 1 member Arthur Mychal Johnson noted that the New York State Department of Transportation (NYS DOT) leased the Harlem River Yards—a 104-acre waterfront lot in the South Bronx—in 1991 to a private developer, the Galesi Group, “for the purpose of increasing utilization of rail freight services and reducing truck traffic congestion.”

Although the NYS DOT had expressed that the purpose of this lease was to develop a large-scale rail yard on the site that would ultimately reduce truck traffic congestion in the area, only 42 acres have been developed for intermodal rail facilities. According to Johnson, “Harlem River Yards currently holds a FedEx hub making over 1,400 daily truck trips through the neighborhood, the New York Post

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8 Ibid.
printing and distribution center, and a 5,000 ton-per-day waste transfer station, one of four waste transfer stations located within a 1/8 mile radius.”10 [map of Harlem River Yards]

The additional truck traffic that the new facility would bring to an already-congested neighborhood has been the source of a great deal of speculation. One policy analyst and community consultant, Charles Komanoff, testified before the New York City Industrial Development Agency to ask for a reassessment of the economic merits of the new facility. Komanoff estimated that the added congestion surrounding the distribution center would amount to “other New Yorkers—car drivers, truckers, taxi users, bus riders—spending each day approximately 2,000 more hours stuck in traffic than they do now.”11

Applying a reputed calculus known as the Balanced Transportation Analyzer (BTA), Komanoff estimated that the lost time caused by FreshDirect traffic moving in and out of the proposed Harlem River Yards facility would cost New York businesses and individuals approximately $52,000 each day, or $19 million each year.12 The deal that the city and state cut with the company ensures that this cost will be external to the facility’s operating costs, and in effect subsidizes increased congestion.

**Trucking in the asthma**

Komanoff’s model, though exhaustive in its scope, does not take into consideration the costs associated with the increased incidences of asthma and frequency of asthma-related hospitalizations that the additional truck traffic will bring to the neighborhood. Because the majority of hazardous diesel particulate air pollution in New York City comes from trucks (i.e. rather than automobiles or buses), public health analysts look closely at truck route density—or the density of truck route miles per square mile in a given census tract—in determining a neighborhood’s vulnerability to harmful respiratory exposure.

Researchers have recently identified the South Bronx as one of four asthma hotspots around the city. The other three hotspots were Morrisania/Belmont, Central/East Harlem, and Central Brooklyn. Together, these four neighborhoods hold about 14% of the populations of their respective boroughs, but also account for a confounding 44% of asthma hospitalizations for children under the age of 15.13 The additional truck route density that FreshDirect would bring to Mott Haven would augment the severity of this crisis.

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10 Ibid.
12 Ibid.
A plan inconsistent with the community’s vision

According to a testimony submitted by the Bronx Council on Environmental Quality (BCEQ) to the New York City Industrial Development Agency, there is a strong consensus concerning the community’s desire for development along the Bronx waterfront. In her statement, BCEQ President Joyce Hogi argued that “the overarching vision for the Bronx waterfront is a contiguous waterfront park.”¹⁴ She added that this consensus has been “embraced by several generations of city and state agencies, elected officials, and their constituents.”¹⁵

One such plan for the waterfront is the South Bronx Greenway, an idea championed by El Puente, a local community organization, and nationally renowned environmental justice activist Majora Carter since the late 1990s. In 1999, Carter won a $1.25 million federal transportation-planning grant to launch a feasibility study for an 11-mile network of pedestrian and bicycle paths that would connect neighborhoods in the South Bronx to each other and to the waterfront.¹⁶

In November 2006, Mayor Bloomberg announced his support for the Hunts Point Peninsula portion of the Greenway.¹⁷ Streetscape improvements have been completed along Produce Market Fence, Lafayette Avenue and Hunts Point Avenue Street. Plans for extension of the South Bronx Greenway beyond Hunts Point remain stalled. Indeed, the location of the new FreshDirect facility along the waterfront may indicate that the city has no plans to pursue the annexation of the Greenway to the Harlem River Yards and Mott Haven.

¹⁵ Ibid.
Above: the birds’ eye view schematic of the South Bronx Greenway, as planned for completion. Pedestrian-friendly corridors connect neighborhoods to each other and to the waterfront. Source: Hunts Point Express, [http://bric.hunter.cuny.edu/hpe/?p=914](http://bric.hunter.cuny.edu/hpe/?p=914).

The bigger picture: Demographic indicators of environmental quality in New York City

Environmental justice advocates have long lamented the inequitable distribution of environmentally hazardous facilities across New York City. Truck depots, waste-processing facilities, and factories have historically been concentrated most heavily in low-income and majority-minority neighborhoods.\(^\text{18}\)

The New York State Department of Environmental Conservation (NYS DEC) has paired Census data with geographic information science (GIS) to create a geo-visualization of the areas that are most vulnerable to environmental exploitation.\(^\text{19}\)

The NYS DEC uses a twofold set of criteria to determine “Potential Environmental Justice Areas,” or areas with a heightened risk of being disproportionately saddled with exposure to environmentally hazardous materials.\(^\text{20}\) The first criterion is that 51.1% of residents in an urban area must belong to a minority group.\(^\text{21}\) Second, at least 23.59% of the population must have reported a household income below the federal poverty level.\(^\text{22}\)

According to the NYS DEC, then, a significant portion of the city is considered to be at heightened risk of environmental hardship.

Above: Potential Environmental Justice Areas, as determined by the NYS DEC. Each census tract shaded purple is designated as a PEJA. Source: Google Earth, NYS DEC overlay.


\(^{20}\) Ibid.

\(^{21}\) Ibid.

\(^{22}\) Ibid.
Mapping the terrain: Stakeholders in the battle for environmental justice in the South Bronx

Land-use decision-making in New York is born from the tensions between three categories of actors: firms, residents, and policymakers. Firms include any private entity with the ability and propensity to invest in new development in New York City. Residents include community boards, consumer groups, non-profits, religious associations, environmentalist organizations, and families, all of whom have concentrated stake in the environmental quality of their neighborhoods. Policymakers include the city and state actors who reserve final say in the land use decision.

The Firm: FreshDirect

Firms are concerned with minimizing costs and improving conditions of certainty. In particular, the decision to invest in a parcel of land is contingent upon a net-positive cost-benefit analysis. FreshDirect was motivated by a chance to receive public subsidies to offset the opportunity cost of relocating its facility from Long Island City. By exhibiting interest in the New Jersey government’s incentive package, the firm prompted New York State and New York City to retaliate with a counter-offer. The result was a subsidy and an expedited review process that circumvented opposition and minimized costs.

The firm likely conducted a cost-benefit analysis that demonstrated the relative advantages of moving to the Bronx. In this case, the economic advantages of moving to the Bronx were artificially bolstered by government incentive packages. Regardless, the firm will virtually always make a decision that advances its bottom line, typically without regard to external social costs.

The residents

In land-use decision-making, New York City residents are characterized by a limited capacity to organize. The opportunity cost for low-income individuals to participate in land-use decision-making far outweighs that of higher-income individuals. That is, the wages that are foregone while an individual is investing time in pursuing avenues for complaint such as through a Community Board meeting or public comment opportunity at the City Council are far more profound for a person whose survival or quality of life is volatile and who is dependent on consistently earned wages.

A recent study in the American Journal of Public Health found that a community’s capacity to adequately respond to an environmentally burdensome project is contingent on: the strength of its leadership, robustness of residents’ political participation, the availability of social and organizational networks, residents’ sense of community, an understanding of community history, the perceived power of the community to overcome external obstacles, the cohesiveness of community values, and the opportunity afforded to residents for critical reflection on the trajectory of development in the neighborhood.23

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As of 2005, the median household income of the Mott Haven population was $15,000, with 65% of residents living below the poverty line. 24 73% of residents are Hispanic, indicating that most belong to a demographic group that has typically lacked social and political capital. 25 Given that determinants of a community’s capacity to organize against the development of an environmentally hazardous facility include community power and social and financial resources, neighborhoods like Mott Haven are not well positioned to deter new environmental burdens.

**Government actors**

New York City elected officials, who are primarily concerned with being reelected, typically back development deals that bolster jobs creation. FreshDirect promised to move the existing 1,963 jobs from its Long Island City facility to the South Bronx, and to hire an additional 344 full-time workers from the neighborhood by 2015, as well as 620 more by 2020, bringing the total jobs at the new site to 2,927. 26 This number was a boon for Borough President Ruben Diaz, Jr., who challenged opponents on his Facebook account with the question: “‘Do we say no to the potential of 3,000 jobs?’” Indeed, New York City government supporters of the project have cited jobs projections as an integral justification for their positions.

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25 Ibid.

State actors were similarly motivated, citing the potential for jobs lost to New Jersey as reasons to support the subsidization of FreshDirect’s relocation to the South Bronx. The Empire State Development Corporation is tasked with retaining jobs in New York State and is equipped with a series of tax incentive packages that it regularly disburses to businesses to attract them to the state.\(^{27}\) In this way, New York State plays a proactive, if not immediate, role in determining the trajectory of land use development in the city.

### No choice but to boycott: when policy fails the public

Having been circumvented during the land use decision-making process, residents are now forced to adopt a reactionary position. In a last attempt to demonstrate the popular disapproval of the new development, South Bronx Unite is currently organizing a citywide boycott of FreshDirect’s services. The inability of a strong, local opposition movement to be able to block or slow the project is testament to the lack of popular accountability inherent to the New York City land use planning process.

### Available policy mechanisms: ULURP

The structure of land use review in New York City is structured such that community boards are forced to adopt a purely reactive stance in reviewing a project. When a firm wants to develop on a parcel of land, it must file an application for review according to the Uniform Land Use Review Process (ULURP).\(^{28}\) The developer works with the DCP to create its application, which is then reviewed by the community board.\(^{29}\) The community board votes either in favor or against the ULURP; this vote, while not binding, is typically incorporated into the respective borough planning.

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\(^{29}\) Ibid.
president’s decision whether to endorse the project.\textsuperscript{30} Still, the borough president’s vote is also not binding, and the project moves on to the City Planning Commission (CPC), and finally the City Council for final approval.\textsuperscript{31} With its non-binding vote and inability to make substantial modifications to proposals, the community board is unable to exert power in planning for new development. Indeed, the power of the community board’s recommendation is primarily political. The City Planning Commission and the City Council may choose to ignore the decisions of the community board and borough president, who may or may not be able to sway decisions in their favor.

**Desired outcomes**

Low-income communities in New York City are not provided with adequate means to successfully contest new, and often environmentally hazardous development. As a result, asthma and other chronic ailments continue to occur with high frequency in these neighborhoods.

The City Planning Department should engage citizens in a more proactive method of crowd-sourced visioning in order to preempt conflicts related to environmental justice. The result would be engaged citizenries with ownership over long-term visions for neighborhoods. Such plans would also provide conditions of certainty for prospective developers, who would be made aware of the specific, community-determined parameters for any new project entering the neighborhood. This would result in investments in high-need regions of the city that reflect communities’ needs and aspirations.

**New Urbanism**

The New Urbanist movement is inspired by the model for sustainable and livable urban forms championed by Jane Jacobs in the mid-twentieth century.\textsuperscript{32} At the core of this movement is a list of qualities that Jacobs found ubiquitous among the most livable urban areas: “mixed uses, frequent streets, varied buildings, and concentration.”\textsuperscript{33} The New Urbanist paradigm encourages more public and green spaces, community access points, easier access

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{new_urbanism_streetscape.jpg}
\caption{Above: an example of a New Urbanist streetscape, in which the public realm (i.e. pedestrian pathways, street trees, wide sidewalks, bicycle infrastructure, and consistent character of building frontages) are emphasized. Source: http://www.jameshardie.com.}
\end{figure}

\textsuperscript{30} Ibid.
\textsuperscript{31} Ibid.
to transit, and pedestrian-friendly transportation infrastructure. Further, by situating residents within walkable proximity to businesses, this brand of smart growth also expands a city’s economic and tax bases. The Congress for the New Urbanism (CNU) declares that the “care for the public realm adds character, builds value, promotes security, and helps residents feel proud of their community.”

Policy alternatives for achieving a New Urbanist city

The Status Quo: Euclidian Zoning

The current zoning paradigm followed by the Department of City Planning (DCP) is grounded in outmoded design principles that stem back to the early twentieth century. Also known as the Euclidian zoning scheme, the traditional zoning model is proscriptive, or prohibitive, in nature. Land is separated into distinct residential, commercial, and manufacturing districts, with some districts zoned for mixed-uses. Amendments to zoning maps, most often proposed by the DCP or private developers, are administered on a lot-by-lot basis, are convoluted, and lack footing in a long-term vision for the neighborhood and the city.

Above: a proposed rezoning for Long Island City in Queens. The neighborhood is broken down into districts and separated by discrete land uses. The exact impacts of the rezoning on the neighborhood’s character and environment also remain unclear. Source: NYC Department of City Planning.

34 "Charter of the New Urbanism,” www.cnu.org/charter.
35 Ibid.
**Bad for New Urbanism**

The traditional mode of zoning, as codified in the New York City Zoning Resolution of 1961, is prohibitive in nature. Because this model does not prescribe particular land uses, the decision to construct livable streetscapes that include street trees, pedestrian pathways, bicycle lanes, and street-level businesses belongs entirely to the firm. Given that firms act primarily out of economic best interest, residents cannot expect that restricting uses alone, regardless of specificity, will lead to the kinds of public space for which New Urbanism—and the South Bronx Greenway—call.

**Bad for developers**

Furthermore, Euclidian zoning, because it does not give an explicit statement of the neighborhood’s character, leaves room for conflicts in interpretation. If a new piece of development is not contextual, or is inconsistent with the character (i.e. the frontage, style, or height) of surrounding buildings, the developer could face significant opposition from the community board. The City Environmental Quality Review process (CEQR) requires that the developer prove that a new piece of development is “consistent with community character.” Because it is unable to accurately and reliably predict opposition from the community, the firm is open to litigation and complaints from the public. These diversions from the permitting process are often costly, and could be preempted by a statement from the community, explicitly detailing how the community defines the character of the neighborhood.

**The Form-Based Code**

Recognizing the need for cities to endow communities with adequate resources to engage the public in land-use decision-making, as well as to promote dense, mixed-use, sustainable development across socioeconomic lines, cities around the country have turned to form-based coding (FBC). FBC is a new, prescriptive planning archetype that uses images and simulations to create a clear, wide-scope vision for the future of neighborhoods. FBC allows communities to workshop ideas for how they want their public spaces to look, and then codifies their recommendations into a new code that restricts aesthetic rather than land use. In this way, communities would be given the agency to proactively define the character of their neighborhoods.

Above: an example of a visual simulation that would accompany a form-based code, taken from Owensboro, Ohio’s waterfront revitalization plan. The plan features a detailed and cohesive public realm, and specifies species of trees that should occupy the waterfront plaza. Source: Landscape Online, [http://landscapeonline.com/research/article/13026](http://landscapeonline.com/research/article/13026).
Case study: Miami 21

Miami’s “Miami 21” was the first example of the use of FBC in a large American city. The City of Miami adopted Miami 21 in an effort to take both a neighborhood-oriented as well as a holistic determination about how the city would look and function. The plan divides the city into Neighborhood Enhancement Team (NET) areas, or small districts through which the planning for the FBC is executed. Each NET office was responsible for engaging the local community to draft a vision for the FBC and reporting their plan back to the mayor’s office. Miami’s Planning Department then synthesized the neighborhood data and created an integrated map. The result was a map of Miami that reflected the New Urbanist aspirations of the city’s residents.

Miami’s plan calls for growth around transit hubs, mixed-use lots, enhanced walkability, and a cohesive aesthetic in public spaces. Public involvement was rendered significantly easier with the introduction of Miami 21, so that a changing public sentiment in a neighborhood or throughout the city pertaining to their development goals and values will be reflected in amendments to the FBC. The desired form is very clearly laid out, and there are easily accessible avenues to challenge a feature of the FBC. Given the comprehensibility of the FBC, advocates and elected officials require less specialized knowledge to be able to interpret and fight zoning regulations.

Left: the district categories included in Miami 21. Rather than zone by land use, Miami 21 elevates the importance of development’s impact on the public realm. (Source: Miami 21, http://miami21.org.)

Below: two examples of T4-General Urban districts. Uses are not mandated, but setbacks, height, and exteriors are planned. (Source: Miami 21, http://miami21.org.)

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39 Ibid.
What’s in a plan?

The New York City FBC should contain nine sections, each contributing to a coherent and publicly accessible vision for the direction of development in the city.\(^{41}\)

1. **The regulating plan**\(^{42}\)

   Rather than the conventional Euclidian zoning map, which includes districting for manufacturing, residential, commercial, and mixed uses, the FBC contains a graphic reference map that indicates desired uses of lots. Categories of FBC land use designations include “Commercial Mixed-Use,” “Neighborhood Center,” “Neighborhood General,” “Neighborhood Edge,” “Park and Open Space,” and “Wetlands/Riperian Zones.”

   These land use designations simultaneously open districts to a more diverse array of investment and restrict the terms of occupancy for new developers. This gives developers more flexibility, as they are free to occupy any space with virtually any use, but holds them accountable to the longer-term vision of the community for public space.

2. **Building and lot standards**\(^{43}\)

   This portion of the FBC would review each neighborhood’s building and lot standards, including plans for density. Lot configurations may be redrawn depending on communities’ plans preferences for the density or distribution of new development.

3. **Frontage standards and architectural standards**\(^{44}\)

   Frontage standards would be determined on a block-by-block basis, and would include acceptable designs for the fronts of buildings. Similarly, materials used for constructing new buildings would be determined by the FBC. These provisions are meant to provide communities with the option to preserve or restore neighborhood character.

4. **Public space standards**\(^{45}\)

   Regulations would be included that would regulate the aesthetic and functions of public plazas and rights-of-way.

5. **Thoroughfare standards**\(^{46}\)

   Plans for sidewalks and other pedestrian walkways, as well as bicycle lanes and paths, would require adequate public mobility. The FBC would also allow for communities to demonstrate a desire for street furniture and other public amenities that would enhance the recreational value of walkways.

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\(^{42}\) Ibid.

\(^{43}\) Ibid.

\(^{44}\) Ibid.

\(^{45}\) Ibid.

\(^{46}\) Ibid.
6. **Parking standards: something for everyone**

By allowing neighborhoods to determine developers’ parking requirements on a case-by-case basis, communities could proactively determine the driving culture of the area. That is, those communities that would like to promote a walkable neighborhood consistent with the New Urbanist model would be able to cut back on parking spaces. Conversely, those neighborhoods that would prefer to stay car-dependent (i.e. likely very few, if any, in the city) may do so.

7. **Landscaping standards**

Developers would be required to meet communities’ standards for ornamental vegetation. This would be meant to give communities power over environmental management and streetscape aesthetic.

8. **Environmental standards**

These regulations would require developers to adhere to certain sustainability measures, including controlling storm water drainage, installing tree guards, and building to maximize rooftop access to solar.

9. **Definitions**

Because an FBC is meant to increase public access to neighborhood plans, it is imperative that the city makes an effort to clarify all jargon and to describe every term as unambiguous as possible. This will also cut back on developers’ initial wariness of the plan; if all parties are able to comprehend both the motivations and provisions of the plan, the implementation process will be smooth.

**Tales from the Upper West Side**

Community boards in New York have already begun to recognize the utility of codifying urban design principles into its regulatory land use framework. In a District Needs Statement issued for Fiscal Year 2012, Manhattan Community Board 7 clearly articulates a vision for growth that is grounded heavily in a normative, form-based assessment. Identifying sustainability as a shared value among members of CB7, the document encourages developers to adhere to Leadership in Energy and Environmental Design (LEED) standards when constructing new buildings. Namely, “most new buildings have glass facades, which constrict natural airflow and afford little room for energy saving insulation.” The CB7 District Needs Statement also asks developers to contribute to the district’s sustainability goals “by supporting local parks and public spaces.”

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47 Ibid.
48 Ibid.
49 Ibid.
50 Ibid.
52 Ibid.
53 Ibid.
54 Ibid.
Board’s requests for developers’ compliance in executing its plan for sustainable development are not binding. Because Euclidian zoning only controls land uses and functions, rather than exterior design and buildings’ relationships to each other and to the public realm, the District Needs Statement can only be advisory. With an FBC, the neighborhood would be able to give its vision statement regulatory power.

**Giving a vision statement some regulatory teeth**

The DCP proposed a new rule for the Upper West Side that effectively mimics a provision of a form-based code and that would assist CB7 in advancing its vision statement. The rule would limit new ground-floor storefronts to 40 feet and new bank frontages to 25 feet. Proponents of the rule claim that “it will preserve what's left of the area's independent commercial character.”\(^{55}\) In a show of profound support, CB7 voted unanimously in favor of the new rule.\(^{56}\) By requiring new development to adopt certain design elements, the DCP and the Community Board hope to attract small businesses to the storefronts.

This model of planning is attractive to many neighborhoods across the city. Community boards in the East Village and the Lower East Side, north TriBeCa, and the Upper East have expressed similar interest in using storefront restrictions to deter chain stores from moving into their neighborhoods.\(^{57}\) While this regulation is not immediately associated with goals for sustainability, the popularity of a rule with roots in form-based coding demonstrates that residents would likely come down in favor of a true FBC. From the South Bronx Greenway to plans for storefront size restrictions in the Upper West Side of Manhattan, New Yorkers are demonstrating that they want enhanced controls over their neighborhoods’ character and the nature of their public space.

**Criteria for evaluating and comparing**

Policy alternatives for promoting environmental justice through a New Urbanist paradigm of development should be evaluated and compared using measures of transparency, environmental impact, and cost.

**I. Transparency**

The *Status Quo*

Given their largely symbolic vote, developers and policymakers are easily able to circumvent the will of the community board. The result is that important decisions are made at higher levels of government, where elected officials and agencies act out of political and economic interests that may or may not be consistent with the interest of the neighborhood’s residents. As in the case of FreshDirect, community boards—particularly those representing minorities or low-income communities—are often unable to exert any significant political pressure on the city or developers to shape the nature of investment.


\(^{56}\) Ibid.

\(^{57}\) Ibid.
Form-Based Code

With a form-based code that is built on a process of neighborhood consensus-building and exhaustive community engagement, and that explicitly states the will of the community, community boards would be able to preempt most unfavorable development. Having determined the regulatory parameters of new development in the area, residents would be newly empowered in land use decision-making. Further, the form-based code’s geospatial visualizations are more easily comprehensible (and contestable) than the rigid and two-dimensional standards codified in the current New York City Zoning Resolution.

II. Environmental impact

The Status Quo

The Zoning Resolution does not require developers to meet any sustainability metrics, and instead requests only that a project be subject to the City Environmental Quality Review (CEQR) process. This places the burden of proof on the community board, the CPC, the office of the borough president, and the City Council to find that a project is environmentally unsuitable. If the CPC and the City Council decide that the project poses an acceptable risk, it may decide to consider the development. In this way, communities are vulnerable to projects that are environmentally exploitative.

Form-Based Code

Because environmental regulations are a key component of the FBC, communities would be able to require proposals to meet a certain set of standards for sustainability. Further, regulations of public space on the exterior of the property restrict the degree to which developers could exploit the surrounding neighborhood’s character.

By promoting dense, New Urbanist neighborhoods, form-based codes typically improve public health and reduce carbon emissions, traffic congestion and vehicle miles traveled in an area.

Cost-benefit analysis

Costs incurred

According to an FBC feasibility study conducted by the Sacramento Area Council of Governments in 2008, “developing a plan and related implementing ordinances will incur costs regardless of the approach taken.” Indeed, regardless of how the city wanted to overhaul the Zoning Resolution—either with a new Euclidian scheme or an FBC—the costs would be about the same. Given that the two alternatives being considered is the status quo (i.e. no changes to the existing Zoning Resolution) and the installation of a new FBC, every upfront cost of the latter alternative will be greater than the cost of doing nothing.

The primary costs of FBC implementation would be the human resources that the city would need to devote in order to staff each neighborhood enhancement team (NET). The staff would likely comprise city planners from the DCP, and may also include urban design specialists who would be

60 Ibid.
able to advise on certain architectural standards, as well as to render designs and engineering analysis. The latter group would not already be on city payroll; their employment would likely make up the largest expenditure during implementation. Still, these employees would likely be hired as temporary consultants and would not incur any significant long-term cost for the city.

**Benefits earned**

The benefits of implementing an FBC can be grouped into the short and long terms:

**Short-Term**

In the short-term, benefits could largely be measured qualitatively. As the DCP begins to work with the public in creatively determining the trajectory of neighborhoods, the city should expect to notice heightened feelings of community empowerment and neighborhood cohesion. While shifts in public sentiment may not be reliably monetized or calculated, the DCP should track testimonies and conduct surveys to measure the degree to which these projected benefits are transpiring.

**Long-Term**

In the long term, enhancements in public space, lightening of environmental burdens, and pedestrian-oriented development should yield to measurable decreases in incidences of asthma and improvement of public health (i.e. both physical and emotional). The DCP should measure changes in public health that result from the installation additional green space and adequate environmental infrastructure. While it should be expected that the frequency of asthma attacks would be profoundly reduced by the new design paradigm, rates of obesity would likely also be significantly reduced in areas where communities have determined that designs of storefronts and the layout of public space should accommodate sources of healthy foods, such as fresh grocers and open-air green markets.

**Anticipated Barriers to Implementation: Developer Opposition to Mixed Uses**

The propensity of private sector developers to support a policy that enhances planning transparency depends on the ability of the policy alternative to minimize costs and improve conditions of certainty. There will doubtless be a learning curve as community boards, developers, and policymakers adjust to the new set of standards. Beyond this initial learning process, developers in particular are likely to raise a series of concerns with a form-based code’s propensity to allow and encourage mixed uses on a single lot.

There is an additional cost to developers when they are required to develop mixed-use buildings (i.e. buildings that are flexible enough to host a combination of manufacturing, residential, and commercial uses). Often, developers occupy a niche in the development industry, specializing in a particular set of construction categories. Community-determined standards for aesthetic and form would require developers to tailor and differentiate its products by block and neighborhood. Similarly, architects may lament the usurpation of their creative vision to residents and city planners.

Private capital developers typically favor profit maximization over social accountability. As such, firms that must spend more to cater to the needs of the community will likely be opposed to new restrictions on their freedom to develop land in a way that uninhibitedly advances their profit motive.

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61 Ibid.
Caveat to opposition: Conditions of certainty

Still, if community boards are able to articulate a popular vision for their neighborhood—including aesthetic, environmental health, and economic development goals—then firms that are able to gain a permit as of right (i.e. when a project is wholly consistent with the parameters of the plan) will be attracted to the opportunity to develop a popular project. Firms seek neighborhoods with conditions of certainty, where they are sure that they will see a return on investment. With community boards able to produce a vision statement that sets parameters for new development, firms will be able to determine those neighborhoods that are more likely to be amenable to their projects and not pose risks for costly litigation and delays.

Next Steps: Plan-Building and Legislative Review

Like in Miami, the process of developing an FBC in New York would be gradual and include a community-input component at each step. Also like Miami, the planning process should be split into neighborhoods and overseen by neighborhood enhancement teams. At community stakeholder meetings, the DCP officials who compose each NET would consult members of communities to draft local plans for development. NET offices would confer with members of the community board and representatives from community-based organizations to decide on projected outcomes for their neighborhood.

NET offices would identify the kinds of streetscapes and public spaces that local residents want to attract, as well as distill the defining characteristics of the existing built environment that residents would prefer to preserve. These neighborhood plans would then be integrated to create a legible FBC that reconciles the unique needs of each area with a normative rendition of the city as a whole.

After all neighborhoods had submitted form-based codes, the amalgamated document would go before the City Council for final ratification. The FBC would be adopted and regarded as a binding regulatory document that would supplant the Zoning Resolution of 1961 as the guiding framework for new development in New York City.

An N.Y.C. Form-Based Code: Planning together for a greener future

“We want the Harlem River Rail Yards Ventures to be forced to comply with an easement giving residents access and enabling the completion of [a] walkway. We want the Greenway. We want FreshDirect out and we want to bring in sustainable business and families.”

Lily Kesselman, South Bronx resident, in a testimony before a meeting of the New York Metropolitan Transportation Council related to FreshDirect’s plan to develop a distribution center in the Harlem River Yards. 62

The needs of the entire New York City community can only be met with the adoption of robust community engagement mechanisms. For environmental burdens to be distributed equitably and in a way that minimizes deleterious public health impacts, community boards must be able to proactively determine parameters for sustainable development. Form-based codes present an opportunity for communities to take ownership over their own futures, allowing New Yorkers to assume the front lines in the war against environmental injustice.