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Dismantling Mid-Century Urban Renewal

A COMMUNITY-BASED APPROACH FOR THE FUTURE OF NEW YORK CITY

INTRODUCTION

Despite a period of sixty-nine years since the federal government first implemented urban renewal programs throughout the United States,¹ a myriad of connotations still persists concerning these large-scaled slum clearance and urban redevelopment projects.² For some, it brings to mind the David and Goliath-type dispute between the powerful urban planner

¹ Urban renewal was initially implemented as “the process of combatting slums and other forms of urban blight” through federal subsidies. *Citizen Participation in Urban Renewal*, 66 COLUM. L. REV. 485, 486 (1966) [hereinafter *Citizen Participation*]. Title I of the Housing Act of 1949 originally offered federal subsidies to state and local municipalities for these redevelopment projects. *Id.* at 490; Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413 (1949). State governments then passed statutes granting municipalities the power of eminent domain to condemn “substandard,” “insanitary,” or “blighted” areas by “clearance, replanning,” or “redevelopment.” N.Y. GEN. MUN. LAW § 502(3–4); see *infra* Part I.

² The connotations associated with urban renewal programs include both physical and emotional remnants. See Emily Badger, *Why Trump’s Use of the Words ‘Urban Renewal’ Is Scary for Cities*, N.Y. TIMES (Dec. 7, 2016), <https://www.nytimes.com/2016/12/07/upshot/why-trumps-use-of-the-words-urban-renewal-is-scary-for-cities.html> [<https://perma.cc/GY2R-MP2L>] (“[U]rban renewal is remembered for its vast destruction of minority communities, when entire neighborhoods were razed for housing, highways and civic projects.”); Marc Fried, *Grieving for a Lost Home: Psychological Costs of Relocation*, in URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 359–60 (James Q. Wilson ed., 1967) (“[T]he forced dislocation from an urban slum is a highly disruptive and disturbing experience. . . . [F]or the majority it seems quite precise to speak of their reactions as expressions of *grief*. These are manifest in the feelings of painful loss, the continued longing, the general depressive tone . . . the sense of helplessness, [and] the occasional expressions of both direct and displaced anger”) (emphasis in original); see also Howard Blum, *Urban Renewal: Lesson in Failure*, N.Y. TIMES (May 24, 1983), <http://www.nytimes.com/1983/05/24/nyregion/urban-renewal-lesson-in-failure.html?pagewanted=all> [<https://perma.cc/62NT-5366>].

Robert Moses³ and local activist Jane Jacobs⁴ concerning the proposed Lower Manhattan Expressway through SoHo and Little Italy.⁵ According to Moses and other renewal supporters, the programs were to economically and aesthetically transform dirty, crowded city centers into metropolises that promoted the automobile,⁶ suburbanization,⁷ and modern housing towers.⁸ In contrast, to opponents of urban renewal programs, it was synonymous to what James Baldwin termed “negro removal,”⁹

³ Robert Moses, the polarizing “master builder” of New York, implemented numerous public works projects such as the Jones Beach State Park, Verrazano-Narrows Bridge, and the Niagara power plant. Critics were apt to point out his authoritarian methods, erasure of old neighborhoods, and the vast amount of people displaced by his projects. See ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* 5 (1975) (“No mayor shaped New York; no mayor—not even La Guardia—left upon its roiling surface more than the faintest of lasting imprints. But Robert Moses shaped New York.”); Paul Goldberger, *Robert Moses, Master Builder, is Dead at 92*, N.Y. TIMES (July 30, 1981), <http://www.nytimes.com/learning/general/onthisday/bday/1218.html> [<https://perma.cc/6WR2-GDDT>] (“The Moses vision of New York was less one of neighborhoods and brownstones than one of soaring towers, open parks, highways and beaches—not the sidewalks of New York but the American dream of the open road.”).

⁴ Jane Jacobs, in contrast to her adversary Robert Moses, was an author and activist who saw value in the existing socially and economically rich, pedestrian-friendly urban environment. See Paul Goldberger, *Eminent Dominion: Rethinking the Legacy of Robert Moses*, NEW YORKER (Feb. 5, 2007), <https://www.newyorker.com/magazine/2007/02/05/eminent-dominion> [<https://perma.cc/M99P-EXHW>] (“Whereas [Moses] celebrated big things and his ability to build them, Jacobs changed the way people thought about cities by teaching them to focus on little things.”); see also Anthony Paletta, *Story of Cities #32: Jane Jacobs v Robert Moses, Battle of New York’s Urban Titans*, GUARDIAN (Apr. 28, 2016), <https://www.theguardian.com/cities/2016/apr/28/story-cities-32-new-york-jane-jacobs-robert-moses> [<https://perma.cc/PMT5-EVTM>]; see generally JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1992) (critiquing modernist urban planning policies in favor of mixed-use and pedestrian-friendly approaches).

⁵ The proposed Lower Manhattan Expressway would have connected the East and Hudson rivers by demolishing many parts of SoHo and Little Italy, in addition to displacing many residents. The plan was eventually abandoned in 1969 after widespread opposition by members of the public, particularly from Jane Jacobs. Paletta, *supra* note 4.

⁶ See Goldberger, *supra* note 3 (“[Mr. Moses] saw the automobile as a force that was bound to revolutionize the landscape, and he intended to help guide that process.”); Joseph Stromberg, *Highways Guttled American Cities. So Why Did They Build Them?*, VOX (May 11, 2016), <https://www.vox.com/2015/5/14/8605917/highways-inter-state-cities-history> [<https://perma.cc/XH4X-B8G2>] (describing the significant role of the automotive industry in the development of the Interstate Highway System).

⁷ Mid-twentieth century city planning theory endorsed “specific and separate zones in the cityscape for disparate uses,” rather than the traditional mixed-use, pedestrian-friendly environments. SAMUEL ZIPP, *MANHATTAN PROJECTS: THE RISE AND FALL OF URBAN RENEWAL IN COLD WAR NEW YORK* 7 (2010).

⁸ See *id.* at 7–8. Jane Jacobs critiqued the design of these housing projects by stating, “Middle-income housing projects . . . are truly marvels of dullness and regimentation, sealed against any buoyancy or vitality of city life.” JACOBS, *supra* note 4, at 4.

⁹ *Urban Renewal . . . Means Negro Removal. ~ James Baldwin (1963)*, YOUTUBE (June 3, 2015), <https://www.youtube.com/watch?v=T8Abhj17kYU> [<https://perma.cc/J4XN-SW2H>]. Urban renewal typically targeted and uprooted African-Americans and other minority groups. Author James Baldwin discussed this in an interview with Kenneth Clark after Baldwin met with then-U.S. Attorney General Robert Kennedy concerning race relations in America. *Id.*; see also Larry Tye, *The Most Trusted White Man in Black America*, POLITICO MAG. (July 7, 2016), <http://www.politico.com/magazine/story/2016/07/robert-f-kennedy-race-relations-martin-luther-king-assassination-214021> [<https://perma.cc/U6F7-EW4W>].

destruction, and mass displacement.¹⁰ Regardless of the ultimate outcome,¹¹ the original stated aim¹² of urban renewal programs was to “eliminate[] slums, prevent[] the spread of blight, and revitalize[] cities.”¹³

Although urban renewal funding from the federal government ended in 1974,¹⁴ many state governments still utilize urban renewal laws to implement urban development projects.¹⁵ Looking back, the general consensus about how these programs were implemented remains mixed at best to almost complete disapproval at worst.¹⁶ Critics take issue with the top-down approach and initial lack of community participation in the planning process.¹⁷ Indeed, the physical consequences of urban renewal, such as large apartment towers and superblocks,¹⁸ still affect the built environment¹⁹ and have left community members

¹⁰ “By the late 1960s, an estimated 29,464 families had been displaced by urban renewal projects in New York [City], 41% of which were families of color.” *Renewing Inequality, American Panorama*, DIGITAL SCHOLARSHIP LAB, <http://dsl.richmond.edu/panorama/renewal/#view=0/0/1&viz=cartogram&cityview=pr&year=1962&city=newyorkny&loc=11/40.7147/-73.9358> [<https://perma.cc/VF8V-YK2N>]; see also MARTIN ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949–1962*, at 8 (1964).

¹¹ See James Q. Wilson, *Introduction*, in *URBAN RENEWAL*, *supra* note 2, at xiii, xv–xvi (“[R]enewal has meant erecting a civic monument in a downtown plaza; in others, rehabilitating sound but decaying homes to improve living conditions for residents; in others, getting ‘undesirables’ out of ‘desirable’ neighborhoods by spot clearance Given this welter of aims and achievements, it is understandable that urban renewal should mean very different things to different people.”).

¹² In the 1920s, urban renewal “brought a convergence of forces that supported the urban renewal movement Real estate interests, housing reformers, and big-city politicians all hoped to reap [the] benefits” Moreover, the programs were to facilitate “a means for public/private partnerships in urban development.” Wendell E. Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 *YALE L. & POL’Y REV.* 1, 5, 14 (2003).

¹³ ANDERSON, *supra* note 10, at 8; see *infra* Part I; see also ANDERSON, *supra* note 10, at 18 (describing blight “[a]s the term originally described plant diseases, the evocation of blight created a vision of a plague spreading across the city, moving from one neighborhood to the next”).

¹⁴ See Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301 (2012)); see also *infra* Section I.A.

¹⁵ See, e.g., N.Y. GEN. MUN. LAW § 502 (2015); see also *infra* Section I.B.

¹⁶ Compare ZIPP, *supra* note 7, at 27–28 (discussing some of the positive economic effects of urban renewal in Manhattan in the mid-twentieth century), with ANDERSON, *supra* note 10, at 8–9 (“It is much more likely that the federal urban renewal programs shifts slums instead of removing them, and, in so doing, may actually encourage the spread of slums and blight.”); see also *infra* Section I.A.

¹⁷ See JACOBS, *supra* note 4, at 4; see also *supra* note 10; Fried, *supra* note 2, at 359, 362 (describing the forced removal of existing residents for proposed urban renewal projects); James Q. Wilson, *Planning and Politics: Citizen Participation in Urban Renewal*, in *URBAN RENEWAL*, *supra* note 2, at 407, 410 [hereinafter *Planning and Politics*] (discussing increased neighborhood opposition based on early urban renewal projects).

¹⁸ See *infra* note 64.

¹⁹ “The term built environment is used when referring to those surroundings created for humans, by humans, and to be used for human activity. Examples would include cities, buildings, urban spaces, walkways, roads, parks, etc.” *What Does the Term*

and government officials deliberating about the future of these programs and designated areas²⁰—specifically in relation to the expiration of the urban renewal plans.²¹ This note focuses on New York City, one of the earliest jurisdictions to experiment with urban renewal,²² in order to evaluate how the City government is addressing the future of this decades-long program.

According to New York City Department of Housing Preservation and Development (HPD) policy, urban renewal plans typically have an average length of forty years, unless amended or extended.²³ Once a plan expires, “the restrictions imposed by [the urban renewal] contract and recorded in the deed expire,” allowing the owner of the property to develop “as of right.”²⁴ Many residents within urban renewal areas, however, are unaware of a plan’s expiration date or what it entails,²⁵ prompting controversies between local residents and developers

“*Built Environment*” Mean?, U. WINDSOR, <http://www.uwindsor.ca/vabe/25/what-does-term-%E2%80%9Cbuilt-environment%E2%80%9D-mean> [<https://perma.cc/LQT4-RA3E>].

²⁰ Decades after these controversial programs were implemented, many jurisdictions throughout America are still dealing with how to address and fix its negative effects. See Priyanka Dayal McCluskey, *BRA Director Offers Formal Apology for West End’s Demolition*, BOS. GLOBE (Sept. 28, 2015), <https://www.bostonglobe.com/business/2015/09/28/bra-director-offers-formal-apology-for-west-end-demolition/lz7v4TLDdrmAG45FRxPIIdK/story.html> [<https://perma.cc/6ZPT-FQYU>]; Erick Trickey, *Will Urban Renewal Ever End?*, NEXT CITY (Aug. 1, 2016), <https://nextcity.org/features/view/boston-city-hall-urban-renewal-redevelopment-authority> [<https://perma.cc/Y6KA-EZLM>]; Abigail Savitch-Lew, *All Hands On Deck to Stop Two Bridges Towers in Lower East Side*, CITY LIMITS (Sept. 7, 2017), <https://citylimits.org/2017/09/07/all-hands-on-deck-to-stop-two-bridges-towers-in-lower-east-side/> [<https://perma.cc/X4Y9-ZL2R>] [hereinafter *All Hands On Deck*].

²¹ See *infra* Part II.

²² See Amy Lavine, *From Slum Clearance to Economic Development: A Retrospective of Redevelopment Policies in New York State*, 4 ALBANY GOV’T. L. REV. 212, 214, 237, 243 (2011) [hereinafter *Slum Clearance*]; Pritchett, *supra* note 12, at 32, 37.

²³ *N.Y. City Council—File #: Int 1533-2017, Committee Report of the Land Use Division*, N.Y.C. COUNCIL LEGIS. RES. CTR., 5 (Dec. 7, 2017), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3013575&GUID=8EC960FE-04B8-4E56-A978-E1FF212AAFB8&FullText=1> [<https://perma.cc/X3K4-P79H>] [hereinafter *Committee Report*]; see, e.g., *Second Amended Urban Renewal Plan: Cooper Square Urban Renewal Area*, N.Y.C. DEP’T HOUS. PRESERVATION & DEV., 9 (June 2001), <https://www1.nyc.gov/assets/hpd/downloads/pdf/community/cooper-square-second-amended-urp.pdf> [<https://perma.cc/EUR3-C2Y3>] (“This Plan will remain in effect for a period of forty (40) years from the date of the original approval of this Plan, until February 13, 2010 . . .”).

²⁴ *Committee Report*, *supra* note 23, at 4. “An as-of-right development complies with all applicable zoning regulations and does not require any discretionary action by the City Planning Commission or Board of Standards and Appeals. Most developments and enlargements in the city are as-of-right.” *Glossary of Planning Terms*, N.Y.C. DEP’T CITY PLAN., <http://www1.nyc.gov/site/planning/zoning/glossary.page> [<https://perma.cc/G648-2LT6>].

²⁵ *N.Y. City Council—File #: Int 1533-2017, Hearing Testimony to the City Council Committee on Land Use*, N.Y.C. COUNCIL LEGIS. RES. CTR. (June 15, 2017), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3013575&GUID=8EC960FE-04B8-4E56-A978-E1FF212AAFB8&FullText=1> [<https://perma.cc/X3K4-P79H>] (follow “Hearing Testimony 6/15/17” hyperlink) [hereinafter *Hearing Testimony*].

about displacement and the future of these designated areas.²⁶ Recently, in order to promote transparency, the New York City Council passed Local Law No. 40 of 2018, a law requiring HPD to provide notice to appropriate community boards, borough presidents, and city council members before an urban renewal plan is set to expire, in addition to establishing a publicly accessible website about urban renewal plans in the City.²⁷

This note analyzes Local Law No. 40 and finds that merely disclosing information about urban renewal plans is insufficient to fully address and develop a future sustainable strategy for this program. Instead, this note advances what strategic and legal protocols should be in place in order to have consistent planning strategies and substantive community input *before* an urban renewal plan expires. In order to ensure the mistakes of the past are not repeated, this note calls for something many urban renewal plans originally omitted—the voices of community members. While Local Law No. 40 includes notice and reporting requirements, it should be amended to implement bottom-up, community-focused strategies in the urban renewal process, such as mandating a city-wide public engagement process and providing technical planning assistance to the communities affected. The ultimate goal of implementing this public engagement process is to encourage civic participation and collaboration with urban renewal residents to determine the future of these neighborhoods. Even though urban renewal has a negative legacy throughout the United States,²⁸ with some calling for its elimination,²⁹ this note acknowledges that while there is some truth to that argument, the legal structures in place can ultimately be used to empower local residents in today's high-cost, high-demand city centers by implementing legally binding, decades-long plans which promote long-term affordable housing³⁰ and citizen-led sustainable development.³¹

²⁶ See *Two Bridges: Minor Modification or Major Mistake?*, MUNICIPAL ARTS SOCIETY N.Y.C. (Aug. 7, 2018), <https://www.mas.org/news/two-bridges/> [<https://perma.cc/4938-62XT>]; see also *infra* Parts II, III.

²⁷ 2018 Local Law No. 40, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3013575&GUID=8EC960FE-04B8-4E56-A978-E1FF212AAFB8&FullText=1> [<https://perma.cc/X3K4-P79H>] [hereinafter Local Law]; see Ed Litvak, *City Council Approves Bill to Increase Transparency for Urban Renewal Areas*, LO-DOWN (Dec. 12, 2017), <http://www.thelodownny.com/leslog/2017/12/city-council-approves-bill-to-increase-transparency-for-urban-renewal-areas.html> [<https://perma.cc/F4JX-U7UP>]; *infra* Part II.

²⁸ See *infra* Part I.

²⁹ See *infra* note 190.

³⁰ See generally CTR. FOR URBAN PEDAGOGY, WHAT IS AFFORDABLE HOUSING?, (2009) (providing an overview of affordable housing).

³¹ This note does not advocate the abolishment of urban renewal without adequate citizen input. See *infra* Part IV.

Part I of this note provides a legal and historical background of urban renewal in the United States and New York City; additionally, it informs the reader about urban renewal's present conditions. Part II addresses the issue of urban renewal plan expiration, the New York City Council's solution to this problem, and briefly concludes that Local Law No. 40 will ultimately fall short of adequately addressing the future of urban renewal areas. Part III extrapolates factors from an analysis of current and former New York City urban renewal case studies to offer principles that should guide the proposed modifications of Local Law No. 40, such as the role of government, incorporating citizen input, and community organization. Part IV begins by discussing why Local Law No. 40 needs to be modified; the main focus of this Part is what should be added to ensure the community is properly notified and involved well in advance of an urban renewal plan expiration. Using factors discussed in Part III, Part IV goes into detail about how to guarantee residents, community boards, and borough presidents are properly informed and receive technical assistance about the options they have regarding the future of these urban renewal areas. Lastly, this Part promotes community-driven, sustainable planning strategies for citizens to engage in the urban renewal process.

I. WHAT IS URBAN RENEWAL?

A. *Brief History of Urban Renewal in the United States*

Most cities in America would be unrecognizable without post-World War II federal urban renewal programs. Instead of highways cutting through city centers, housing towers laid out like dominoes, or civic buildings surrounded by large urban plazas and parking lots, cities would be more pedestrian friendly, have more densely packed buildings, and potentially less residential racial segregation.³² Yet supporters of these programs did not necessarily foresee these harmful outcomes;³³ instead, they envisioned modern, economically prosperous cities to counter the enticement of new suburbs.³⁴

³² See Stromberg, *supra* note 6 (discussing the destruction of urban centers for the expansion of the U.S. highway system); *Slum Clearance*, *supra* note 22, at 243 (describing the physical characteristics of New York City's Stuyvesant Town, a vast residential high-rise project). An example of a civic center implemented as an urban renewal project is Lincoln Center in New York City. See ZIPP, *supra* note 7, at 157.

³³ Most of the residents affected by these programs (a.k.a. living in "blight" or "slums") were low-income people of color. ANDERSON, *supra* note 10, at 7-8, 55.

³⁴ Characterizing American suburbanization from an international perspective, Kenneth T. Jackson writes, "[t]he United States has thus far been unique

Despite efforts in the late nineteenth century to combat squalid living conditions in urban areas,³⁵ the notion of blight and slums in American cities gained substantial attention in the 1930s with the Great Depression.³⁶ Slums were characterized as “the cut-over areas and the eroding lands of the city, the places of material decay and human corrosion.”³⁷ Similarly, the concept of blight became associated with “a disease that threatened to turn healthy areas into slums.”³⁸ In order to address the problems of inner city deterioration due to a decreasing tax base and loss of municipal revenues³⁹—stemming from the exodus of

in four important respects that can be summed up in the following sentence: affluent and middle-class Americans live in suburban areas that are far from their work places, in homes that they own, and in the center of yards that by urban standards elsewhere are enormous.” KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 6 (1985). “Many different forces contributed to the suburbanization process: an American preference for the ownership of detached homes . . . improved transportation technologies, the relatively low costs of home ownership in the United States, federal subsidies of home ownership and highway construction, the availability of cheap energy, and racism.” Ian S. Tattenbaum, Note, *Renewal for the 1990s: An Analysis of New York City Redevelopment Programs in Light of Title I of the Housing Act of 1949*, 6 N.Y.U. ENVTL. L.J. 220, 227–28 (1997).

³⁵ The fight against slums in the United States goes back to the late 1860s with New York’s passage of the Tenement House Act of 1867. See *Slum Clearance*, *supra* note 22, at 216–19 (“Popular support for housing reform grew toward the end of the nineteenth century, especially after Jacob Riis’ infamous exposé, *How the Other Half Lives*, was published in 1890. Numerous governmental reports also called attention to the social and economic ‘menaces’ of the slums.”). Moreover, it should be noted that the concept of urban renewal had international counterparts in the late nineteenth century. See Amy Lavine, *Urban Renewal and the Story of Berman v. Parker*, 42 URB. LAW. 423, 423 (2010) [hereinafter *Urban Renewal*] (“Urban renewal was not a new concept prior to *Berman v. Parker*; Baron Georges Haussman had transformed Paris’ *logements insalubres* during the latter half of the nineteenth century and Mussolini had cleared wide swaths of Rome during the 1920s and 1930s, demolishing lower class neighborhoods in the process.”).

³⁶ “The collapse of the economy during the Great Depression and the paradigm shift of the New Deal brought a new forcefulness to progressive efforts to improve urban housing conditions.” *Urban Renewal*, *supra* note 35, at 423, 435. The Great Depression brought about the Public Works Administration, which established the country’s first significant public housing program. Pritchett, *supra* note 12, at 23. In 1937, Congress passed the Wagner Housing Act, establishing the United States Housing Authority. With the establishment of federal funding for public housing, the Act “formalized the link between slum clearance and public housing development.” *Urban Renewal*, *supra* note 35, at 437; see Pritchett, *supra* note 12, at 25.

³⁷ MARK I. GELFAND, *A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933–1965*, at 107 (1975) (quoting NAT’L RES. COMM., *OUR CITIES* 75 (1937)); see also Pritchett, *supra* note 12, at 16 (“A slum, according to planners, was an area with run-down buildings, dirty streets, and a high crime rate that was almost exclusively inhabited by poor people.”).

³⁸ Pritchett, *supra* note 12, at 3, 18 (“To secure political and judicial approval for their efforts, renewal advocates created a new language of urban decline: a discourse of blight. . . . [B]light was a rhetorical device that enabled renewal advocates to reorganize property ownership by declaring certain real estate dangerous to the future of the city.”). While the definition of blight has been applied inconsistently, the application of blight contrasts from what is deemed a slum (although sometimes officials have used the two words interchangeably). Generally, blight is a characteristic of an area that has the potential to become a slum. *Id.* at 18.

³⁹ ZIPP, *supra* note 7, at 7.

wealthier residents into new suburbs⁴⁰—the federal government passed the Housing Act of 1949.⁴¹ Under Title I of the Act, local municipalities could apply for federal loans or grants in order to execute their urban renewal plans.⁴² Federal funding was conditioned on acquiring and clearing blighted⁴³ and unsanitary areas to construct city-owned or privately sponsored low- and middle-income housing and community spaces.⁴⁴ By applying for subsidies from the federal government, city officials wanted “to preserve the profitability of city property and to attract new private capital investment”⁴⁵ through the transformation of declining areas.⁴⁶ For these programs to be effectively implemented, however, promoters of urban renewal first had to overcome the constitutionality of the legislation, specifically in regards to the Public Use Clause of the Fifth Amendment.⁴⁷

⁴⁰ See GELFAND, *supra* note 37, at 108 (“Millions of well-to-do families now lived outside the central cities’ limits, beyond the reach of their taxing powers.”); *see also* Pritchett, *supra* note 12, at 13–14.

⁴¹ Ashley A. Foard and Hilbert Fefferman, *Federal Urban Renewal Legislation*, in URBAN RENEWAL, *supra* note 2, at 71–72.

⁴² Housing Act of 1949, § 101, Pub. L. 81-171, 63 Stat. 413, 414 (1949); *see also* *Committee Report*, *supra* note 23, at 3 (“An urban renewal plan . . . is a plan for an urban renewal project in a designated [urban renewal area].”).

⁴³ *See Urban Renewal*, *supra* note 35, at 442.

⁴⁴ The purpose of Housing Act of 1949 was to: “(1) Eliminate substandard and other inadequate housing through clearance of slums and blighted areas[]; (2) Stimulate housing production and community development sufficient to remedy the housing shortage[]; (3) Realize the goal of a decent home and a suitable living environment for every American family.” ANDERSON, *supra* note 10, at 4; *see also* ZIPP, *supra* note 7, at 7–8. “In European cities, such [urban renewal] efforts were undertaken by government, but American renewal advocates opposed such centralized power. Instead, they argued that cities could be rebuilt privately, and they proposed the creation of ‘urban redevelopment corporations.’” Pritchett, *supra* note 12, at 3.

⁴⁵ ZIPP, *supra* note 7, at 7. Officials who were aligned with downtown business groups and the real estate industry also wanted to increase municipal land values, tax revenue, and economic opportunities. This is not to say that these were the only parties promoting the concept of urban renewal; there were many professions and groups that had their own motivations for urban renewal. Architects and city planners were driven by modernist design principals and spatial thinking, while housing advocates and union organizers were concerned with overcrowding and unsafe tenements. *Id.* at 7–8.

⁴⁶ Proponents of urban renewal saw slums and blighted areas as eyesores, jeopardizing the prosperity of cities; they believed these areas were “breeding ground[s] for disease and crime.” GELFAND, *supra* note 37, at 108; *see also* ANDERSON, *supra* note 10, at 9 (“[M]any city politicians have seized on the prospect of increasing tax revenues through urban renewal.”).

⁴⁷ *See* U.S. CONST. amend. V (“[N]or shall private property be taken for public use, without just compensation.”). For the untested concept of urban revitalization to be realized, supporters had to convince the Supreme Court to reevaluate and broaden the scope of the government’s eminent domain powers, thus influencing American jurisprudence. Through the use of eminent domain, which authorizes the government to acquire private property for public use as long as just compensation is provided, local governments wanted to condemn and rehabilitate blighted areas for renewal purposes. Pritchett, *supra* note 12, at 29, 39–40; *see also* ANDERSON, *supra* note 10, at 2; Emily L. Madueno, *The Fifth Amendment’s Takings Clause: Public Use and Private Use; Unfortunately, There Is No Difference*, 40 LOY. L.A. L. REV. 809, 811 (2007).

The first major case addressing the constitutionality of urban renewal was *Berman v. Parker* in 1954, which concerned a project to transform the southwest portion of Washington D.C.⁴⁸ The District of Columbia Redevelopment Land Agency (DCRLA),⁴⁹ created by the District of Columbia Redevelopment Act of 1945, developed a plan in 1952 to clear a portion of the existing neighborhood designated “Area B,” which was 97.5% African American,⁵⁰ and build middle-income housing, office towers, and stores.⁵¹ Despite the southwest neighborhood being “a lively cultural hub for many of the city’s black residents and immigrant Jews”⁵² at the time, the DCRLA and the National Capital Planning Commission (NCPC) took a more top-down approach to planning the area, advocating for a “modernist Utopia” and “demolition of nearly all of the area’s buildings.”⁵³

A dispute arose when a local department store was condemned as part of the proposed project, even though DCRLA acknowledged the property was not blighted.⁵⁴ Rather, the agency asserted that the condemnation of a non-blighted property was necessary for the realization of the project’s ultimate goal, which was the prevention of slums and urban decline within the larger

⁴⁸ *Berman v. Parker*, 348 U.S. 26, 28, 30 (1954). The main legal conflicts about the scope of the government’s eminent domain authority concerning urban renewal dealt with whether so-called blighted properties could be condemned even though they were located in an area yet to be considered a slum, and whether “the transfer of condemned property to private parties [was] allowed under the Public Use Clause.” Pritchett, *supra* note 12, at 38–39.

⁴⁹ Urban renewal legislation typically grants authority to a local development agency. See *infra* Section I.B.1.

⁵⁰ *Berman*, 348 U.S. at 30 (“In 1950 the Planning Commission prepared and published a comprehensive plan for [Area B]. Surveys revealed that in Area B, 64.3% of the dwellings were beyond repair, 18.4% needed major repairs, only 17.3% were satisfactory; 57.8% of the dwellings had outside toilets, 60.3% had no baths, 29.3% lacked electricity, 82.2% had no wash basins or laundry tubs, 83.8% lacked central heating.”).

⁵¹ The planned renewal ultimately displaced “over [twenty thousand] impoverished black residents and replaced their homes with office buildings, stores, and predominantly middle-income housing.” Pritchett, *supra* note 12, at 41.

⁵² *Urban Renewal*, *supra* note 35, at 444. At the time, the southwest portion of Washington D.C. housed about twenty-three thousand residents. *Id.* See generally HumanitiesDC, *Southwest Remembered*, YOUTUBE (Jan. 30, 2015), <https://www.youtube.com/watch?v=gpJ35Lw0D5w> [<https://perma.cc/XG5H-3NSZ>] (documenting former residents of the southwest portion of Washington D.C. and their reactions to the urban renewal plans).

⁵³ *Urban Renewal*, *supra* note 35, at 444–48 (quoting PAMELA SCOTT, CAPITAL ENGINEERS: THE U.S. ARMY CORPS OF ENGINEERS IN THE DEVELOPMENT OF WASHINGTON, D.C., 1790–2004, at 245 (2007)). Since the District of Columbia Redevelopment Act contained no definition of blight, the DCRLA was able to determine condemnation areas on a “case-by-case basis” despite the objections of local property owners, demonstrating the lack of community engagement from the beginning of the development process. Pritchett, *supra* note 12, at 42, 44.

⁵⁴ See *Berman*, 348 U.S. at 31; Pritchett, *supra* note 12, at 41 (citing Brief for the District of Columbia Redevelopment Land Agency and National Capital Planning Commission at 13–14, *Berman v. Parker*, 348 U.S. 26 (1954) (No. 476–53)).

southwest area.⁵⁵ Ultimately, the United States Supreme Court held the taking of private, non-blighted property to be constitutional, granting Congress a large amount of discretion over the District of Columbia and further stating it was within the legislature's authority to decide what constituted a public purpose for a government taking.⁵⁶ The Court essentially did not put any limit on this broad holding, except to state that "[o]nce the question of the public purpose has been established . . . the integrated plan rests in the discretion of the legislature."⁵⁷ *Berman* represented one of the major controversies of urban renewal programs: mass displacement⁵⁸ and a lack of citizen participation in the planning, development, and implementation of the plans.⁵⁹ Moreover, this case came to stand for the conceptual expansion of the Takings Clause of the Fifth Amendment,⁶⁰ forever changing eminent domain jurisprudence and the nature of American cities.⁶¹

By the 1960s and 1970s, it became apparent that the revitalization of American city centers had fallen short of the

⁵⁵ DCRLA reasoned primarily that "the clearance was the 'public purpose' and the subsequent sale was 'purely incident[al],'" and alternatively that "the public purpose continued even after the property was no longer publicly owned because the property would be subject to strict regulations after its sale." Pritchett, *supra* note 12, at 43 (citing Brief for the District of Columbia Redevelopment Land Agency, *supra* note 54, at 29–39). Conversely, the property owners asserted that the taking violated the Fifth Amendment because it not only transferred ownership from one private property owner to another, but the takings had no public use. *Berman*, 348 U.S. at 31; *Urban Renewal*, *supra* note 35, at 453.

⁵⁶ The Court called the legislature—and not the judicial branch—"the main guardian of the public needs." *Berman*, 348 U.S. at 32, 35–36; *see also infra* note 59.

⁵⁷ *Berman*, 348 U.S. at 35–36.

⁵⁸ "The reality of urban renewal was that redevelopment was used to reshape the racial and economic geography of cities. Such was the case in Southwest Washington where, of the 5,900 units of housing that were constructed on the site, only 310 could be classified as affordable to the former residents of the area. By the 1960s, the formerly black neighborhood was majority white." Pritchett, *supra* note 12, at 46–47.

⁵⁹ "*Berman* was consistent with the New Deal Court's philosophy that legislatures were best suited to determine the appropriate uses of government power in the area of economic regulation. The DCRLA . . . run by planning experts, would apply professional standards to determine which areas required redevelopment . . ." *Id.* at 46. Although the DCRLA and the Planning Commission appeared to incorporate some affordable housing units in Area B, scholars have pointed out that in actuality "[i]t would have been 'economically feasible' to include more low income housing [in the redevelopment plan], or even to build at a higher density, but the planning commission was wary of 'hav[ing] too high a proportion of one economic group concentrated in one area.'" *See Urban Renewal*, *supra* note 35, at 448–49. Furthermore, the lack of citizen participation in this plan is brought to light by the fact that "none of the briefs in the *Berman* case even mentioned the fact that the project would uproot thousands of poor blacks and would reshape Washington's racial landscape." Pritchett, *supra* note 12, at 44.

⁶⁰ *Urban Renewal*, *supra* note 35, at 424 ("*Berman v. Parker* has come to stand for the exceedingly deferential standard of review applied in eminent domain and other land use cases."); ANDERSON, *supra* note 10, at 13.

⁶¹ After this decision, jurisdictions could acquire private properties through eminent domain and subsequently sell the properties to private parties for development. ANDERSON, *supra* note 10, at 13; *see also Urban Renewal*, *supra* note 35, at 425.

original goals.⁶² Urban renewal programs completely altered the old, regimented city grids and uprooted long-time residents and small businesses,⁶³ transforming the urban environment into suburban-style superblocks full of apartment towers surrounded by green spaces.⁶⁴ Critics from both sides of the political aisle pointed out the failures of urban renewal programs,⁶⁵ such as the lack of community involvement in the planning and implementation of the plans,⁶⁶ worsening racial segregation,⁶⁷ the elimination of strong social networks,⁶⁸ and economic divestment.⁶⁹ With the passage of the Housing and Community Development Act in 1974,⁷⁰ the federal government acknowledged that urban renewal programs were ineffective and ceased funding, emphasizing localized

⁶² See *Urban Renewal*, *supra* note 35, at 469–70 (“[B]y the mid 1960s . . . It had become clear that when an area was designated for redevelopment, it usually had less to do with improving housing conditions than it did with opening prime real estate for higher value uses and wealthier people, and neither liberals nor conservatives were happy with the results.”).

⁶³ Herbert J. Gans, *The Failure of Urban Renewal*, in *URBAN RENEWAL*, *supra* note 2, at 537, 541.

⁶⁴ An example of an urban renewal project that encompasses suburban-style super blocks filled with apartment towers and park space is Stuyvesant Town in New York City. See discussion *infra* Section I.B.1.

⁶⁵ One ideological side was represented by activists like Jane Jacobs, “offer[ing] an early inkling of the New Left and counterculture’s efforts to lead a permanent revolution in culture, social life, and consciousness. On the other, the attack from the right foreshadowed the extent to which all liberal reforms would come to be tarred with the brush of ‘big government’ . . .” This attack was represented by conservatives like author Martin Anderson. ZIPP, *supra* note 7, at 367–68; see also ANDERSON, *supra* note 10 (criticizing and arguing in favor of a repeal of federal urban renewal programs); Gans, *supra* note 63, at 537. See generally MINDY THOMPSON FULLILOVE, *ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT* (1st ed. 2004) (describing the harmful physical, emotional, and economic consequences of decades-long urban renewal programs).

⁶⁶ See Daniel R. Mandelker, *The Comprehensive Planning Requirement in Urban Renewal*, 116 U. PA. L. REV. 25, 33–34 (1967); *Planning and Politics*, *supra* note 17, at 410.

⁶⁷ See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 106, 127–29 (2017); *Urban Renewal*, *supra* note 35, at 471; Pritchett, *supra* note 12, at 35; see also *supra* note 9.

⁶⁸ See Fried, *supra* note 2, at 359, 362 (describing former residents’ grief in the West End area of Boston, it was found that “the residential area is the region in which a vast and interlocking set of social networks is localized. And, on the other hand, the physical area has considerable meaning as an extension of home, in which various parts are delineated and structured on the basis of a sense of belonging.”). Describing the importance of neighborhood connections, Jane Jacobs stated: “The sum of such casual, public contact at a local level—most of it fortuitous, most of it associated with errands . . . is a feeling for the public identity of people, a web of public respect and trust, and a resource in time of personal or neighborhood need.” JACOBS, *supra* note 4, at 56.

⁶⁹ See generally Gans, *supra* note 63, at 537–38 (outlining the policy failures of slum clearance and urban renewal efforts); ANDERSON, *supra* note 10, at 7 (criticizing urban renewal for exacerbating housing shortages); *Urban Renewal*, *supra* note 35, at 469–72 (describing different perspectives of urban renewal criticism); ROTHSTEIN, *supra* note 67, at 106–07, 127 (arguing that urban renewal programs worsened racial segregation).

⁷⁰ Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified as amended at 42 U.S.C. § 5301 (2012)).

development.⁷¹ Nevertheless, although federal funding terminated, many municipalities, including New York City, continue to utilize state urban renewal legislation to invoke eminent domain authority and accomplish, albeit on a smaller scale, urban development projects.⁷²

B. *Urban Renewal in New York City*

1. History and Legal Structure of Urban Renewal Legislation

When one considers the objectives of urban renewal programs,⁷³ it is no surprise that New York State led the way in urban redevelopment legislation.⁷⁴ The Urban Redevelopment Corporations Law (URCL), passed in 1941, set the foundation for subsequent urban renewal legislation by authorizing the establishment of local redevelopment companies in order to condemn and raze blighted property for private redevelopment.⁷⁵ It was not long, however, until New York's "master builder" Robert Moses⁷⁶ drafted the Redevelopment Companies Law (RCL) in 1942 to allow insurance companies to invest in housing projects, which consequently would enlarge the scope of redevelopment projects.⁷⁷

⁷¹ *Hearing Testimony*, *supra* note 25. See generally *40 Years Ago: August 22, President Ford Signs Housing and Community Development Act of 1974*, NAT'L LOW INCOME HOUS. COAL. (Aug. 18, 2014), <http://nlihc.org/article/40-years-ago-august-22-president-ford-signs-housing-and-community-development-act-1974> [https://perma.cc/SHW4-MPYM] (outlining the 1974 Housing and Community Development Act and its policy changes, such as the creation of the Community Development Block Grant (CDBG) program and Section 8 program).

⁷² "Although urban renewal projects like the one involved in *Berman v. Parker* are thus a thing of the past, eminent domain continues to be used today for similar redevelopment projects. These projects are labeled as 'economic development' initiatives rather than as 'urban renewal' plans. They tend to be smaller, involve the displacement of fewer people, and . . . 'focus on more practical aspects such as job creation.'" *Urban Renewal*, *supra* note 35, at 473 (quoting Pritchett, *supra* note 12, at 48); see also Trickey, *supra* note 20; ZIPP, *supra* note 7, at 369.

⁷³ See Pritchett, *supra* note 12, at 14; *Slum Clearance*, *supra* note 22, at 214.

⁷⁴ New York State was one of the first states to pass modern building codes to counteract unsanitary and unsafe living conditions, in addition to instituting public housing authorities to build housing projects. See *Slum Clearance*, *supra* note 22, at 216–17, 228 (describing the Tenement House Act of 1895); Tattenbaum, *supra* note 34, at 229 ("New York has had a long history of using public resources to subsidize and induce private reinvestment in substandard districts."); see also Pritchett, *supra* note 12, at 25, 32.

⁷⁵ *Slum Clearance*, *supra* note 22, at 238–39 n.155 (citing the Urban Redevelopment Corporations Law, 1941 N.Y. Laws 2039); see also Pritchett, *supra* note 12, at 32.

⁷⁶ See *supra* note 3.

⁷⁷ The original 1942 version of the Redevelopment Companies Law eliminated so-called "safeguards," such as the requirement to hold public hearings prior to implementing proposed projects. See *Slum Clearance*, *supra* note 22, at 238–41 n.168 (citing the Redevelopment Companies Law, 1942 N.Y. Laws 1855). Moreover, the 1943 amendment of the RCL "declared redevelopment to be a 'superior public use' for

Metropolitan Life Insurance Company (Met Life) utilized the law to clear eighteen blocks of “tenements, stores, and warehouses” in what was then known as the Lower East Side’s Gas House District and fund the development of Stuyvesant Town, an immense suburban-style high-rise residential project.⁷⁸ Stuyvesant Town not only represented one of the earliest forms of urban renewal in the country, but also illustrated New York City’s gradual expansion of eminent domain.⁷⁹

As the City became more urbanized and populated in the late 1940s, government officials and business and real estate professionals wanted to take advantage of federal urban renewal funding to clear certain areas of the City in order to attract new businesses and residents.⁸⁰ By enacting Article 15 of the New York State General Municipal Law, the state legislature granted municipalities the authority “for the redevelopment, through clearance, replanning, reconstruction, rehabilitation, and concentrated code enforcement . . . of substandard and insanitary areas.”⁸¹ To this day, municipalities still have the power to establish urban renewal agencies,⁸² formulate urban renewal plans⁸³ for areas found blighted or unsanitary,⁸⁴ and ultimately

condemnation purposes.” *Id.* at 242–43 (quoting 1943 N.Y. Laws 704–05). This laid the foundation for the expansion of eminent domain in New York State. *See id.* at 241–43.

⁷⁸ ZIPP, *supra* note 7, at 74 (“Stuyvesant Town welcomed its first families in August 1947 and was finished and fully occupied less than two years later, on June 1, 1949.”); *Urban Renewal*, *supra* note 35, at 443 n.99; *see also* Pritchett, *supra* note 12, at 33 (“The Stuyvesant project required the uprooting of 11,000 working-class families so that they could be replaced by 8,756 middle-class families.”). Stuyvesant Town denied residences to African Americans and other minorities. *See generally* Dorsey v. Stuyvesant Town Corp., 87 N.E.2d 541, 550 (1949) (holding the publicly subsidized Stuyvesant Town’s racial discrimination policies constitutional because it was a private redevelopment project).

⁷⁹ *See Slum Clearance*, *supra* note 22, at 245; *see also infra* Section I.B.2.

⁸⁰ *See Committee Report*, *supra* note 23, at 3; ZIPP, *supra* note 7, at 28 (“Urban renewal, in many ways, served to jump-start the Manhattan boom years of the late ‘40s and ‘50s. . . . [P]rojects made room in the city grid for research medicine, high culture, and higher education. . . . [It] was . . . an epochal transformation that continues to remake Manhattan and all of New York in the twenty-first century.”).

⁸¹ N.Y. Gen. Mun. Law § 502(3) (McKinney 2019). The law states that “substandard or insanitary area” is to “be interchangeable with a slum, blighted, deteriorated or deteriorating area, or an area which has a blighting influence on the surrounding area.” *Id.* at § 502(4); *see also Slum Clearance*, *supra* note 22, at 251–52 (“In 1961, the various statutes governing municipal urban renewal projects were consolidated into a new article in the General Municipal Law, and similar enabling legislation was enacted for municipal urban renewal authorities in 1962.”) (citing 1961 N.Y. Laws 1402–03; 1962 N.Y. Laws 3762–63).

⁸² N.Y. Gen. Mun. Law § 502(5) (McKinney 2019).

⁸³ The plan must state, among other things, “a statement of proposed land uses within the [urban renewal area], proposed land acquisition, demolition and clearance.” *Committee Report*, *supra* note 23, at 3.

⁸⁴ Norman Siegel et al., *The Trouble with Eminent Domain in New York*, 4 ALBANY GOV’T L. REV. 77, 80 (2011).

acquire property through buy-outs or condemnation.⁸⁵ In New York City, HPD develops urban renewal plans subject to the City Council's approval.⁸⁶ Once an urban renewal agency acquires, condemns, and demolishes property, the agency has the authority to dispose of the property to a sponsor in order to carry out the approved urban renewal plan.⁸⁷

The designated zoning requirements⁸⁸ encompassing an urban renewal area do not change once a plan has been approved.⁸⁹ There may, however, be more stringent land use controls imposed on the area by HPD⁹⁰ and stated "in the instrument of conveyance between the City and the sponsor who agrees to redevelop the property in accordance with the [urban renewal plan]."⁹¹ These restrictive land use controls act as an overlay on the underlying zoning requirements; if an urban renewal plan is subject to expiration, the restrictions expire.⁹² The owner of the property within the expired urban renewal area has the right to develop the property in accordance with the City's

⁸⁵ Generally, most urban renewal agencies in America proceeded in the following ways after their plans were approved: (1) acquisition of applicable properties through negotiation or condemnation (by eminent domain); (2) relocation of displaced residents (federal laws required local agencies to relocate or rehouse former residents); (3) site clearance through demolition of the acquired buildings; (4) site improvements (after demolition, local agencies sometimes made infrastructural improvements or constructed public buildings); (5) disposition of land (if the local government decides not to retain ownership of the land, they might sell, lease, or donate it to another party—either another public agency or private sponsor); and (6) new construction (applicable sponsor has to develop the properties according to the original urban renewal plan—whether for residential, industrial, or commercial uses). ANDERSON, *supra* note 10, at 18–19; *see also* Foard & Fefferman, *supra* note 41, at 94–95.

⁸⁶ *See* N.Y.C. Charter § 1802(3), (6)(e). Approval of urban renewal plans are subject to the Uniform Land Use Review Procedure (ULURP), a process implemented in the 1977 New York City Charter revision. This procedure requires that applicable community boards review and vote on all land use applications, which include zoning changes, special permits, city property acquisition and disposition, and urban renewal plans. *See* N.Y.C. Charter §§ 197-c, (a); *see also infra* note 199.

⁸⁷ *Committee Report, supra* note 23, at 3.

⁸⁸ "Zoning is the language of the physical city. It aims to promote an orderly pattern of development and to separate incompatible land uses, such as industrial uses and homes, to ensure a pleasant environment. The [N.Y.C.] Zoning Resolution is a legal instrument to regulate and establish limits on the use of land and building size, shape, height, and setback." *About Zoning*, N.Y.C. DEP'T CITY PLAN., <http://www1.nyc.gov/site/planning/zoning/about-zoning.page> [<https://perma.cc/9G2C-9NT3>]; *see also* N.Y.C. Zoning Res. (2018), <https://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/allarticles.pdf?v=1003> [<https://perma.cc/73V3-S9ZB>].

⁸⁹ *Committee Report, supra* note 23, at 4.

⁹⁰ *See id.* at 4, 6 (discussing more restrictive land use controls than what the N.Y.C. Zoning Resolution imposed on certain lots in the Two Bridges Urban Renewal Area); *see also infra* Parts II and III.

⁹¹ *Committee Report, supra* note 23, at 4. These land use controls are required to be recorded "in the deed or lease for the property such that they run with the land for the duration of the [urban renewal plan]." *Id.*

⁹² *Committee Report, supra* note 23, at 4. *See* discussion concerning urban renewal expiration *infra* Sections I.C, IV.B.5 and Part II.

Zoning Resolution.⁹³ Parties interested in keeping certain land use restrictions in place can either apply to the City Planning Commission to extend the plan or rezone the urban renewal area to reflect the area's current conditions.⁹⁴

2. Legal Precedents: Leading the Reinterpretation of the Public Use Clause

Given that New York State was one of the first jurisdictions to implement urban development laws, it also reshaped how the Public Use Clause was interpreted.⁹⁵ Before the Supreme Court expanded the applicability of the Public Use Clause in *Berman v. Parker* in 1954,⁹⁶ the New York Court of Appeals held in *Murray v. LaGuardia* “that there was no violation of the state constitution’s public use clause, regardless of whether the project might carry incidental private benefits for Metropolitan [Life Insurance].”⁹⁷ In this 1943 decision, owners of condemned property for the proposed Stuyvesant Town⁹⁸ project challenged the constitutionality of the RCL⁹⁹—they argued the condemnations did not serve a public use because Met Life would ultimately benefit.¹⁰⁰ The court disagreed with the property owners’ argument, however, ruling that a public purpose under the New York State Constitution includes “low rent housing or [for] clearance and rehabilitation of substandard areas.”¹⁰¹ The court also indicated that condemnation for a public use could be served even if there is a benefit for a private party.¹⁰² The court’s decision expanded the use of eminent domain and, consequently, allowed future urban renewal projects to be implemented as long as “the state of the property before condemnation”¹⁰³ was found blighted and “the slum conditions themselves were removed.”¹⁰⁴

Another New York case that influenced the terminology and broad interpretation of blight was *Kaskel v. Impellitteri* in 1953.¹⁰⁵ The plaintiff, citing a New York City Housing Authority

⁹³ *Committee Report*, *supra* note 23, at 4.

⁹⁴ *Id.*

⁹⁵ *See Urban Renewal*, *supra* note 35, at 454.

⁹⁶ *See Berman v. Parker*, 348 U.S. 26 (1954).

⁹⁷ *Slum Clearance*, *supra* note 22, at 245; *see Murray v. LaGuardia*, 52 N.E.2d 884, 888 (N.Y. 1943); *see also Urban Renewal*, *supra* note 35, at 454.

⁹⁸ *See supra* Section I.B.1 for discussion of Stuyvesant project.

⁹⁹ *See supra* Section I.B.1 for discussion of RCL.

¹⁰⁰ *Slum Clearance*, *supra* note 22, at 244; *see Murray*, 52 N.E.2d at 888.

¹⁰¹ *Murray*, 52 N.E.2d at 887.

¹⁰² *Id.* at 888 (“If, upon completion of the project the public good is enhanced it does not matter that private interests may be benefited.”).

¹⁰³ *Urban Renewal*, *supra* note 35, at 454.

¹⁰⁴ *Slum Clearance*, *supra* note 22, at 250.

¹⁰⁵ *See Kaskel v. Impellitteri*, 115 N.E.2d 659 (N.Y. 1953).

report, argued that his property was not blighted or insanitary for condemnation and redevelopment purposes.¹⁰⁶ The New York Court of Appeals ultimately ruled against the plaintiff-landowner, giving the City broad discretion when determining what constitutes blight as long as the finding was not “corruptly or irrationally or baselessly” made.¹⁰⁷ This decision, in conjunction with the court’s ruling in *Murray*, gave New York City expansive eminent domain powers and authority to determine what type of land could be condemned. Both *Murray* and *Kaskel* represent how local residents lacked influence in the administrative decision-making process,¹⁰⁸ in addition to how New York City led the way in shaping mid-twentieth century urban development legislation.¹⁰⁹

C. *Current Conditions of Urban Renewal*

After more than half a century, the future of urban renewal areas in many parts of the country turns on this question: can urban renewal legislation—with its infamous history—be used in an equitable and sustainable way? Cities such as Boston, Portland, Eugene, and Austin have addressed various forms of this question, such as whether urban renewal laws or plans should be extended, terminated, or amended.¹¹⁰ For example,

¹⁰⁶ *Id.* at 661; see also *Slum Clearance*, *supra* note 22, at 252–53.

¹⁰⁷ *Kaskel*, 115 N.E.2d at 661.

¹⁰⁸ Both of these cases exemplify how local residents lacked influence when the City’s administrative agencies made decisions concerning what constitutes slums and blight, as well as what was to be built on the former residents’ land. “Increasingly broad blight determinations were also made possible by the growing importance of administrative discretion, which the courts were reluctant to question.” *Slum Clearance*, *supra* note 22, at 252. “*Murray* greatly increased the permissible scope of urban renewal projects by removing any real limitation on what could be built on former slum land, so long as the slum conditions themselves were removed.” *Id.* at 250. *Murray* also allowed “[eleven thousand] mostly low and middle income residents of the gas house district . . . to be relocated, and once the project was finished, . . . be replaced by more than twice as many residents of a distinctly higher income bracket.” *Id.* at 243. This figure shows how local residents lacked the ability to influence redevelopment decision-making concerning their future.

¹⁰⁹ Post-*Kaskel*, New York courts continued to rule in favor of the government’s use of eminent domain in order to facilitate urban development projects. These decisions further broadened the government’s condemnation powers to include takings of non-blighted land for commercial and industrial development. See, e.g., *Rosenthal & Rosenthal, Inc. v. N.Y. State Urban Dev. Corp.*, 771 F.2d 44, 46 (2d Cir. 1985); *Kaur v. N.Y. State Urban Dev. Corp.*, 933 N.E.2d 721, 733 (N.Y. 2010); *Goldstein v. N.Y. State Urban Dev. Corp.*, 921 N.E.2d 164, 172–73 (N.Y. 2009); *Yonkers Cmty. Redevelopment Agency v. Morris*, 335 N.E.2d 327, 331 (N.Y. 1975); *Cannata v. City of New York*, 182 N.E.2d 395, 397 (N.Y. 1962); see also *Slum Clearance*, *supra* note 22, at 254–69. Additionally, New York State’s embrace of economic development takings paralleled a national trend. See generally *Kelo v. City of New London*, 545 U.S. 469 (2005) (holding a city’s use of eminent domain for economic development purposes constitutional).

¹¹⁰ For an in-depth discussion of Boston’s response, see *infra* Section IV.B.1. Another city that had to address the future of urban renewal is Portland, Oregon, in which the Portland Development Commission had to perform community outreach to consider budgetary allocations and whether to extend or allow certain urban renewal districts to

when the urban renewal powers of the Boston Redevelopment Authority (BRA) were set to expire in 2016, city officials, at the request of the state government, conducted a year-and-a-half-long public engagement process to solicit feedback from locals.¹¹¹ The fact that other cities around the country have been confronted with these issues underscores the importance of instigating community discussions about the future of urban renewal. Likewise, New York City faces an analogous crossroad since many urban renewal plans are reaching their expiration and sparking debate about the subsequent development in these areas.

In New York City, urban renewal plans do not last in perpetuity—HPD’s policy provides an average duration of forty years,¹¹² unless the plan was amended or extended through the proper ULURP processes.¹¹³ As of 2019, there are over ninety expired plans, sixty active urban renewal plans, and the City “continues to acquire properties pursuant to state Urban Renewal Law, albeit on a smaller scale than in the past.”¹¹⁴ Regardless of the

expire. See *Future of Urban Renewal*, PORTLAND DEV. COMMISSION (Feb. 12, 2008), <https://www.portlandoregon.gov/bps/article/185496> [<https://perma.cc/E76U-BZTL>]; Casey Parks, *Urban Renewal Hurt African Americans, Officials Say. Now Portland Leaders Want to Make Amends*, OREGONIAN (Nov. 5, 2016), https://www.oregonlive.com/portland/index.ssf/2016/11/urban_renewal_african_american.html [<https://perma.cc/KH46-XUK5>]; see also Don MacGillivray, *Fifty-Six Years of Urban Renewal in Portland*, SOUTHEAST EXAMINER (May 1, 2015), <https://www.southeastexaminer.com/2015/05/fifty-six-years-of-urban-renewal-in-portland/> [<https://perma.cc/RWW4-RMVD>]. The City Council of Eugene, Oregon also faced a choice between retaining the status of a forty-eight-year-old downtown urban renewal district or allowing the district to lapse. The Council ultimately voted to extend the urban renewal plan (which went against an earlier promise to allow the plan to lapse) and rejected a proposal to allow voters to decide. Christian Hill, *Eugene Council Votes to Extend Downtown Urban Renewal District*, REGISTER-GUARD (June 14, 2016), <https://www.registerguard.com/rg/news/local/34473093-75/eugene-council-extends-life-of-downtown-urban-renewal-district.html> [<https://perma.cc/NQX7-B8HZ>]. Similarly, Austin, Texas’s Urban Renewal Agency sent a request to the Mayor and City Council to extend an urban renewal plan because the agency had not completed its plans for a mixed-use community. Letter from Joseph S. Babb, Chair of Urban Renewal Agency of the City of Austin, to Mayor and Council Members, Planning Comm’r (Sept. 17, 2018), <http://www.austintexas.gov/edims/document.cfm?id=306380> [<https://perma.cc/KE5S-P4XL>]. In contrast to the examples above, in 2011 the California Supreme Court upheld a state law that abolished redevelopment agencies (which include urban renewal agencies) throughout the state in order to fill in the gaps of the state’s budgetary crisis. Maura Dolan et al., *California High Court Puts Redevelopment Agencies Out of Business*, L.A. TIMES (Dec. 29, 2011), <http://articles.latimes.com/2011/dec/29/local/la-me-redevelopment-20111230> [<https://perma.cc/E69U-HX45>]. But see Liam Dillon, *State Lawmakers Want to Restore an Urban Renewal and Affordable Housing Program. But It’s Complicated*, L.A. TIMES (Feb. 12, 2018), <https://www.latimes.com/politics/la-pol-ca-urban-renewal-program-returns-20180212-story.html> [<https://perma.cc/29F5-NEMH>] (describing efforts by California lawmakers to bring back the powers of urban redevelopment agencies).

¹¹¹ Trickey, *supra* note 20; see discussion *infra* Section IV.B.1.

¹¹² *Committee Report*, *supra* note 23, at 5.

¹¹³ *Id.*; see also *supra* note 86 (discussing ULURP).

¹¹⁴ *Committee Report*, *supra* note 23, at 5; *Urban Renewal*, N.Y.C. DEP’T HOUS. PRESERVATION & DEV., <https://www1.nyc.gov/site/hpd/community/urban-renewal-areas>.

status of these plans, in order to avoid future legal disputes,¹¹⁵ government officials, citizens, and community organizers not only need to address the expiration issue, but must also collaborate and prepare long-term, sustainable strategies for the future of urban renewal areas in New York City. Furthermore, even though the expiration issue was first addressed in 2017 with the introduction of a City Council bill promoting transparency about urban renewal plans,¹¹⁶ the subsequent law—although well-intended—ultimately falls short because it does not adequately provide any long-term solutions about the future of these areas or gain citizen input.

II. LOCAL LAW NO. 40 OF 2018: ADDRESSING URBAN RENEWAL EXPIRATION

Many urban renewal plans are expired or reaching their forty-year expiration point, prompting residents, politicians, and government agencies to address the future of these designated areas. When an urban renewal plan expires, any type of land use restrictions that were recorded in the deed or lease will also expire.¹¹⁷ Owners of expired urban renewal property are free to develop the land as-of-right consistent with the City's Zoning Resolution, potentially disrupting the environment of the surrounding area.¹¹⁸ Recently, plan expiration and development rights have become a newsworthy and contentious issue because historically there was no mechanism in place to alert residents within urban renewal areas when a plan was scheduled to expire.¹¹⁹ An example of this currently involves community groups, developers, government officials, and politicians in the former Two Bridges Urban Renewal area of the Lower East Side.¹²⁰ The issue of urban renewal plan expiration has

page#UrbanRenewalResearchGuide [https://perma.cc/J6XM-AKKY] [hereinafter *Urban Renewal Research Guide*].

¹¹⁵ See discussion *infra* Part II and note 120.

¹¹⁶ See *infra* Part II.

¹¹⁷ See *supra* Section I.B.1; see also *Committee Report, supra* note 23, at 4.

¹¹⁸ See *supra* Section I.B.1; *Committee Report, supra* note 23, at 4.

¹¹⁹ Unless one were to gain access to an urban renewal plan (which required a Freedom of Information request to HPD), and analyzed the plan, deeds, land disposition agreements, or other legal instruments, it is most likely an average citizen would never know when an urban renewal plan expired. See *Hearing Testimony, supra* note 25; *Committee Report, supra* note 23, at 4–5.

¹²⁰ The debate surrounding the expired Two Bridges Urban Renewal Area, located in Lower Manhattan, represents potential development conflicts former urban renewal areas could face now that many plans are reaching the forty-year expiration point. In this case, residents in the area are concerned over several out-of-scale towers proposed once the urban renewal plan expired. Conflicts include whether future development should be in line with the former goals of the urban renewal plan (e.g., affordable housing, senior centers, etc.) and what land use restrictions the properties should be subject to. See *infra* Part III; see also Abigail Savitch-Lew, *Huge Waterfront Towers Frame Debate Over LES Rezoning*, CITY LIMITS (Apr. 17, 2017), <https://city>

led many people to question what legal procedures should be in place to ensure there is adequate notice and community input *before* an urban renewal plan expires.¹²¹

In an attempt to avoid future disputes between residents and developers concerning the future of an expired urban renewal area, in addition to having an informed public, City Council members Margaret Chin and Antonio Reynoso presented Introduction No. 1533 on April 5, 2017, which was subsequently enacted as Local Law No. 40 of 2018.¹²² The law requires HPD, in coordination with the New York City Department of City Planning (DCP), to “provide written notice of the expiration date of such urban renewal plan to the speaker of the council, each borough president, council member, and community board whose district includes any real property within the project boundary of the affected urban renewal area.”¹²³ Additionally, HPD is required to establish and maintain a publicly accessible online database containing information about the status of all urban renewal plans in the City, including the history of approvals, any extensions or revisions, and expiration dates.¹²⁴ The sponsors hope this law will provide publicly accessible information and notice to communities about the land use restrictions that will lapse when the urban renewal plan expires; moreover, proponents hope the notice requirement will avoid out-of-scale development in the future.¹²⁵

While Local Law No. 40 is a step in the right direction since no state or municipal law has addressed urban renewal

limits.org/2017/04/17/huge-waterfront-towers-frame-debate-over-les-rezoning/ [https://perma.cc/KL6P-VLYM]; Sadeef Ali Kully, *Fight Over Land-Use Powers in Council’s Two Bridges Lawsuit*, CITY LIMITS (Dec. 8, 2018), https://citylimits.org/2018/12/08/lawsuit-will-race-shovels-as-judge-refuses-request-to-halt-two-bridges-projects/ [https://perma.cc/29RA-STM2].

¹²¹ *Hearing Testimony*, *supra* note 25.

¹²² Local Law, *supra* note 27.

¹²³ *Id.* at 2. The expiration notice to these parties “include[s] any restrictions on use, density or design contained in such expiring urban renewal plan . . . [and] the status of any pending application to amend such urban renewal plan.” *Id.*

¹²⁴ The law requires the website to include information “regarding the urban renewal law, an explanatory guide to researching urban renewal restrictions on designated urban renewal sites, and links to resources . . . including . . . the city’s online zoning and land use maps, [and] the automated city register information system.” *Id.*; see also *Urban Renewal Research Guide*, *supra* note 114 (HPD’s urban renewal online database). Lastly, under Local Law No. 40, HPD must “report . . . to the mayor, the speaker of the council, the borough presidents, the affected council members, and the community boards” maps and other information about all urban renewal areas. The information in the report has to be provided no later than two years after the effective date of enactment. Local Law, *supra* note 27, at 5.

¹²⁵ See *N.Y. City Council—File #: Int 1533-2017, Hearing Transcript of the Committee on Land Use*, N.Y.C. COUNCIL LEGIS. RES. CTR., 6, 8 (June 15, 2017), http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3013575&GUID=8EC960FE-04B8-4E56-A978-E1FF212AAF8&FullText=1 [https://perma.cc/X3K4-P79H] [hereinafter *Hearing Transcript*]; *Committee Report*, *supra* note 23, at 5.

expiration,¹²⁶ it does not provide adequate communication strategies to the affected groups or address what community boards, council members, and other groups should do once they receive notice of expiration.¹²⁷ To avoid future legal disputes concerning out-of-scale development and displacement, and, most importantly, incorporate community voices, there needs to be a legal solution, rather than agency policy, that provides information and substantive strategies affected citizens can take when an urban renewal plan expires. For these reasons, Local Law No. 40 should be amended to promote community-focused planning approaches and mandate a community engagement process.

III. CASE STUDY FACTORS: LESSONS FROM THE PAST

A. *Role of Government: Incorporating Citizen Input?*

Mid-twentieth century urban renewal projects have typically been instituted from the top, and as a result, have brought more harm than benefits as residents have become alienated and distrustful of their local government's objectives.¹²⁸ One of the most consequential factors of the outcome¹²⁹ of an urban renewal project is whether or not the local governing agency proactively engaged locals from the beginning in the development, planning, and implementation of the project.¹³⁰ This involves considering, for example, whether government agencies allowed citizens to influence the designation of a blighted area,¹³¹ whether locals were given comprehensive information about the project *before* it reached approval stages, and whether locals were given notice concerning the expiration of the urban renewal plan.

¹²⁶ See *supra* text accompanying note 23.

¹²⁷ See *infra* Part IV.

¹²⁸ See *Citizen Participation*, *supra* note 1, at 517; see generally Gans, *supra* note 63, at 538 ("Slum-dwellers whose homes were to be torn down have indeed protested bitterly . . . and because such outcries have rarely been supported by the local press, they have been easily brushed aside by the political power of the supporters of the projects in question.")

¹²⁹ This note considers a "successful" urban renewal project as one not just based on high economic return, but the level of citizen engagement, the elimination of unhealthy living conditions, and whether the project retained existing social networks, minimized displacement, and promoted affordable housing.

¹³⁰ An early example of tension between a local government agency and a community group was the Cooper Square Committee's proposed alternative urban renewal plan in response to New York City's proposed plan for the area. See *Citizen Participation*, *supra* note 1, at 517 ("The failure to achieve rapport between the city agencies and the citizens group must be considered unfortunate, not only as a failure of communication but also as a failure of one of the first attempts at a private alternative plan Each meeting between the city and the Committee has been held in an air of tension"); see also *Cooper Square*, URBAN REVIEWER, <http://www.urbanreviewer.org/#map=16/40.7251/-73.9914&plan=Cooper+Square> [<https://perma.cc/S39C-HCUB>].

¹³¹ See discussion *supra* Sections I.A, I.B.2.

In 1992, South Bronx residents accidentally¹³² learned of Melrose Commons, HPD's proposed urban renewal plan calling for middle-income housing encompassing a total of thirty-three blocks.¹³³ Although the original plan was developed without any citizen input and would have displaced many of the low-income residents,¹³⁴ New York City government officials ultimately scrapped HPD's original plan¹³⁵ and worked with locals after Nos Quedamos (the We Stay Committee) advocated for an alternative community plan.¹³⁶ HPD, in addition to the Departments of Parks, Transportation, and other local agencies,¹³⁷ moderated communication and development between for-profit developers, planning firms, and residents in the realization of the final approved plan.¹³⁸ With the Bronx's history of isolation, alienation,

¹³² “[R]esidents . . . said they first heard about Melrose Commons in the summer of 1992 when one of them accidentally met a city worker taking notes outside her house. Word quickly spread, and a committee was formed to fight the plan.” Mervyn Rothstein, *A Renewal Plan in the Bronx Advances*, N.Y. TIMES (July 10, 1994), <http://www.nytimes.com/1994/07/10/realestate/a-renewal-plan-in-the-bronx-advances.html?pagewanted=all&src=pm> [<https://perma.cc/SY7N-ELZF>].

¹³³ *Melrose Commons: From Urban Devastation to Thriving Community—in 20 Years or Less*, MAGNUSSON ARCHITECTURE & PLAN., <https://www.maparchitects.com/melrose-commons/> [<https://perma.cc/HT96-6DSY>] [hereinafter *Melrose Commons*]; Rothstein, *supra* note 132.

¹³⁴ At the time the original plan was proposed, the median household income was one of the lowest in the city and residents would not be able to afford living in the new developments. See Petr Stand et al., *Melrose Commons, A Case Study for Sustainable Community Design*, PLANNERS NETWORK, <http://www.plannersnetwork.org/magazine-publications/case-studies-and-working-papers/melrose-commons-a-case-study-for-sustainable-community-design/> [<https://perma.cc/63ET-2YUU>]; Rothstein, *supra* note 132.

¹³⁵ “Over the course of a self-imposed six month period and with the help of MAP Architects, the community was able to develop an in-depth urban renewal plan, which both the City and State eventually adopted.” *Unprecedented in its Speed and Scope, This Pioneering Project Transformed the Neighborhood*, MAGNUSSON ARCHITECTURE & PLAN., <https://www.maparchitects.com/melrose-commons/urban-renewal/> [<https://perma.cc/8LMJ-HUXC>].

¹³⁶ Discussing the lack of community involvement in the development of the initial urban renewal plan, Yolanda Garcia, chair of Nos Quedamos, stated, “City agencies had once again determined our fate without ever engaging in conversation with the very people who were to be directly affected. . . . [W]e desired to be an integral part of the long awaited prosperity by remaining home owners, business owners and residents of the Melrose Community.” Stand et al., *supra* note 134.

¹³⁷ Rothstein, *supra* note 132.

¹³⁸ See Eric Bederman, *NYC Department of Housing Preservation and Development, Parsons the New School for Design and the Public Policy Lab Launch Innovative Partnership*, N.Y.C. DEP’T HOUSING PRESERVATION & DEV. (Mar. 12, 2012), <http://www1.nyc.gov/site/hpd/about/press-releases/2012/03/03-12-12.page> [<https://perma.cc/E52T-SHA2>] (“Under the Melrose Commons . . . HPD has worked with for-profit and community-based partners to develop over 2,800 new units of affordable housing since 2000. In the coming years, HPD anticipates the completion of an additional nine hundred new units of affordable housing, bringing the total to 3,700 units in the Urban Renewal Area alone.”). Melrose Commons urban renewal plan was approved in 1994 and expires in 2034. The final plan called for, among other things, affordable mixed-income residences, commercial development, minimizing displacement, and sustainable design principles. *Melrose Commons*, *supra* note 133; *Melrose Commons*, URBAN REVIEWER, <http://www.urban>

and distrust of government,¹³⁹ the final version of Melrose Commons represents a successful neighborhood planning collaboration between politicians, government agencies, and local residents in the urban renewal process.¹⁴⁰

In contrast to Melrose Commons' success, the lack of government transparency and citizen participation¹⁴¹ in the development of the Seward Park Urban Renewal Area (SPURA) in the 1960s contributed to its decades-long infamous stagnation.¹⁴² Located on six acres of city blocks in the Lower East Side, the initiation of SPURA brought the demolition of businesses and displacement of approximately 1,800 residents.¹⁴³ Even though locals were promised a right to return, the objective to build affordable housing units was never realized,¹⁴⁴ and the city-owned properties remained vacant or became parking lots¹⁴⁵ due to a lack of government leadership, political corruption, and conflict among community groups regarding affordable housing.¹⁴⁶ Nevertheless, the former SPURA area,¹⁴⁷ now branded "Essex Crossing," is

reviewer.org/#map=16/40.8228/-73.9136&plan=Melrose+Commons [https://perma.cc/83H8-3323]; see also Rothstein, *supra* note 132.

¹³⁹ Stand et al., *supra* note 134.

¹⁴⁰ Stand et al., *supra* note 134 ("The vitality of citizen participation and its crucial role in creating responsive sustainable communities is illustrated by the truly collaborative planning process that has remade an urban renewal plan in the Melrose area of the Bronx. This intertwining of the social and physical city is essential sustainable development.")

¹⁴¹ One reason for the lack of citizen participation was due to the fact that N.Y.C. Community Boards were not in existence yet. See Eugene Chen, *The Seward Park Urban Renewal Area, Forty-five Years Later: Affordable to Whom?*, 18 CUNY L. REV. F. 98, 99 (2015).

¹⁴² See Russ Buettner, *They Kept a Lower East Side Lot Vacant for Decades*, N.Y. TIMES (Mar. 21, 2014), https://www.nytimes.com/2014/03/23/nyregion/they-kept-a-lower-east-side-lot-vacant-for-decades.html?_r=0 [https://perma.cc/R7K4-B636]; Charles V. Bagli, *City Plans Redevelopment for Vacant Area in Lower Manhattan*, N.Y. TIMES (Sept. 17, 2013), <http://www.nytimes.com/2013/09/18/nyregion/city-plans-redevelopment-for-vacant-area-in-lower-manhattan.html> [https://perma.cc/X6CF-FBNT]; Tom Robbins, *Seward Park: Whose Promised Land?*, CITY LIMITS (May 1980) at 14–16, <https://www.scribd.com/document/297772924/Seward-Park-City-Limits-May-1980-Issue> [https://perma.cc/K6MD-RRWU].

¹⁴³ *Lost Streets: Seward Park's Fight for Housing Justice*, N.Y.U. (May 3, 2017), <https://www.nyu.edu/about/news-publications/news/2017/may/lost-streets—seward-parks-fight-for-housing-justice-on-view-at-.html> [https://perma.cc/V43N-J82G].

¹⁴⁴ Another major reason the city-owned land remained vacant for decades was due to the lack of consensus among the area's Jewish, Puerto Rican, and Chinese groups regarding affordable housing. See Buettner, *supra* note 142; Robbins, *supra* note 142, at 14–16.

¹⁴⁵ Allegra Hobbs, *Displaced Tenants Honored as Affordable Housing Returns to Seward Park*, DNAINFO (May 7, 2017), <https://www.dnainfo.com/new-york/20170505/greenwich-village/seward-park-extension-urban-renewal-housing-struggle-exhibition-at-nyu> [https://perma.cc/PG6T-7U2Q].

¹⁴⁶ See *supra* note 142.

¹⁴⁷ SPURA expired in approximately 1992. See *Seward Park*, URBAN REVIEWER, <http://www.urbanreviewer.org/#map=16/40.7154/-73.9864&plan=Seward+Park> [https://perma.cc/D6XE-UXTU]. In recent years, various groups worked with the community to develop new plans for the future of the neighborhood. Some of the groups included a committee formed by Community Board 3, officials from the New York City Economic

currently being redeveloped due to a healthy partnership between local government, developers, non-profits, and community groups.¹⁴⁸ While this area represented mid-century urban renewal gone wrong, it has the potential to symbolize positive collaboration and planning in a post-urban renewal area.¹⁴⁹

Finally, a lack of information exchanged between citizens and their government concerning the status of an urban renewal plan can lead to controversy and legal battles, which is currently taking place regarding the Two Bridges Urban Renewal plan expiration.¹⁵⁰ When the plan—which encompassed fourteen acres in Lower Manhattan along the East River waterfront—expired, certain urban renewal land use restrictions imposed on the properties also expired.¹⁵¹ Residents within the area were unaware of the plan expiring and, thus, did not have notice of the developer’s proposed large towers scheduled to be built.¹⁵² The proposed controversial developments, out of scale with the surrounding context,¹⁵³ represent the culmination of a lack of transparency and community involvement between government agencies, politicians, and locals. This lack of clarity and information exchanged in the Two Bridges controversy is not necessarily determinative of the ultimate outcome if there are other factors present, such as the level of community organization by residents.

Development Corporation, and the Center for Planning and the Environment at the Pratt Institute. See Bagli, *supra* note 142; see also *Community Voices and the Future of the Seward Park Urban Renewal Area*, PRATT CTR. COMMUNITY DEV., 3 (2009), http://prattcenter.net/sites/default/files/spura_communityvoices_sept1709_0.pdf [<https://perma.cc/J4J6-465Y>] [hereinafter *Community Voices*].

¹⁴⁸ Essex Crossing, scheduled to be completed by 2024, will have several mixed-use development projects, which will include luxury condos, affordable housing, a senior center, and a public park. Former residents displaced by SPURA “will be given preference in the application process for roughly a quarter of the affordable housing units.” Hobbs, *supra* note 145; see Helene Stapinski, *Essex Crossing, a Renewal Project 60 Years in the Making*, N.Y. TIMES (June 15, 2017), <https://www.nytimes.com/2017/06/15/nyregion/essex-crossing-renewal-lower-east-side.html> [<https://perma.cc/5FW3-HVPP>]; see also *Essex Crossing*, ESSEX CROSSING, <https://www.essexcrossingnyc.com/> [<https://perma.cc/5FBX-KMAH>]; *Mayor Bloomberg Unveils Plans for Major Mixed-Use Development in Long-Vacant Seward Park Area on Lower East Side*, N.Y.C. OFF. MAYOR (Sept. 18, 2013), <http://www1.nyc.gov/office-of-the-mayor/news/302-13/mayor-bloomberg-plans-major-mixed-use-development-long-vacant-seward-park-area-on#0> [<https://perma.cc/3698-T6P9>].

¹⁴⁹ See *Community Voices*, *supra* note 147 (describing joint planning and outreach efforts by non-profits, government agencies, and developers to redevelop the former urban renewal site in the Lower East Side).

¹⁵⁰ See *supra* Part II.

¹⁵¹ Restrictions limiting height and setback of buildings elapsed, allowing developers who acquired the properties within the expired urban renewal area to build taller than the surrounding context. *Committee Report*, *supra* note 23, at 6–8.

¹⁵² *Id.* at 7–8. The proposed towers are between sixty-two and seventy-nine stories. *Id.*

¹⁵³ Residents argue that the proposed luxury towers are inconsistent with the original goals of the urban renewal plan, which was to “limit density, promote the construction of low and moderate-income housing, [and] ensure adequate open space and lighted air.” *Hearing Transcript*, *supra* note 125, at 7.

B. *Strong Community Organization*

Locals' ability to effectively form community organizations demonstrates the strength of their social networks, their faith in their place of residence, and a commitment to their future.¹⁵⁴ These organizations promote participation and allow "people to see their common interests, and therefore, community grows out of participation . . . through the process of dialogue, bargaining, challenge, compromise, and consensus building."¹⁵⁵ In response to unintentionally learning of the City's plan for Melrose Commons, Bronx residents formed Nos Quedamos to collectively resist and embolden residents to develop their own community-based plan.¹⁵⁶ As a result of Nos Quedamos' community organizing, the Bronx Borough President halted the plan's approval process to gain feedback from residents.¹⁵⁷ Working with DCP and HPD, in addition to Magnusson Architecture and Planning firm, Nos Quedamos conducted weekly community meetings to develop a new, community-based plan.¹⁵⁸ By exhibiting strong leadership and passion about their neighborhood, Nos Quedamos retained existing social and economic capital, and successfully developed and implemented a true neighborhood plan.¹⁵⁹ In comparison to Nos Quedamos' unified organization, Seward Park residents were historically divided along ethnic and economic lines; this contributed to the stagnation of the original urban renewal plan starting in the 1960s.¹⁶⁰ Nonetheless, in light of SPURA's expiration, various

¹⁵⁴ See generally *Citizen Participation*, *supra* note 1, at 511–17 (discussing the 1959 formation of the Cooper Square Community Development Committee and Businessmen's Association in opposition to New York City's proposed urban renewal plan for the area).

¹⁵⁵ Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 BROOK. L. REV. 861, 912 (2001).

¹⁵⁶ Rothstein, *supra* note 132 ("One resident, Pedro Cintron, a Nos Quedamos founder, would interrupt public forums held by Mr. Kahan's Bronx Center and loudly declare that he and his neighbors wanted to stay in their community and their homes.").

¹⁵⁷ Stand et al., *supra* note 134.

¹⁵⁸ The organization conducted 168 meetings in one year and lobbied government agencies and politicians. Rothstein, *supra* note 132; see also *Melrose Commons*, *supra* note 133; *Unprecedented*, *supra* note 135 ("Nos Quedamos surveyed other residents, held public meetings and ultimately became the unified voice that articulated the community's concerns, demanding the time and opportunity to formulate an alternative plan.").

¹⁵⁹ Stand et al., *supra* note 134 ("This vision is one that respects, supports and involves the existing community of Melrose in the formulation of plans and policies that address the issues of housing, open space, community renewal and sustainability that are vital for the continued growth of the Bronx and its role in the regional economy."). Similarly, the Cooper Square Committee strove to implement an alternative community plan that would minimize displacement and house the neighborhood's then-existing residents. See *Citizen Participation*, *supra* note 1, at 513.

¹⁶⁰ Robbins, *supra* note 142, at 14–16 (describing the contest over housing between the area's Jewish and Hispanic communities: "[a]rgument and debate over the sites has always been heated and often laced with charges of racism. The struggle between

community groups, non-profits, and government agencies collectively advanced goals for the future of the neighborhood, facilitating the development of Essex Crossing.¹⁶¹

In a similar vein, community groups in and surrounding the Broadway Triangle Urban Renewal Area in Brooklyn, which is quickly gentrifying and has a large population of Hasidic, Latino, and African American residents,¹⁶² underwent an eight-year legal battle concerning racial discrimination and inclusivity in a proposed affordable housing development on city-owned land.¹⁶³ The area's Latino and African American residents, including smaller community groups, formed the Broadway Triangle Community Coalition¹⁶⁴ and argued that the proposed development, which included shorter buildings with larger apartments,¹⁶⁵ "would unfairly favor the area's Hasidic community, and that the development would serve to further segregate the adjacent neighborhoods."¹⁶⁶ The Coalition advocated that the City should instead accommodate adjacent community board residents, including a sizeable African American and Latino population, in order to promote integration and "further fair housing as required

the two communities has spilled over into the streets at times, and has also led to lengthy and involved legal challenges on the tenancy of the projects that have been built").

¹⁶¹ Groups such as Good Old Lower East Side (GOLES), Urban Justice Center, Immigrant Social Services, HPD, and the N.Y.C. Department of City Planning contributed to these efforts. See *Community Voices*, *supra* note 147, at 3, 19; *Essex Crossing Development (Seward Park)*, N.Y.C. ECON. DEV. CORP. (Sept. 12, 2016), <https://www.nycdec.com/project/essex-crossing-development-seward-park> [<https://perma.cc/EVJ2-KBSE>].

¹⁶² J. David Goodman, *City to Settle Discrimination Claim in Brooklyn Housing Plan*, N.Y. TIMES (Dec. 3, 2017), https://www.nytimes.com/2017/12/03/nyregion/brooklyn-housing-discrimination.html?_r=0 [<https://perma.cc/466C-KZX4>]. Although the original urban renewal plan put forth in 1989 languished and the area remained vacant, the City Council approved a rezoning of the area in 2009 to promote affordable housing. See *Urban Renewal: Broadway Triangle*, N.Y.C. DEPT HOUSING PRESERVATION & DEV., <https://www1.nyc.gov/site/hpd/community/urban-renewal-area-details.page?areaId=84> [<https://perma.cc/7ULT-DJYW>]; Stu Loeser & Andrew Brent, *Statements of Mayor Bloomberg and Other Officials on City Council Approval of Broadway Triangle Development Plan*, N.Y.C. OFF. MAYOR (Dec. 21, 2009), <https://www1.nyc.gov/office-of-the-mayor/news/548-09/statements-mayor-bloomberg-other-officials-city-council-approval-broadway-triangle> [<https://perma.cc/B4GE-GFUK>].

¹⁶³ Goodman, *supra* note 162; Amy Plitt, *City, Community Groups Settle Dispute over Broadway Triangle Housing*, CURBED N.Y. (Dec. 4, 2017), <https://ny.curbed.com/2017/12/4/16733176/brooklyn-affordable-housing-broadway-triangle-lawsuit> [<https://perma.cc/VT9D-ADVW>].

¹⁶⁴ The Broadway Triangle Community Coalition consists of approximately forty community organizations, such as Churches United for Fair Housing, Brooklyn Legal Services Corporation A, Office of Councilmember Antonio Reynoso, and the Williamsburg Tenant Association. *Community Calls for More Diversity at Broadway Triangle*, GREENLINE (Aug. 1, 2016), <https://northbrooklynnews.com/2016/08/01/community-calls-for-more-diversity-at-broadway-triangle/> [<https://perma.cc/RZ3S-TKKE>].

¹⁶⁵ Zoe Rosenberg, *Proposed Broadway Triangle Rezoning Ignites Housing Debate*, CURBED N.Y. (Mar. 23, 2015), <https://ny.curbed.com/2015/3/23/9978132/proposed-broadway-triangle-rezoning-ignites-housing-debate> [<https://perma.cc/L66J-N2XF>].

¹⁶⁶ Plitt, *supra* note 163. The groups argued that the proposed projects violated the Fair Housing Act. See Rosenberg, *supra* note 165.

by law for projects receiving federal housing funds.”¹⁶⁷ Ultimately, community groups and the City came to a settlement on a new affordable housing plan in 2017, which included more units devoted to lower-income brackets and gave preference to a larger swath of Broadway Triangle residents.¹⁶⁸ Not only does this legal battle highlight the importance of government agencies and developers proactively gaining early input¹⁶⁹ from the adjacent community, but also various community groups working together with legal aid organizations and other non-profits to accomplish more equitable urban development.

Lastly, community groups and local politicians concerned about future out-of-scale residential development in the former Two Bridges Urban Renewal Area have organized together and even brought legal challenges;¹⁷⁰ however, these legal challenges were commenced relatively late in the land use approval process¹⁷¹ due to a lack of notice of the original urban renewal plan expiration.

C. *Significance of Notice*

In conjunction with the government’s duty to incorporate citizen input, the local governing agency must promote transparency and notice about the development or expiration of an urban renewal plan. Providing advance notice of a project promotes dialogue and negotiation between city officials and locals, in addition to effective community organization. Although South Bronx residents were not given formal notice of the City’s proposed urban renewal area, which was to displace many residents, they still had enough warning to organize, develop, and advance a collaborative plan through the proper channels.¹⁷² Conversely, the fact that residents of the former Two Bridges Urban Renewal area were unaware of the plan’s expiration until it was too late harmed their ability to thwart out-of-scale development.¹⁷³ If communities are given sufficient notice and

¹⁶⁷ Goodman, *supra* note 162.

¹⁶⁸ Plitt, *supra* note 163. The settlement also included “investment in counseling and legal representation for local residents who believe they were discriminated against while seeking housing.” Goodman, *supra* note 162.

¹⁶⁹ See *supra* Section III.A.

¹⁷⁰ *All Hands On Deck*, *supra* note 20; Kully, *supra* note 120.

¹⁷¹ Residents first learned of the proposed Melrose Commons Urban Renewal Plan while the Department of City Planning was still in the planning stages. See Section III.A; Rothstein, *supra* note 132; Kully, *supra* note 120.

¹⁷² See *supra* Section III.A.

¹⁷³ *Hearing Testimony*, *supra* note 25 (“If the community had received the information about the expiration of the urban renewal plan in advance of expiring, it would have prevented the threats of overdevelopment of luxury high rises on our waterfront The community would have been able to give input into the zoning policies that protect our communities from floods, displacement, and overcrowded streets.”); see also Kully, *supra* note 120.

information before an urban renewal plan advances or expires, they will have adequate time to organize and choose how to address future development, in addition to seeking out any needed technical planning assistance.

D. *Technical Assistance with Planning*

Since many citizens are not equipped with city planning or bureaucratic knowledge,¹⁷⁴ whether residents receive technical city planning or legal assistance contributes to the success of an urban renewal project and promotes better relations between local government, residents and community organizations.¹⁷⁵ Encouraging consensus building¹⁷⁶ and collaborative planning allows “[p]eople who are close to neighborhood issues [to] clearly identify community needs and advocate passionately for local concerns.”¹⁷⁷ Regardless of whether planning efforts are facilitated by the government, for-profit, or non-profit groups through the use of public workshop events or surveys,¹⁷⁸ it is clear that successful projects, such as Melrose Commons and the former SPURA site (now Essex Crossing), were implemented based on communication, negotiation, collaboration, and compromise between residents, government officials, and those with technical planning knowledge.

¹⁷⁴ “A neighborhood presented with . . . planning proposals is often unable to challenge the agency’s conclusions, which appear to be rooted in expertise. The members of the community may lack the technical competence required to determine whether the . . . choices will coincide with their interests. . . . [T]he lack of technical competence frequently leaves the neighborhood powerless” *Citizen Participation*, *supra* note 1, at 591.

¹⁷⁵ *Id.* at 509–17 (discussing the Wellington-Harrington Neighborhood Improvement Plan implemented in the 1960s in opposition to the Cambridge Renewal Authority’s urban renewal plan, in addition to the Cooper Square Committee’s use of a professional city planner to represent the community in opposition to New York City’s urban renewal plan).

¹⁷⁶ This note recognizes that regardless of how much the government promotes transparency and provides planning assistance to local residents, there will always be conflicting interests that may not ultimately be resolved. Rather, this note supports the notion that “[n]eighborhood collaborative planning can be a useful way for residents to take part in governmental decision making Neighborhood collaborative planning is not a panacea for the ills of local government It can, though, be a useful technique for giving residents a feeling that they have a stake in the outcome of decisions that may be made about their community” Peter W. Salsich Jr., *Grassroots Consensus Building and Collaborative Planning*, 3 WASH. U.J.L. & POL’Y 709, 712 (2000). This note advocates for consensus building and compromise between local government, residents, politicians, and other community organizations.

¹⁷⁷ Patricia E. Salkin & Amy Lavine, *Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power*, 18 J.L. & POL’Y 157, 169 (2010) (citation omitted).

¹⁷⁸ See generally *Community Voices*, *supra* note 147 (describing the community engagement process between community groups, local residents, and business owners in the redevelopment of a former urban renewal area).

E. *Other Factors*

Other aspects that contribute to a neighborhood's ability to organize, lobby, and collaborate with other parties include resilient social networks and connection to place.¹⁷⁹ Melrose residents felt strongly about their neighborhood despite the negative "Bronx Is Burning" connotation.¹⁸⁰ Economic factors, such as the area's median income level and home ownership rates, also contribute to residents' access to resources, their ability to advocate for land use policies in favor of their neighborhood,¹⁸¹ and their ability to develop their own neighborhood plans.¹⁸² Finally, in combination with the previous factors listed, an area's location within the larger city also affects development issues; for instance, whether the area is considered the next "up and coming" neighborhood¹⁸³ or is located

¹⁷⁹ See Rothstein, *supra* note 132 ("Ms. Garcia, whose family has owned a carpet store on Third Avenue for decades, said the feeling was that those who stayed with the neighborhood through the hard times, who had kept it going through the decay and the crime and the difficulties, should be part of the progress.").

¹⁸⁰ "This community has been neglected for the last 40 years . . . We want to turn things around and make this a place where anybody and everybody will love to live." Rothstein, *supra* note 132. See Joe Flood, *Why the Bronx Burned*, N.Y. POST (May 16, 2010, 4:59 AM), <http://nypost.com/2010/05/16/why-the-bronx-burned/> [https://perma.cc/W4L4-7GCH]. Although never actually said, it was alleged that during live coverage of a 1977 World Series game at Yankee Stadium, sports reporter Howard Cosell stated, "There it is, ladies and gentlemen . . . , the Bronx is burning" when cameras panned to a large fire in the surrounding neighborhood. The phrase now represents the poor state of New York City during the 1970s and 80s. *Id.*

¹⁸¹ A side effect to higher-income residents advocating for land use policies in favor of their area is the exclusionary "Not in My Backyard" (NIMBY) phenomenon. See AM. BAR ASSOC., STEERING COMM. ON THE UNMET LEGAL NEEDS OF CHILDREN AND COMM'N ON HOMELESSNESS AND POVERTY, NIMBY: A PRIMER FOR LAWYERS AND ADVOCATES 5 (1999) ("NIMBY is the term commonly used to describe efforts to block the establishment of housing and service facilities within a particular community . . . More and more frequently, neighbors organize together to oppose development projects which aim to assist and serve people who are disadvantaged or deemed 'unworthy.'"); Elsa Brenner, *The Nimby Effect*, N.Y. TIMES (Dec. 22, 2002), <https://www.nytimes.com/2002/12/22/nyregion/the-nimby-effect.html> [https://perma.cc/DMC9-4CUK]. In contrast, a recent model has developed to counter NIMBYism—the "YIMBY" approach ("Yes in My Backyard"), promoting more residential development in response to housing shortages and rapidly rising rents in major urban areas. See Erin McCormick, *Rise of the Yimbys: The Angry Millennials with a Radical Housing Solution*, GUARDIAN (Oct. 2, 2017), <https://www.theguardian.com/cities/2017/oct/02/rise-of-the-yimbys-angry-millennials-radical-housing-solution> [https://perma.cc/H9XC-V5LE]; see generally Kenneth A. Stahl, "Yes in My Backyard": Can a New Pro-Housing Movement Overcome the Power of NIMBYS?, 41 ZONING & PLAN. L. REP. (2018). Although this note will not address the intricacies of the YIMBY movement, this note supports the movement's advocacy for more affordable and equitable urban development.

¹⁸² See Amy Widman, *Replacing Politics with Democracy: A Proposal for Community Planning in New York City and Beyond*, 11 J.L. & POL'Y 135, 180 (2003) (footnote omitted) ("[A] community's financial status is also a tool to gain access to resources including time, money and technical assistance. This is essential to a successful planning process. Without adequate resources, there is little chance that public participation will affect decisions in a meaningful way.").

¹⁸³ See *supra* Section III.B for a discussion about the Broadway Triangle Urban Renewal area in gentrifying Brooklyn.

along waterfront property,¹⁸⁴ can lead to concerns about gentrification and displacement.¹⁸⁵ With these factors in mind, urban renewal has the potential to be implemented in an equitable, community-driven manner¹⁸⁶ and to provide lasting legal protection for low-income residents located in high-demand areas. Despite the recent passage of Local Law No. 40, this law ultimately falls short because merely providing information about urban renewal is insufficient in curtailing future legal and development disputes; rather, this law must be amended to gain adequate citizen input, provide more notice, and promote a sustainable strategy for future urban renewal development.

IV. AN ALTERNATIVE SOLUTION

A. *Dismantling Mid-Century Urban Renewal: Why Local Law No. 40 Needs to Be Amended*

Local Law No. 40 does not take proactive steps to address the future of urban renewal areas prior to expiration. Instead, to avoid legal disputes,¹⁸⁷ promote trust, and encourage informed decision making, the law should be amended to adopt, among other provisions, specific strategies that incorporate community input, an increased notice period, and technical planning assistance concerning urban renewal plans. By modifying this law, the goal is to tip the historical, top-down balance of power of urban renewal development in favor of a participatory, citizen-led movement.

Since many residents living in New York City's urban renewal areas have historically been marginalized, low-income people of color,¹⁸⁸ it is important to change how urban renewal is utilized in the twenty-first century. Although the majority of urban

¹⁸⁴ See *supra* Part II, Section III.A for a discussion about the former Two Bridges Urban Renewal area.

¹⁸⁵ See Rachel D. Godsil, *The Gentrification Trigger: Autonomy, Mobility, and Affirmatively Furthering Fair Housing*, 78 BROOK. L. REV. 319, 325 (2013) ("Gentrification generally refers to a process where a once-affluent area, which has been abandoned and is now occupied by working-class or poor people, is rediscovered by the affluent. Typically, neighborhoods that are gentrified possess the following characteristics . . . deteriorating housing, generally low property values, high crime, few amenities, and substandard schools."); Lynn E. Blais, *Urban Revitalization in the Post-Kelo Era*, 34 FORDHAM URB. L.J. 657, 681 ("Inner cities, after years of decline due to suburban flight, sprawl, and industrial migration, are currently being repopulated as young, professional suburbanites with financial clout move back to the city and are joined by the empty nesters of the baby boom generation."); see also *Hearing Testimony, supra* note 25 ("Residents are concerned the luxury developments with [sic] bring about . . . secondary displacement.").

¹⁸⁶ See Salsich, *supra* note 176, at 733–36.

¹⁸⁷ See, e.g., Jarrett Murphy, *Calls for Stricter Review of Proposed Waterfront Skyscrapers*, CITY LIMITS (May 26, 2017), <https://citylimits.org/2017/05/26/calls-for-stricter-review-of-proposed-waterfront-skyscrapers/> [<https://perma.cc/T2J7-AEDQ>].

¹⁸⁸ See *Renewing Inequality, supra* note 10; see also *Hearing Testimony, supra* note 25.

renewal projects implemented in the twentieth century were failures,¹⁸⁹ this note does not advocate for the abolition of urban renewal legislation without gaining meaningful citizen input.¹⁹⁰ Furthermore, mandating expiration does not consider the benefits of having an urban renewal plan legally in place. For instance, since urban renewal plans may contain “[d]eed or [l]and [d]isposition [a]greement[s] . . . contain[ing] a covenant requiring the developer to develop and use the property in compliance”¹⁹¹ with the plan, certain beneficial land uses can be legally enforced, such as affordable housing and community facilities.¹⁹² These land use restrictions can serve “true public purposes” and provide stable, long-term affordable housing to lower-income residents.¹⁹³ Thus, whether urban renewal plans are extended or expire should be a decision left to residents within the designated area.

Given the fact that New York City has historically spearheaded urban development,¹⁹⁴ the City should continue to lead the way in setting up a legal framework to encourage public participation concerning the future of these programs, such as whether to extend, amend, or allow a plan’s restrictions to lapse.¹⁹⁵ The proposed amendments to this law¹⁹⁶ recognize that urban renewal plans can be legally advantageous for residents facing threats of gentrification and displacement. For instance, urban renewal plans, compared to New York City’s nonbinding 197-a plans,¹⁹⁷ are subject to ULURP for the initial passage and any

¹⁸⁹ See, e.g., Blum, *supra* note 2; Gans, *supra* note 63, at 537–38.

¹⁹⁰ At the New York City Council’s Committee on Land Use hearing regarding the proposed Int. No. 1533, George Janes, an urban planner, urged the Council to “consider amending every active urban renewal plan so that they all expire in one year.” Hearing Testimony, *supra* note 25. Additionally, while there are certain aspects of urban renewal that need to be changed, such as the broad eminent domain powers and discretion governments have when declaring an area blighted, see discussion *supra* Part I, this note does not address how to change those issues.

¹⁹¹ *Hearing Testimony*, *supra* note 25.

¹⁹² See, e.g., *id.* (“Community input into planning for the Edgemere [urban renewal] revision led to HPD’s commitment to include the creation of a community land trust to keep housing affordable in the revised plan . . .”).

¹⁹³ Land uses with a public purpose include “parks, open space, schools, community centers and . . . affordable housing.” *Id.*

¹⁹⁴ See *supra* Section I.B.

¹⁹⁵ See, e.g., Request for Six Year Extension of Certain Boston Urban Renewal Plans Letter from Chrystal Kornegay, Undersecretary, Mass. Dep’t of Hous. & Cmty. Dev., to Brian Golden, Dir., Bos. Redevelopment Auth., (Aug. 3, 2016), <http://www.bostonplans.org/getattachment/92cf6b88-927c-42bb-859b-5e01fd2ac1f8> [https://perma.cc/AJA3-ULEU] [hereinafter Boston Urban Renewal Extension Letter].

¹⁹⁶ See *infra* Section IV.B.

¹⁹⁷ “The City Charter, in Section 197-a, authorizes community boards and borough boards, along with the Mayor, the City Planning Commission . . . the Department of City Planning . . . and any Borough President, to sponsor plans for the development, growth, and improvement of the city, its boroughs and communities. Once approved by the Commission and adopted by the City Council, 197-a plans guide future actions of city agencies in the areas addressed in the plans.” N.Y.C. Dep’t of City

subsequent amendments,¹⁹⁸ which requires a public hearing, review, and an advisory decision from the applicable community board.¹⁹⁹ Since urban renewal plans essentially provide a legal right to implement a project, if the proposed amendments to Local Law No. 40 are adopted and utilized effectively, urban renewal legislation can empower residents to determine their future and hold government officials accountable.

B. *The Next Steps: What Should Be Added to Local Law No. 40*

This Section advocates that Local Law No. 40 should be amended to adopt concrete, strategic mechanisms to ensure communities are properly notified and involved well in advance of an urban renewal plan expiration, in addition to promoting sustainable planning strategies for citizens. For the City to remedy the negative effects of past urban renewal plans, and promote transparency, trust, and equitable planning strategies, this law should be modified to adopt (1) an initial city-wide public engagement process; (2) an increased notice period; (3) annual reporting requirements; (4) funding provisions; (5) public hearings for specific urban renewal areas; and (6) technical assistance and community planning strategies. Doing so will ensure that citizens are not only alerted in advance of expiration but are also actively involved with government officials in future planning and development efforts.

1. Initial City-Wide Public Engagement Process

To achieve the goals of transparency, notice, and an informed citizenry, this law should adopt a provision that mandates an initial, two-year city-wide public engagement process

Planning, *197-a Plan Technical Guide*, <http://www1.nyc.gov/assets/planning/download/pdf/about/publications/197a.pdf> [<https://perma.cc/H9N4-W2LQ>]; see also Tom Angotti, *New York City's '197-a' Community Planning Experience: Power to the People or Less Work for Planners?*, 12 PLAN. PRAC. & RES. 59, 63 (1997) [hereinafter *New York City's '197-a'*] (“Even after a plan is approved by the [City Planning Commission] and City Council, those bodies are required only to consult the plan when making future land-use decisions; they can override any plan proposals as long as they demonstrate they have consulted the plan.”); Tom Angotti, *Race, Place and Waste: Community Planning in New York City*, NEW VILLAGE, 1999, at 5 (“The plan is a policy statement and advisory. It only obligates city agencies to consider the plan recommendations in making future decisions.”).

¹⁹⁸ *Committee Report*, *supra* note 23, at 4. However, “extending the duration of the [urban renewal plan] will not automatically extend land use restrictions on properties that have already been disposed to sponsors.” *Id.*; see discussion *supra* Section I.B; N.Y. GEN. MUN. LAW § 505; N.Y.C. Charter §§ 197-c(a)(8), 1802(3), and 1802(5)(e).

¹⁹⁹ *ULURP Explained*, CITY LIMITS, <https://citylimits.org/zonein/ulurp-explained/> [<https://perma.cc/2Q5C-VV3F>].

concerning urban renewal in New York City, modeled off of the 2015 Boston Redevelopment Authority's (BRA)²⁰⁰ year-and-a-half long public engagement process.²⁰¹ Given the BRA's notorious reputation for a lack of accountability and causing displacement (similar to New York City's history of urban renewal),²⁰² when the agency requested to extend fourteen urban renewal plans for another six years, the Massachusetts Department of Housing & Community Development (DHCD) asked the BRA to conduct this outreach "to inform residents about the history of urban renewal and to solicit feedback about the future use of these tools in Boston."²⁰³ Additionally, the DHCD required the BRA to seek the Boston City Council's approval.²⁰⁴ The Council then ordered the BRA to craft "a two-year action plan²⁰⁵ to improve the level of transparency and accountability with respect to how urban

²⁰⁰ The Boston Redevelopment Authority has been rebranded the "Boston Planning and Development Agency" (BPDA). For the purposes of this note, however, the BRA will still be utilized. See Eillie Anzilotti, *After a Dark Past, Boston's Urban Renewal Agency Is Building a Citizen-Led City for the Future*, FAST COMPANY (Apr. 17, 2017), <https://www.fastcompany.com/40403850/after-a-dark-past-bostons-urban-renewal-agency-is-building-a-citizen-led-city-for-the-future> [<https://perma.cc/C8RU-PC9E>] ("[T]he BPDA is on a mission to show that urban renewal doesn't have to mean displacement. The idea of working with a design firm to reimagine how the agency relates to communities and the city as a whole stemmed from the understanding that channels of communication between the two were broken (or perhaps never existed), and needed to be repaired."); Hinali Shah, *When an Urban Planning Agency Gets a Seriously Needed Redesign*, METROPOLIS (Apr. 17, 2017), <http://www.metropolismag.com/design/when-an-urban-planning-agency-gets-a-seriously-needed-redesign/> [<https://perma.cc/5ZXR-XP6J>].

²⁰¹ *BRA Announces Public Engagement Plan for Urban Renewal Extension Process*, BOS. PLAN. & DEV. AGENCY (Mar. 24, 2015), <http://www.bostonplans.org/news-calendar/news-updates/2015/03/24/bra-announces-public-engagement-plan-for-urban-ren> [<https://perma.cc/G7AE-GCUQ>]; *Urban Renewal Public Engagement Process Moves into Next Phase*, BOS. PLAN. & DEV. AGENCY (Apr. 17, 2015), <http://www.bostonplans.org/news-calendar/news-updates/2015/04/17/urban-renewal-public-engagement-process-moves-into> [<https://perma.cc/6V2H-DLUJ>].

²⁰² See Shah, *supra* note 200 ("[I]n 1987 [the BRA] removed itself from the city budget entirely, so it could function autonomously. For decades, there have been protests and petitions, especially from those displaced from the West End in the early '60s, but none were heard."); Trickey, *supra* note 20 ("In 1958, in one of the most infamous acts of America's urban renewal era, the Boston Redevelopment Authority seized nearly all of the working-class West End, evicted its last 7,500 residents, and razed it all to make way for new middle-class apartments.").

²⁰³ *Urban Renewal Overview*, BOS. PLAN. & DEV. AGENCY, <http://www.bostonplans.org/planning/urban-renewal/overview> [<https://perma.cc/P79K-X2ZJ>]; see also Boston Urban Renewal Extension Letter, *supra* note 195 (DHCD required the BRA to "[c]atalogue all Land Disposition Agreements (LDAs) within Urban Renewal areas, noting the type of restrictions imposed, if any, the term, and the number of affordable housing units covered by each agreement.").

²⁰⁴ Kyle Scott Clauss, *Urban Renewal Goes on Trial at City Council Hearing on BRA Extension*, BOS. MAG. (Mar. 3, 2016), <http://www.bostonmagazine.com/news/2016/03/03/bra-urban-renewal-city-council/> [<https://perma.cc/B5JC-QVAK>].

²⁰⁵ The action plan includes "inventorying land disposition agreements, reviewing plan boundaries to determine where modifications are necessary, and providing updates on the progress of the completion of the urban renewal plans." Boston Urban Renewal Extension Letter, *supra* note 195.

renewal tools are used in Boston.”²⁰⁶ As a result of this action plan, BRA received approval from both DHCD and the City Council to extend their urban renewal authority until 2022.²⁰⁷

In a similar vein, HPD, in conjunction with other New York City agencies, should conduct a city-wide public engagement process to begin the process of government accountability and to counteract the negative consequences of mid-century urban renewal.²⁰⁸ Mandating this outreach²⁰⁹ will encourage citizen participation in a program that was historically developed in private and imposed from the top.²¹⁰ Engaging in a participatory model “derives from a democratic concept that all people are equal in their decision-making ability and should have the right to participate in decision-making on matters or issues that directly or indirectly concern them or have an effect on their lives.”²¹¹ This entails that government officials, specifically under the guidance of HPD, should conduct hearings and workshops throughout the City to initially educate locals about the history, purpose, and consequences²¹² of New York City urban renewal.²¹³ Officials can subsequently gain feedback through additional workshops and surveys²¹⁴ about the future of these plans,²¹⁵ such as whether residents prefer to maintain or update the plan’s goals to address

²⁰⁶ *Urban Renewal Overview*, *supra* note 203.

²⁰⁷ *Id.* The Boston City Council also requires the BRA to provide “updates on the progress of the completion of the urban renewal plans.” Boston Urban Renewal Extension Letter, *supra* note 195; *see also* Request for Meeting Letter from Bill Linehan, Chair, Comm. on Planning and Dev., Bos. City Council, to Michael Christopher, Deputy Dir., Bos. Planning and Dev. Agency, (Apr. 3, 2017), <http://www.bostonplans.org/getattachment/29beb603-a1a0-4e3f-ba09-619127bed12b> [<https://perma.cc/8E27-PUE8>].

²⁰⁸ For example, in addition to HPD, this outreach program should involve government officials from the Departments of City Planning, Parks and Recreation, and the New York City Economic Development Corporation.

²⁰⁹ In addition to Boston, this public outreach concerning urban renewal is also similar to the outreach efforts performed by cities such as Portland, Oregon, and Austin, Texas. *See* discussion *supra* note 110.

²¹⁰ *See supra* Part I.

²¹¹ McFarlane, *supra* note 155, at 909.

²¹² *See Urban Renewal Public Engagement Process*, *supra* note 201.

²¹³ Information should include the amount of New York City residents displaced by urban renewal, whether residents were given a right to return, and whether the City actually followed through with those promises. *See supra* text accompanying note 10.

²¹⁴ To reach a wide audience, city officials should have hearings, workshops, and other information sessions available online. The government can also conduct online surveys and “encourag[e] people to participate in the conversation about urban renewal on Twitter,” as utilized by the BRA. *BRA Announces*, *supra* note 201.

²¹⁵ If communities wish to propose new urban renewal plans, this note supports the Melrose Commons community-based planning model. This approach encourages public participation, mixed income development, true affordable housing, sustainable urban design, and architectural principles, while minimizing existing residential and economic displacement. *See supra* Section III.A.

issues not considered decades ago²¹⁶ (e.g., climate change,²¹⁷ flood resiliency measures,²¹⁸ or gentrification²¹⁹). One participatory method used to gain citizen input that should be encouraged during this public engagement process is “governmental crowdsourcing”²²⁰ of local land use decisions,²²¹ which is “the process of outsourcing certain governmental functions to the broad public, and soliciting back services, suggestions, solutions, and ideas”²²² by embracing digital platforms (“e-participation”²²³) and other new technologies.²²⁴ Employing initial crowdsourcing methods such as online discussion, suggestion, and voting forums in order to narrow down the number of comments and suggestions,²²⁵ in conjunction with subsequent in-person hearings and workshops throughout the City, would finally equalize the balance of power in the urban renewal process and promote choice, transparency, and more self-determination.²²⁶ City officials should also involve community organizations, non- and for-profit groups to facilitate this wide-ranging process, provide technical assistance,²²⁷ and ensure the outreach process remains objective.

²¹⁶ See *BRA Announces*, *supra* note 201.

²¹⁷ See generally John R. Nolon, *Land Use and Climate Change: Lawyers Negotiating Above Regulation*, 78 BROOK. L. REV. 521 (2013) (describing the effect of climate change on land use and the legal system).

²¹⁸ See *Community Land Access Is in the Resilient Edgemere Community Plan*, 596 ACRES (Mar. 23, 2017), <http://596acres.org/resilient-edgemere/> [<https://perma.cc/H5D2-2VDKJ>].

²¹⁹ See *supra* Section III.E.

²²⁰ Jennifer Shkabatur, *Cities @ Crossroads: Digital Technology and Local Democracy in America*, 76 BROOK. L. REV. 1413, 1443–44 (2011) (describing the role digital technology has on citizen participation in local governance).

²²¹ See Lee Anne Fennell, *Crowdsourcing Land Use*, 78 BROOK. L. REV. 385, 385 (2013).

²²² Shkabatur, *supra* note 220, at 1443.

²²³ “The ideal of e-participation envisions ‘horizontal’ relations, in which municipal authorities share power with citizens, and citizens acquire authentic decision-making responsibilities in agenda setting, resource allocation, policy decisions, and collaborative problem solving.” *Id.* at 1464; see also *supra* note 214.

²²⁴ This includes “new technologies like smartphone apps and online interfaces for involving constituents.” Fennell, *supra* note 221, at 385. “Some localities, nonprofits, and entrepreneurs have already begun experimenting with smartphone apps that allow people to report observed problems like potholes or malfunctioning streetlamps on the fly. Perhaps the best known of these is the SeeClickFix smartphone app . . . modeled on the earlier FixMyStreet app . . .” *Id.* at 393. Jennifer Shkabatur outlines multiple methods of participatory budgeting utilized in several German cities; these include digital forms of civic participation such as participatory budgeting, urban planning, and policy consultations. See Shkabatur, *supra* note 220, at 1464–80.

²²⁵ See Shkabatur, *supra* note 220, at 1465–69, 1472–76 (discussing the online participatory budgeting processes of the borough of Berlin-Lichtenberg and the city of Cologne, in addition to an online urban planning initiative in the city of Hamburg).

²²⁶ Crowdsourcing is “to find better ways to elicit, aggregate, coordinate, and channel the preferences, intentions, and experiences of current and future land-users. Zoners and planners must begin shifting their focus from the top-down regulation of land use to the development of information platforms for coordinating land use.” Fennell, *supra* note 221, at 415.

²²⁷ See *infra* Section IV.B.6.

Finally, as an enforcement measure to guarantee that residents' feedback is incorporated in any future changes to New York City's urban renewal program, HPD should be required to formulate a city-wide action plan similar to the BRA's²²⁸ and to give the City Council annual updates during the two-year public engagement process. The action plan should first analyze New Yorkers' opinions about managing the urban renewal program. The plan should include information such as (1) a "catalog [of] all [l]and [d]isposition agreements" to give the City "a comprehensive grasp of the agreements governing properties in [urban renewal] areas";²²⁹ (2) "[a]n analysis as to whether [u]rban [r]enewal [p]lan[s] should remain as drawn . . . be modified,"²³⁰ rezoned, or terminated; (3) proposals for future uses of vacant, city-owned properties within urban renewal areas that were never developed; and (4) proposals for improving how land use restrictions within urban renewal areas could be terminated with prior notice to residents. Implementing this public engagement requirement is essential to Local Law No. 40's goal of transparency, informing the public, and improving the urban renewal process. Moreover, this proposed city-wide engagement process will work in conjunction with one of the primary goals of the law, which is to increase the amount of time citizens receive notice of an urban renewal plan expiring.

2. Increasing Notice

One of the main provisions of Local Law No. 40²³¹ requires notice about urban renewal plan expiration because "expired [urban renewal land use] restrictions may be forgotten until a developer builds a structure unconstrained by them."²³² Although the original bill was rightly modified in the legislative process to provide an earlier notification period to the affected borough president, council member, and community board,²³³ Local Law No. 40 should be amended to increase the minimum amount of notification from twelve to eighteen months prior to expiration. If

²²⁸ This action plan precludes the annual reporting requirement in Section IV.B.3, which focuses on specific urban renewal areas. See *infra* Section IV.B.3.

²²⁹ *State Approves Six Year Extension of Boston's Urban Renewal Plans*, BOS. PLAN. & DEV. AGENCY (Aug. 8, 2016), <http://www.bostonplans.org/news-calendar/news-updates/2016/08/8/state-approves-six-year-extension-of-boston%E2%80%99s-urba> [<https://perma.cc/PY96-LYDJ>].

²³⁰ Boston Urban Renewal Extension Letter, *supra* note 195.

²³¹ Local Law, *supra* note 27.

²³² *Committee Report*, *supra* note 23, at 5.

²³³ The original draft of Int. No. 1533 required notification of expiration "not less than [sixty] days and not more than 120 days prior to the expiration date." *Id.* at 11.

communities wish to amend, extend, or have an urban renewal plan terminate at the designated expiration date, the current designated time period of twelve months is still inadequate for residents to fully organize and develop a plan of action about the future of the urban renewal area.²³⁴ Lastly, Local Law No. 40 should include a provision that once the borough president, council member, and community board receive notice of the plan's expiration, the parties are mandated to disclose that information on their official government websites within sixty days. This will promote communication with residents and prohibit authority figures from hiding information due to personal conflicts of interest concerning development or business opportunities.

3. Annual Reporting Requirements

No later than two years after the enactment of Local Law No. 40, HPD is required to issue a report “to the mayor, the speaker of the council, the borough presidents, the affected council members, and the community boards,” containing information such as a list of all urban renewal areas, maps of project boundaries, expiration dates, and land uses.²³⁵ Rather than issuing a report once, HPD should issue a publicly available report on an annual basis in order to update the public on any changes that occur concerning any urban renewal plan.²³⁶ These annual reports are necessary because publicly disclosing the pending urban renewal expiration date without other information is ineffective for residents to organize and take action. Annual reports of all the active urban renewal areas, completed by Borough, Block, and Lot numbers, should include:

- (1) [s]pecific planned uses of all properties;
- (2) [c]urrent uses of all properties in active [u]rban [r]enewal [a]reas . . . ;
- (3) [a]ll planned acquisitions by the City or any other public authority;
- (4) [a]ll completed acquisitions;
- (5) [a]ll planned dispositions, including the name of [the] entity to which each lot would be disposed, the price proposed to be paid, and any restrictive covenants, deed restrictions or other terms set at the time of disposition, and what public review of the disposition is required . . . ;
- (6) [c]ompleted dispositions . . . ;
- (7) [s]tatus of any

²³⁴ Eunice Suh, the Assistant Commissioner of Planning and Predevelopment at HPD, stated: “[HPD] suggest[s] amending the window for notification to provide an earlier notice. It takes many months to complete work to amend or extend a [p]lan and it will be more useful for communities to learn about its expiration earlier.” *Hearing Testimony*, *supra* note 25.

²³⁵ Local Law, *supra* note 27, at 5 (describing the requirements of the reports).

²³⁶ Advocates in favor of these annual reports include CAAAV Organizing Asian Communities, Good Old Lower East Side, 596 Acres, and the Urban Justice Center. *Hearing Testimony*, *supra* note 25.

planned, in process or completed relocation of tenants from properties in the plan area.²³⁷

In addition to the points above, the reports for each urban renewal project should also include a catalogue of all city-owned land within urban renewal areas (including easements and air rights), the status of each plan (e.g., proposed or active), the underlying zoning or land use provisions of the urban renewal area,²³⁸ budgetary provisions concerning any proposed or active urban renewal projects, the number of residents living in a designated area, an estimated number of residents dislocated when the project originally began, the number and type of affordable housing units, any environmental impact statements, and the owner of each property within a designated area. The reports should also be published on HPD's online database so that any citizen can access the information,²³⁹ rather than have the reports solely given to the applicable community boards, council members, and borough presidents as asserted by certain advocates.²⁴⁰ These reporting requirements would avoid the problem of government officials and politicians not disclosing certain information because of potential conflicts of interest concerning development opportunities. Providing as much information as possible in these annual reports about urban renewal plans would promote the law's goal of transparency, trust, and government accountability.

4. Funding

Equally important to the success of Local Law No. 40 is providing funding for the proposed modifications advocated within this note, such as the city-wide public engagement process, annual reports, the urban renewal online database, and technical assistance. Since urban renewal areas typically house low-income communities, coupled with the fact that a community's access to resources affects land use policies,²⁴¹ this law will accomplish little to nothing without mandating taxpayer funding to HPD and other agencies in order to conduct

²³⁷ *Id.*

²³⁸ These should include commercial or residential land uses, height restrictions, or the floor area ratio [FAR], which is "the principal bulk regulation controlling the size of buildings. FAR is the ratio of total building floor area to the area of its zoning lot." *Glossary of Planning Terms*, *supra* note 24.

²³⁹ See *supra* Part II for a discussion concerning the online database as required by Local Law No. 40.

²⁴⁰ See *Hearing Testimony*, *supra* note 25.

²⁴¹ "Without adequate resources, there is little chance that public participation will affect decisions in a meaningful way." Widman, *supra* note 182, at 180.

hearings and provide technical assistance.²⁴² In conjunction with this funding provision, the law should require the Public Advocate's office²⁴³ to monitor and perform annual audits of HPD regarding this urban renewal budget.²⁴⁴

New York City's 197-a plans²⁴⁵ ineffectiveness demonstrates the necessity of adequate funding.²⁴⁶ While the 197-a planning device substantively promotes localized, bottom-up participation,

[i]nsufficient funding for 197-a plans has placed heavy reliance on pro-bono professional assistance and community volunteers, hampered the planning process, and resulted in substantial delay . . . [this] is disastrous for 197-a plans because it leads to loss of community interest, frustration, and disillusionment, and undermines the relevance of the plan.²⁴⁷

Analogously, if funding is not stipulated in Local Law No. 40 to HPD, DCP, and community boards to facilitate workshops, hearings, and outreach events, residents within urban renewal areas²⁴⁸ will face difficulty organizing, lobbying, raising money, and planning for the future of their neighborhoods.

5. Public Hearings for Urban Renewal Areas

Since urban renewal programs were traditionally implemented without considering public opinion,²⁴⁹ following the implementation of the city-wide public engagement process,²⁵⁰ HPD and DCP should conduct bi-annual public hearings within each active urban renewal area throughout the City. Applying

²⁴² See *infra* Sections IV.B.5 and IV.B.6.

²⁴³ The N.Y.C. Public Advocate acts as a "watchdog" over government agencies. See *Public Advocate for the City of New York*, OFF. PUB. ADVOC. <https://pubadvocate.nyc.gov/> [<https://perma.cc/T8YM-4VQK>].

²⁴⁴ See TOM ANGOTTI, LAND USE AND THE NEW YORK CITY CHARTER, 26 (2010), <http://www.hunter.cuny.edu/ccpd/repository/files/charterreport-angotti-2.pdf> [<https://perma.cc/67A4-ANVV>].

²⁴⁵ See *New York City's '197-a'*, *supra* note 197, at 62; see also discussion *supra* Section IV.A.

²⁴⁶ "[L]ack of funding; limited technical assistance and support from city government" are some of the reasons why 197-a plans are ineffective. JOCELYNE CHAIT, THE STATE OF 197-A PLANNING IN NEW YORK CITY (1998) [hereinafter THE STATE OF 197-A]. "These and other difficulties have led to a growing dissatisfaction with 197-a planning and reluctance on the part of some community boards and groups to enter into a long and arduous process that they feel is less and less worthwhile." *Id.* 197-a plans have no legal mechanism in the City Charter mandating funding for these community-developed plans. *Id.*

²⁴⁷ *Id.*

²⁴⁸ "The city's more disadvantaged communities, which perhaps stand to gain the most from 197-a planning, have an even greater need for funding because they cannot draw on the same level of technical expertise and financial resources that are present in more affluent communities." *Id.*

²⁴⁹ See Gans, *supra* note 63.

²⁵⁰ See *supra* Section IV.B.1.

the information and input gathered during the city-wide public engagement process to these targeted public hearings will help HPD “take into account [the] unique needs and sensibilities of various sub-areas.”²⁵¹ Further, “[this] participation can serve as an important vehicle for . . . gauging [a project’s] support or opposition, and providing a forum for civic activity on matters of immediate interest to city residents.”²⁵² The hearings should take the form of collaborative workshops and smaller discussion groups in order to inform residents about the current state of the plan and whether the original goals have been achieved. To maximize the accessibility of these sessions, they should be held in the evenings²⁵³ and HPD should be required to advertise, record, and archive these hearings on the online database. Furthermore, in addition to in-person meetings to gain feedback and to reach as many residents as possible in these active urban renewal areas, HPD and DCP should utilize similar digital participatory methods as mentioned in reference to the city-wide public engagement process.²⁵⁴

Part of the goal of these smaller-scaled public hearings is to inform and provide residents notice of the legal options they have regarding the expiration of the specific urban renewal plan at hand. Assuming these communities receive legal and technical planning assistance,²⁵⁵ the hearings will help residents living in an active urban renewal area decide whether the plan should be extended, modified, or allowed to expire. If residents choose to allow the plan to expire, property owners are “free to develop the property as of right²⁵⁶ consistent with the [New York City’s] [Zoning Resolution]”²⁵⁷ and any land use restrictions running with the property also expire.²⁵⁸ Residents should be alerted by HPD and DCP officials as to what specific land use restrictions expire within the urban renewal plan and who receives ownership of the properties. Additionally, the hearings should inform residents what actions they can take in light of a plan expiring, such as developing their own community-driven

²⁵¹ McFarlane, *supra* note 155, at 898.

²⁵² *Id.*

²⁵³ For example, these sessions will be in contrast to City Council and City Planning Commission public meetings, which are held in the morning, making it harder for citizens to attend. See *Commission Meetings*, N.Y.C. DEPT CITY PLAN., <https://www1.nyc.gov/site/planning/about/commission-meetings.page> [<https://perma.cc/9R9P-HFNB>]; *Calendar*, N.Y.C. COUNCIL LEGIS. RES. CTR., <http://legistar.council.nyc.gov/Calendar.aspx> [<https://perma.cc/2S2B-R3U8>].

²⁵⁴ See *supra* Section IV.B.1.

²⁵⁵ See *infra* Section IV.B.6.

²⁵⁶ See *supra* text accompanying note 24.

²⁵⁷ *Committee Report*, *supra* note 23, at 4.

²⁵⁸ See *supra* Sections I.B and II.

neighborhood plan,²⁵⁹ community benefit agreements with the underlying sponsor of the urban renewal plan,²⁶⁰ or community land trusts.²⁶¹ If, however, residents choose to allow an urban renewal plan to expire, yet wish for the new development to be consistent with current conditions, they “can appeal to the [City Planning Commission] to rezone the [urban renewal area].”²⁶² The process of amending the Zoning Resolution “to codify restrictions in the [urban renewal plan],” however, requires ULURP action and takes a considerable amount of time.²⁶³

Conversely, “[t]o prevent [the floor area ratio]²⁶⁴ and [land] use restrictions from lapsing at the end of an urban renewal plan,” residents may choose to “appeal to the [City Planning Commission] to extend the duration of” the original urban renewal plan.²⁶⁵ Urban renewal plans can also be amended to acquire and develop additional properties to either further the initial goals or modify the plan to current neighborhood needs.²⁶⁶ For example, the Edgemere community

²⁵⁹ *E.g.*, 197-a plan. See *supra* Section IV.A.

²⁶⁰ Community benefit agreements [CBAs] “are usually negotiated directly between the project developer and community representatives. Rather than containing terms between a developer and the local government, CBAs specify public benefits that a developer will provide in order to secure community support for . . . the proposed project.” Alejandro E. Comacho, *Community Benefit Agreements: A Symptom, Not the Antidote, of Bilateral Land Use Regulation*, 78 BROOK. L. REV. 355, 361 (2013).

²⁶¹ Abigail Savitch-Lew, *The NYC Community Land Trust Movement Wants to Go Big*, CITY LIMITS (Jan. 8, 2018), <https://citylimits.org/2018/01/08/the-nyc-community-land-trust-movement-wants-to-go-big/> [<https://perma.cc/ND9B-FB8R>] (“A [community land trust] is a nonprofit entity that stewards the housing or other buildings on its property by retaining ownership of the land—a unique ownership structure that advocates say help ensure the buildings remain permanently affordable. The model is also believed to promote democratic and community-driven decision making, with CLTs usually governed by a ‘tripartite board,’ in which one third of members are residents of the property itself, one third live in the surrounding neighborhood, and one third are other stakeholders like nonprofits, elected officials, or funders.”).

²⁶² *Committee Report*, *supra* note 23, at 4.

²⁶³ *Id.* at 5 (“If stakeholders do not start the ULURP process early enough, the [urban renewal plan] restrictions can lapse, opening a window for as-of-right development before the zoning text is amended.”). An example of a community trying to rezone a former urban renewal area is Community Board 3, encompassing the former Two Bridges Urban Renewal Area, trying to stop three large tower developments. See Ed Litvak, *Community Board 3 Is Poised to Join ‘Two Bridges’ Rezoning Campaign*, LO-DOWN (Oct. 19, 2017), <http://www.thelodownny.com/leslog/2017/10/community-board-3-is-poised-to-join-two-bridges-rezoning-campaign.html> [<https://perma.cc/498R-TQY3>] (“Rezoning can be implemented even after work begins on building foundations, but the applicants know they must move quickly if they’re going to stop the mega-towers.”).

²⁶⁴ See *supra* text accompanying note 238.

²⁶⁵ *Committee Report*, *supra* note 23, at 4 (“Extending the duration of the [urban renewal plan] will not automatically extend land use restrictions on properties that have already been disposed to sponsors. . . . [A] future amendment of the [plan] will only apply if the parties agreed at the time of sale.”).

²⁶⁶ For example, in 2004, HPD submitted an application to amend the Brooklyn Center Urban Renewal Area. See *Brooklyn Center*, URBAN REVIEWER, <http://www.urban>

in Queens collaborated with HPD and other non-profits in a series of public workshops to initiate an amendment to the Edgemere Urban Renewal Area Plan²⁶⁷ in light of Hurricane Sandy and the effects of climate change.²⁶⁸ The plan is to be revised in 2019 and “identifies community gardens as a strategy for communities to adapt to increased flood risk, and includes a community land trust as [a] strategy to facilitate long-term affordability and resilient stewardship.”²⁶⁹ The Edgemere plan illustrates how an urban renewal plan can be amended based on the needs of the twenty-first century. Additionally, if residents decide to keep an urban renewal plan active, without extending or amending its provisions, HPD should strongly encourage residents to evaluate the plan annually in light of changed circumstances. These in-depth public hearings exemplify not only the need for government involvement but technical planning assistance from agency officials, non-profits, and other community organizations in order to develop equitable strategies for the future of New York City’s urban renewal areas.

6. Technical Assistance and Community Planning Strategies

To facilitate the city-wide public engagement outreach and public hearings outlined above, in conjunction with the funding requirement, Local Law No. 40 should adopt a provision that requires HPD and DCP to provide joint city planning assistance to communities in urban renewal areas. Educating residents within urban renewal areas about legal and community-based planning strategies will finally disrupt the historical top-down approach of urban renewal planning²⁷⁰ and engage low-income residents who may lack access to resources

reviewer.org/#map=16/40.6902/-73.9867&plan=Brooklyn+Center&page=references.html [https://perma.cc/6XEC-YPZA].

²⁶⁷ *Edgemere*, URBAN REVIEWER, <http://www.urbanreviewer.org/#map=15/40.5973/-73.7747&plan=Edgemere> [https://perma.cc/HQZ8-H9K8].

²⁶⁸ See *Community Land Access*, *supra* note 218; N.Y.C. DEP’T HOUSING PRESERVATION & DEV., RESILIENT EDMERERE COMMUNITY PLAN (2017), <https://www1.nyc.gov/assets/hpd/downloads/pdf/community/resilient-edgemere-executive-summary.pdf> [https://perma.cc/HNA2-DRV4] [hereinafter RESILIENT EDMERERE].

²⁶⁹ *Community Land Access*, *supra* note 218; see also Nathan Kensinger, *A Long-Neglected Queens Neighborhood Grapples with the Effects of Climate Change in N.Y.C.*, CURBED N.Y. (Apr. 13, 2017), <https://ny.curbed.com/2017/4/13/15280808/climate-change-queens-edgemere-photo-essay> [https://perma.cc/TR5U-YPYS].

²⁷⁰ THE STATE OF 197-A, *supra* note 246 (“Community-based planning . . . provid[es] alternatives to traditional top-down or development controlled planning and decision-making and emphasiz[es] comprehensive, multi-sectoral approaches to complex and persistent urban problems.”).

and be constrained in a high-cost city.²⁷¹ The significance of this provision is exemplified in the problems of 197-a planning, which promotes citizen participation, “yet inexperience in collaborative problem solving and consensus building and in mediating competing interests has led to frustration, delays, and conflict within and among communities and between communities and city government.”²⁷² Moreover, while non-profits and universities can provide planning assistance to disadvantaged communities, “they are generally not around during the critical period after the plan has been adopted, to assist in promoting the plan, engaging in negotiations with city agencies and monitoring compliance.”²⁷³

To combat these inefficiencies, HPD and DCP should each have at least one city planner designated to each active urban renewal area. These planners should “act as interpreter, advisor, educator and representative of community interests.”²⁷⁴ Specifically, they should provide assistance during the city-wide engagement process and inform residents about the legal and planning options they have during the public hearings held in each active urban renewal area.²⁷⁵ These meetings should be open to any citizen but be directed toward the residents who live in the active urban renewal areas. In addition to providing presentations conveying information about future ownership structures, agreements, and the intricacies of New York City’s bureaucracies, the planners should embrace participatory digital technologies²⁷⁶ and conduct smaller-scaled collaborative workshops and meetings to allow for “more opportunities for citizen engagement, whether through formal public hearings, or through more informal planning workshops and charrettes.”²⁷⁷ These collaborative workshops can be modeled on the Edgemere Community Planning Initiative conducted by HPD and other City agencies, which involved local residents, elected officials, and community organizations.²⁷⁸ The Initiative consisted of “a four-phase planning process over the course of a year, including workshops, open

²⁷¹ *New York City’s ‘197-a’*, *supra* note 197, at 64 (“The lack of technical expertise is not as critical in higher-income neighborhoods that can draw on professionals to volunteer their time; low-income neighborhoods are at a distinct disadvantage.”).

²⁷² THE STATE OF 197-A, *supra* note 246. Community organizations and N.Y.C. community boards can be “understaffed and underfunded, and lack the technical expertise to develop a workable plan that complies with threshold standards.” *Id.*

²⁷³ *Id.*

²⁷⁴ *Citizen Participation*, *supra* note 1, at 593 (citation omitted).

²⁷⁵ See *supra* Sections IV.B.1 and IV.B.5.

²⁷⁶ See *supra* Section IV.B.1.

²⁷⁷ Salkin & Lavine, *supra* note 177, at 170.

²⁷⁸ See RESILIENT EDGEMERE, *supra* note 268.

houses, small group meetings, and questionnaires.”²⁷⁹ Likewise, assigning city planners to urban renewal areas will ensure these communities are adequately informed and not left behind as more urban renewal plans reach their expiration point.

CONCLUSION

Although the goals of notice and transparency are necessary and commendable considering the negative legacy urban renewal has for many New York City residents, Local Law No. 40 needs to be amended to be effective in the long term. Without specific participatory and legal protocols in place, such as increasing notice, mandating public outreach events, and providing technical planning assistance, this law will not assist residents in their efforts to fight out-of-scale development and maneuver the complex land use issues that arise when urban renewal plans expire.

While the implementation of Robert Moses-style mid-century urban renewal²⁸⁰ had many harmful consequences, urban renewal legislation and its subsequent land use restrictions can be utilized equitably and to residents’ advantage in high-cost, high-demand New York City. Rather than abolish the legal system in place, New York City should reevaluate how urban renewal is imposed and planned by actively engaging its citizens. Instead of using sweeping eminent domain powers to demolish areas arbitrarily designated as “blighted,” the City should encourage bottom-up, community planning strategies to counteract the negative effects of gentrification, promote affordable housing, and support sustainable design.

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²⁷⁹ *Id.*

²⁸⁰ *See supra* Introduction.

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