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Part II

How NYC dismisses business displacement and its impact on communities

PRATT CENTER FOR COMMUNITY DEVELOPMENT

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ABOUT THIS REPORT

This report is a companion to Pratt Center's 2018 *Flawed Findings Part I: How NYC's Approach to Measuring Residential Displacement Risk Fails Communities*.

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PRATT CENTER FOR COMMUNITY DEVELOPMENT

The Pratt Center for Community Development works for a more just, equitable, and sustainable city for all New Yorkers by empowering communities to plan for and realize their futures. As part of Pratt Institute, we leverage professional skills in urban planning, architecture, design and public policy to work on the ground with community-based organizations to challenge systemic inequities and advance sustainable development.

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1 EXECUTIVE SUMMARY

Neighborhood businesses are critical community assets, providing essential services, employment and entrepreneurial opportunities, and creating a sense of place, familiarity and security. They are fundamental to our basic conception of community and the city's urban fabric. Yet, New York City's sole tool to analyze business displacement—the NYC City Environmental Quality Review (CEQR) and the associated CEQR Technical Manual[1]—dismisses the intrinsic value businesses of all types contribute not only at the neighborhood level, but at the city level as well. Business turnover is an inevitable reality. While the periodic opening and closing of businesses is an inescapable fact of urban life, what communities find unacceptable is government intervention that leads to widespread displacement of companies that collectively form a core part of a community's identity, provide essential goods and services to area residents and workers, or form an ecosystem that adds vitality to particular business sectors.

Following the release of Pratt Center's 2018 companion report on residential displacement, we conducted a similar detailed evaluation of the way New York City evaluates indirect business displacement risk, defined in the Technical Manual as "the involuntary displacement of businesses or employees that results from a change in socioeconomic conditions created by the proposed project."[2] The Technical Manual requires three lenses of analysis: a) general business displacement due to increased property values/rents or other disruptive trends; b) displacement due to retail market saturation; and c) displacement due to adverse effects on specific industries.

FINDINGS

An analysis of the Technical Manual's guidance on how to conduct the displacement review explains why there have been no positive impact determinations: the methodology is so flawed and full of loopholes that arriving at a positive finding is virtually impossible. We identified 8 overarching flaws that break down into 5 main categories.

These flaws lead to inadequately informed decision-making, which fail to correctly identify the true cost of government action or opportunities for mitigation: for decision-makers who do not have the thorough, robust or accurate analysis they require to adequately weigh in on rezonings; for local residents and businesses that would otherwise have mitigation measures to offset real displacement impacts; and for the city as a whole.

• Eroding the meaning of displacement

1. **Because business relocation anywhere in the city is theoretically possible, displacement from a current location is not considered to be displacement.**
   After the analysis is complete, a major loophole remains to avoid a declaration of impact: if a business can move to another location, then there is not a negative impact. This dismisses the very real impacts of moving a business including breaking ties with a community, finding and building out affordable space, tending to employees changing transportation needs, and reestablishing an identity in a new location, among other challenges.

2. **All displacement is assumed to be legal.**
   By assuming all displacement is legal, the analysis overlooks the likelihood of tenant harassment, which is a major challenge for businesses in many sectors, including manufacturing, and particularly for immigrant-owned businesses.

• Failing to require metrics or other substantiation for conclusions

3. **EIS authors are given broad discretion in determining impact significance and which, if any, businesses are evaluated for potential displacement.** To determine impact, EIS authors are directed to decide whether businesses to be displaced provide products or services essential to the local economy, but do not include any guidance for the definitions of essential or local. A similar lack of guidance allows EIS authors to subjectively determine if a potentially displaced business has an important or substantial economic value to the city. If not, a finding of adverse impact can be avoided.

• Failing to regard the neighborhood by failing to describe the neighborhood

4. **Local businesses' value and contributions as defining elements of neighborhood character are ignored.**
   In previous iterations of the Technical Manual, the analysis had to include an evaluation on how business displacement would impact a neighborhood's character. Without this analysis, the impacts on neighborhood identity are overlooked.

5. **The impacts of breaking up industry clusters are not adequately analyzed.**
   Similar type businesses tend to locate near each other, creating competitive advantages. The guidance for evaluating clusters is limited to those businesses that do not provide comparable goods or services, the exact opposite of a cluster, and as a result this important aspect of business location is neglected.

6. **All customers are assumed to be the same, with little to no appreciation for how changes in price point or cultural preferences will impact businesses.**
   While the Technical Manual focuses on a company's ability to stay in a neighborhood in the face of rising real estate costs, it dismisses the notion that bringing a new residential population to the area with demographics different from the existing community will impact the viability of existing businesses.

• Divorcing impacts on businesses from impact on workers and economic policy

7. **The impact indirect business displacement has on employees barely figures into the analysis.**
   The Technical Manual does not consider how a change in employment mix can impact wages when bringing in new business sectors to a community.

• Ignoring potential disparate impacts by race or ethnicity

8. **The collective impact of these flaws masks disparate impacts on immigrants and people of color.**
   The Manual does not provide any guidance on analyzing impacts on immigrants and people of color, which ignores the added challenges these populations face, and overlooks the impact on specialized economies that cannot be easily replicated if dispersed.

RECOMMENDATIONS

A revised CEQR approach alone, which is limited to project-specific analysis, is not the sole answer to honestly addressing business risk and the effects major development has on communities, but it is one of several critical steps to tackling this urgent need. To reform CEQR and to advance more informed decision-making, Pratt Center recommends the following.

NYC should:

1. **Convene a Task Force of technical and economic development experts and other stakeholders to revamp the CEQR Technical Manual's approach to evaluating business displacement.**

2. **Conduct a citywide business existing conditions analysis and use it to inform economic development policy.**

3. **Undertake and support planning for commercial and industrial districts as part of any substantial rezoning.**

4. **Assess the success and value of the myriad of business assistance and relocation programs stemming from rezonings.**

2 INTRODUCTION

> **"New York City's vitality is often described through its businesses—the countless restaurants and specialty shops that can be patronized at any hour day or night; the storefront doors, signs and languages that change dramatically from one neighborhood to another; and the hustle and bustle of lunch time office workers in commercial districts and forklifts in industrial areas."**

New York City's vitality is often described through its businesses—the countless restaurants and specialty shops that can be patronized at any hour day or night; the storefront doors, signs and languages that change dramatically from one neighborhood to another; and the hustle and bustle of lunch time office workers in commercial districts and forklifts in industrial areas. NYC's sensory experience is intertwined with its business sector, which in turn drives peoples' and companies' ongoing attraction to live and operate here. Of course, the value of the city's economic sector has very real and practical merits as well—providing employment opportunities, capital investments, and tax dollars that the city relies on and supports via a range of strategies: direct subsidies to large employers to start or continue operations, detailed studies on the challenges and opportunities for specific industries to grow in the city, and various programs to support start-up and growing companies.

(Above) Industrial and manufacturing businesses tend to have lower barriers to employment and provide well-paying jobs but can be more space intensive.

(Left) The Downtown Brooklyn EIS acknowledged that the 2004 rezoning would directly displace 100 businesses, employing approximately 1,700 people, but ultimately concluded a finding of no significant impact for direct or indirect business displacement.

Yet, the City's only official way to calculate the risk of **business displacement—the involuntary movement of a business due to a condition beyond its control, such as rising real estate costs**—is through the City Environmental Quality Review (CEQR) process, which glosses over displacement pressure. In fact, Pratt Center's review of 14 recent environmental review documents completed under CEQR for major development projects over the past 15 years found no instance where it was determined there would be any significant impact on business displacement. The City concluded there would not be a significant impact even when the primary stated intent of the rezoning was to introduce new uses, such as in the Greenpoint-Williamsburg, Willets Point, and Jerome Avenue rezonings—a stunning finding.

In September 2018 Pratt Center released *Flawed Findings Part 1: How NYC's Approach to Measuring Residential Displacement Risk Fails Communities*, offering a detailed analysis of the City's process for evaluating residential displacement, and found numerous methodological flaws, which both undermined informed decision-making and placed additional unnecessary burdens on communities seeking equitable outcomes. Herein we do a comparable examination of how the City evaluates business displacement, similarly concluding that the approach fails to effectively measure risk,

New York City's 2017 plan to rezone Inwood was met with strong opposition by residents and business owners. Photo by Adi Talwar, courtesy of City Limits.

> **“If the underlying methodology to evaluate economic impacts is flawed, which is currenty the case, then an honest evaluation of both the risks and benefits will not occur.”**

leaving communities, including their small businesses, to unfairly bear the burden of a project's impact on its economic and employment base. Certainly, not all development has a negative impact on a neighborhood's economy. Communities previously underserved by quality goods and services can benefit directly from greater choice and access to new businesses, such as grocery stores offering fresh produce, when few such stores previously existed. However, if the underlying methodology to evaluate economic impacts is flawed, which is currently the case, then an honest evaluation of both the risks and benefits will not occur.

Alarm about business displacement has been raised time and time again. Most recently, Northern Manhattan Not For Sale, a coalition of community advocates in Inwood, sued the City over claims there was inadequate analysis on residential and business displacement; the court has since annulled the rezoning. Additionally, community coalitions organized in response to the de Blasio Administration's other *Housing New York* rezonings, and others including United for Small Business NYC have expressed deep concern for their local business community and the jobs for local residents that companies provide. As residents confront rising housing costs, they also encounter the impact of losing income if their place of work is, or their customers are, displaced as well. The plight of small businesses in the city is well documented,[3] and while there is an underlying acceptance that business turnover is a natural part of the economic cycle, interest in creating more equitable leasing practices and small business support policies has grown considerably in recent years. After decades of advocacy and multiple attempts at designing policy solutions to stave off the impacts of rising real estate values on local businesses that are both beloved and a source of jobs and upward mobility for local residents, especially in ethnic, immigrant, and working-class neighborhoods, the New York City Council is once again considering commercial rent legislation to provide small businesses with some protection against unsustainable rent increases.

A major obstacle to the development of sound policy is the absence of data on the problem (the recently approved legislation to require a retail vacancy database is a step in the right direction). Businesses fail for a number of reasons, including those unrelated to development: poor management, lack of capital, and insufficient market demand, for example. In a high cost environment such as New York City, the ability to find and maintain affordable, quality space to operate a business is a major hurdle. While the City has conducted numerous studies on particular sectors over the years, there has never been a comprehensive analysis conducted on business displacement risk and the types of programs and policies required for New York City to remain competitive and attractive to business investment.[4] As this report details, CEQR could be an important source for some of this information, but as currently designed and implemented it is woefully inadequate to address these important issues.

Food manufacturing businesses, which remain a critical source of jobs in the city, must increasingly compete for space with non-industrial businesses, even in areas zoned for manufacturing.

3 UNDERSTANDING THE PROCESS FOR MEASURING INDIRECT BUSINESS DISPLACEMENT

As detailed in *Flawed Findings Part I,* zoning and land use decisions in New York City are managed through the Uniform Land Use Review Procedure (ULURP), a City Charter-mandated process that requires review by community boards, borough presidents, the City Planning Commission, the City Council, and the Mayor. Each project must also go through the City Environmental Quality Review (CEQR) process, which requires and sets basic guidelines for evaluating and disclosing a project's environmental impacts, including direct and indirect residential displacement and direct and indirect business displacement. While both direct and indirect business displacement are important areas of analysis, here we focus on indirect as it has the tendency to impact a much larger number of businesses.[5] CEQR does not culminate in an approval or rejection of a project—it is a process for evaluating and disclosing impacts—but is intended to inform the public and ULURP's decision-makers of a proposal's impacts. Most importantly, for projects that are deemed to have significant adverse impacts, the law requires potential mitigation measures to be listed; funding and implementing mitigation measures, however, are not part of CEQR.[6]

The first step in CEQR is an Environmental Assessment, a cursory examination after which the Lead Agency—typically the NYC Department of City Planning (DCP) in the case of area-wide rezonings—makes a determination of impact. If, in the agency's best judgment, the project will not result in a significant impact, it makes a negative declaration and the environmental review ends, as was the case with the recent Garment Center rezoning. If the agency decides a significant impact may occur or additional review is needed, it makes a positive declaration. Following a positive declaration, a project must undergo a more extensive analysis and produce an Environmental Impact Statement (EIS). EISs are long, technical documents detailing 19 areas of potential impact—from health and transportation to sanitation and socioeconomic conditions. Both residential and business displacement impacts are addressed in the socioeconomic conditions chapter of an EIS.

To assist applicants and the lead public agency in writing EISs, the City developed a companion CEQR Technical Manual in the early 1990s that details specific methods for evaluating the various areas required for review. Since that time, the Technical Manual has been updated several times, including changes to the displacement assessment methodology. EISs are most frequently prepared by consultants contracted by the lead agency who refer to the guidance of the most current CEQR Technical Manual to inform the methodology. The last update of the Manual was completed in 2014. City agencies are currently working on another update to the Technical Manual. However, there has been little to no public communication about this process, the changes under consideration or the timing for release.

The CEQR Technical Manual defines indirect business displacement as "the involuntary displacement of businesses or employees that results from a change in socioeconomic conditions created by the proposed project."[7] CEQR does not seek to determine if business displacement has already occurred. Rather the CEQR Technical Manual lays out a specific methodology for determining whether a proposed project will result in a significant impact related to business displacement. Specifically, the Manual states, "the objective of the CEQR analysis is to disclose whether any changes created by the project would have a significant impact compared to what would happen in the future without the project."[8] EIS authors are advised to move through three major phases, each one requiring a more detailed understanding of the area's socioeconomic conditions: Pre-Assessment, Preliminary Assessment, and Detailed Analysis (see Figures 1-4).

The same methodology applies to retail, service, and industrial businesses alike, despite the vastly different operating conditions of these sectors. Unlike the direct business displacement analysis and the direct and indirect residential displacement analyses, it is noteworthy that the current outcome of the indirect business displacement analysis does not require a quantifiable number of vulnerable businesses, but instead, a subjective, qualitative determination of significance. Without any quantifiable metrics, it is much easier to dismiss potential impacts and justify findings of "no significance."

The Technical Manual provides guidance for each of the three environmental review phases as described below.

PRE-ASSESSMENT

The guidance for the Pre-Assessment stage is the most definitive, with the majority of the questions direct and straightforward. During this step, if the EIS authors answer "yes" to any of the following scenarios, a preliminary assessment would be required:

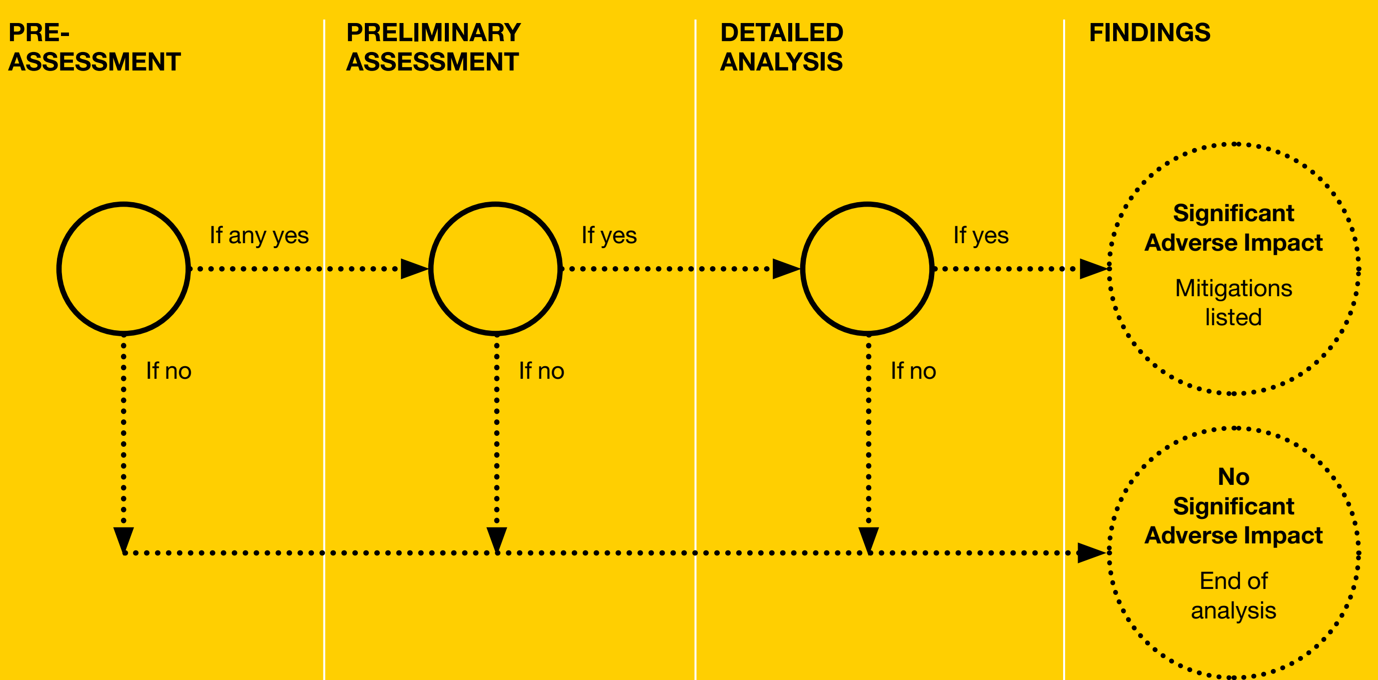
- More than 500 residents or 100 employees would be displaced by the project
- The project would create 200 residential units or more than 200,000 square feet of commercial development
- The project would add more than 200,000 square feet of retail on a single site or more than 200,000 square feet of regionally serving retail across multiple sites
- The project would displace a business that is "unusually important"[9] because its products or services are dependent upon its location, are the focus of a public plan or policy to preserve the business, or serve a population that is uniquely dependent on its services in its present location. It is important to note that no further guidance or metrics are provided to define "unusually important" in this context.
- The project is expected to affect conditions within a specific industry

Despite the clarity and the specificity of these conditions, the Technical Manual introduces a major loophole to contravene them, adding that these thresholds may be too high or too low depending on the project and therefore can be overridden at the discretion of the lead agency.[10] If this loophole is employed, or if none of the conditions detailed above are met, analysis ceases and this limited inquiry results in a finding of no significant impact.

Figure 1

Major Steps in Impact Analysis

This process is repeated for A. General Business Displacement, B. Retail Market Saturation, and C. Adverse Effects on Specific Industries



PRELIMINARY ASSESSMENT & DETAILED ANALYSIS

Following the Pre-Assessment, the methodology for Preliminary Assessment calls for dividing potential indirect business displacement into three categories:

a) general business displacement due to increased property values/rents or other disruptive trends;
b) displacement due to retail market saturation; and
c) displacement due to adverse effects on specific industries.[11]

From this stage forward, each of these categories is considered separately, with the possibility of having a finding of significance for one, two, three or none of the categories. Consequently, one category can move on to the Detailed Analysis stage while for others review ends at the Preliminary Assessment stage. The steps to move from one stage to the next for each of the three categories are described below.

Although there are three different types of potential analyses, not all types of businesses are eligible for consideration of displacement risk. Strikingly, for both the a) General Business Displacement and c) Adverse Effects on Specific Industries, the Technical Manual instructs EIS authors to only consider a subset of businesses in their analyses. Section 321.2 of the Technical Manual describes these businesses, referred to hereafter as "Priority Businesses"[12] as:

- Businesses that provide products or services that are deemed essential to the local economy that would no longer be available in its trade area. "Trade area" can be defined as the project study area or a much broader geography,[13] despite the fact that a project study area is often delineated with no correlation to a business's trade area, and the larger geography that may get selected similarly has no rational link to a business's trade area.

- A business in a category that is subject to a regulation or public policy to protect or enhance it. The Manual offers as an example industrial businesses located in an Industrial Business Zone being displaced by the development of a non-industrial use.[14]

If a business is not considered a Priority Business then according to the Manual, a project's impact on that business is deemed inconsequential and does not have to be either evaluated or mitigated. The determination of whether a business is considered a Priority Business or not is largely subjective despite the fact that the entire analysis hinges on this determination. This serves as a major loophole in many EISs: an EIS may acknowledge the potential for indirect business displacement but because the businesses at risk are not deemed Priority Businesses, an adverse impact is not considered. None of the EISs reviewed for this report identified any Priority Businesses, illustrating the ineffectiveness of this caveat and how completely this restricted approach prevents a finding of adverse impact.

> **"If EIS authors claim a business is not a Priority Business then a project's impact on that business is deemed inconsequential and does not have to be evaluated or mitigated. None of the EISs reviewed for this report identified any Priority Businesses."**

A. GENERAL BUSINESS DISPLACEMENT

Preliminary Assessment

The objective of the General Business Displacement[15] Preliminary Assessment is to determine whether the proposed project may introduce trends that make it difficult for Priority Businesses to remain in the area. The Manual articulates two scenarios to evaluate: increased real estate costs and disruption in business networks.

For the first, the Manual states that indirect business displacement occurs when a project would "markedly increase property values and rents throughout the study area, making it difficult for some categories of businesses to remain in the area."[16] The addition of the word "markedly" opens up the opportunity for subjectivity and manipulation as no quantitative metric to define "markedly" is provided.

The second scenario to evaluate is if a project directly displaces a use that area businesses rely on for their operations or if the project displaces the customers of area businesses. If the assessment reveals the potential for either of these trends for Priority Businesses, a detailed assessment is required. If not, the analysis for General Business Displacement ends in a finding of "no significant impact."

Detailed Analysis

While the Preliminary Assessment (the previous stage) acknowledges disruption in business networks as a potentially harmful trend that could lead to displacement, the Detailed Analysis stage has no guidance on how to evaluate this scenario. Presumably EIS authors are encouraged to devise their own approaches to determining impacts, or are not actually encouraged to examine this consequence, calling into question the efficacy of it being mentioned in the Preliminary Assessment. In contrast, the Manual's Detailed Analysis section does provide some guidance on determining impacts related to increased property values and rents.

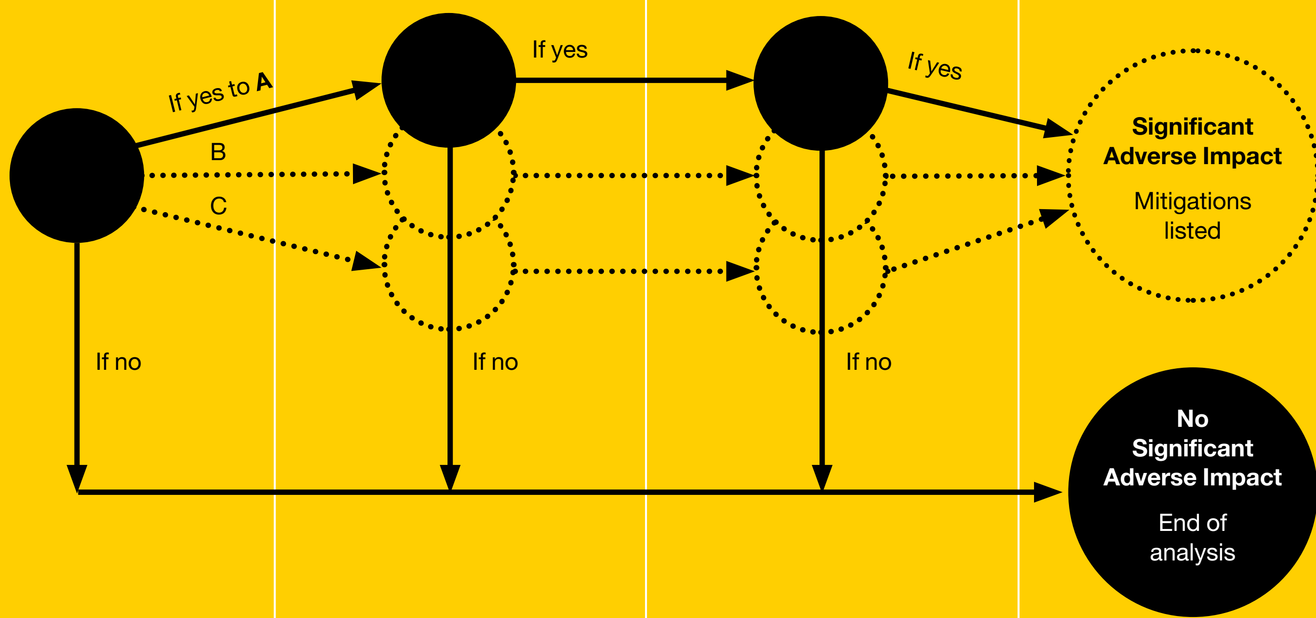
The indicated purpose of the Detailed Analysis is to determine if a project would increase property values for a vulnerable category of Priority Businesses and whether relocation opportunities exist for those firms.[17] The Manual outlines a multi-step process to describe the study area's economic conditions in order to identify categories of businesses that would be at risk of displacement if property values and rents were to rise. Ultimately, EIS authors are charged with a highly subjective task: to "determine whether the business to be displaced has an important or substantial economic value to the city."[18] There are no thresholds, metrics, or other criteria provided to define "important" or "substantial" except to consider who the businesses' customers are and whether similar products would continue to be available to them, but not who the owners and employees are and whether job opportunities are generally available to them.

The last step is to compare the study area with and without the project and determine if the project would raise property values or rents to an extent that would make existing businesses vulnerable to displacement. However, a significant adverse impact is possible only if those found vulnerable are considered Priority Businesses *and* "could not be relocated within the trade area or the City."[19] By adding "or the City" into the requirements for determining impact, the Technical Manual opens up another major loophole as proving a business could not move somewhere in the five boroughs is extremely difficult, if not impossible.

Figure 2

A. General Business Displacement

PRE-ASSESSMENT | **PRELIMINARY ASSESSMENT** | **DETAILED ANALYSIS** | **FINDINGS**



A
Will the project displace 500+ residents, 100+ employees, or unusually important business?

Will the project increase property values or exacerbate other trends, making it difficult for Priority Business to stay?

- **Create economic profile**
- **How do regulations affect economic base?**
- **Do services/ buildings exist to support businesses at risk?**
- **Describe operational and financial character of vulnerable businesses**
- **Determine if vulnerable business have important value to the city**
- **Describe Future No Action**
- **Describe Future With Action**
- **Will project impact priority businesses, and is relocation in the city not possible?**

B. RETAIL MARKET SATURATION

Preliminary Assessment

The Retail Market Saturation analysis is decidedly different than the General Business Displacement evaluation, focusing on a project's potential to draw sales from existing retail establishments, which has the potential to cause storefront "vacancies and disinvestment on neighborhood commercial streets."[20] The analysis is not concerned with an individual business's ability to stay in operation (that would fall under the General Business Displacement analysis) but rather reviews the study area's potential to support new retail without jeopardizing existing retail uses collectively. The Technical Manual asserts upfront that market saturation is rare in New York City, claiming that the city's large population can usually absorb an increase in retail uses without impacting the existing retail real estate market.[21]

The Preliminary Assessment lists eight steps for conducting a "retail capture rate" analysis that divides the project's projected sales volume by the amount of money available from residents in the study area to buy goods (known as the area's "purchasing power"). If the resulting capture rate (i.e., the amount of purchasing power that could be captured by the additional retail contemplated by the project) exceeds 100 percent, a Detailed Analysis is warranted. If not, the analysis for retail market saturation ends in a finding of "no significant impact." The Technical Manual does not include any guidance for accounting for a percent of an area's purchasing power that is spent on online shopping. It is important to note that in the process for calculating a "retail capture rate" there are several subjective decision points—from the definition of the study area to the definition of sales volume—that can significantly affect the calculation leading to a result of less than 100 percent, therefore ending the analysis.

Detailed Analysis

The Detailed Analysis section concentrates on the potential for overlap between a project's proposed retail anchors and existing retail establishments in the area to determine if there is duplication that could lead to storefront vacancies. EIS authors are directed to construct profiles for existing stores that provide goods similar to those that will be part of the proposed project, and to assess whether the proposed project would result in decreased shopper traffic on neighborhood commercial streets. The Manual lists three criteria for the likelihood of decreased shopper traffic:

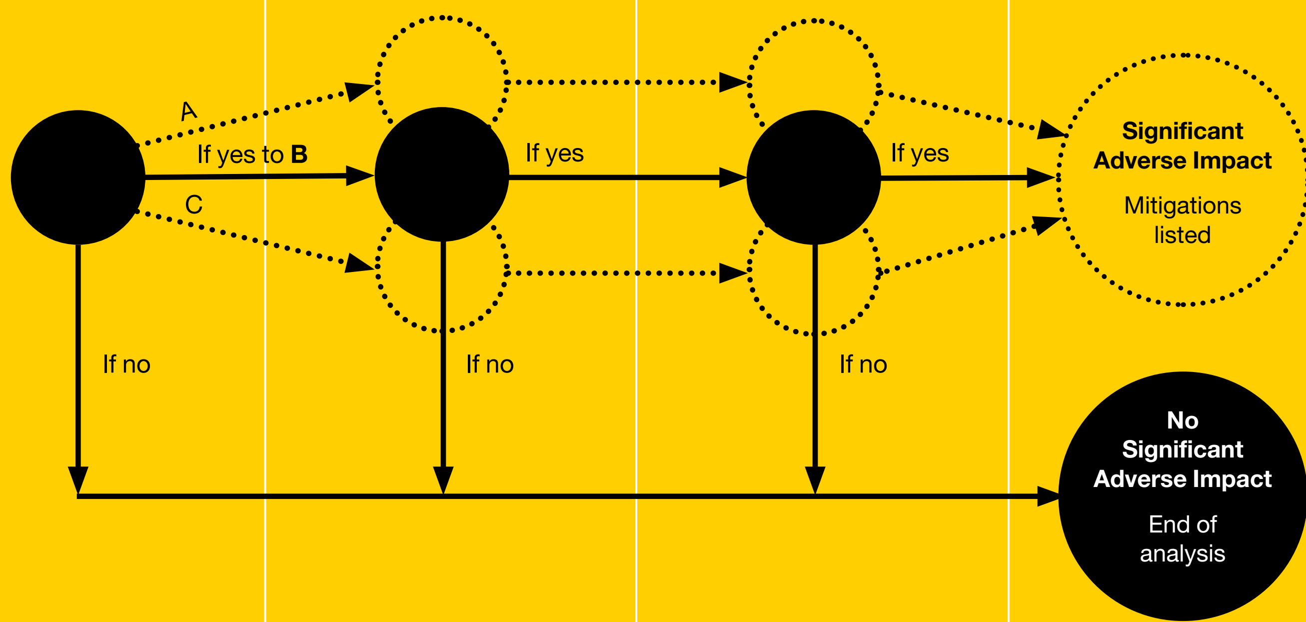
- the proposed stores could affect the ability of existing stores to have sufficient sales to stay in operation;
- the existing stores that would potentially close currently draw a large share of shopper traffic to the neighborhood commercial strips, or the street has a concentration of stores selling the relevant type of products; and
- limited demand is expected for retail tenants due to purchasing power in the trade area.

All three criteria must be met in order to declare a finding of significant impact. If only one or two of these conditions hold, the Manual says a finding of significant impact should not be declared.

Figure 3

B. Retail Market Saturation

PRE-ASSESSMENT | **PRELIMINARY ASSESSMENT** | **DETAILED ANALYSIS** | **FINDINGS**



B
Will the project introduce over 200,000 sq. ft. of...
(a) new commercial?
(b) regional serving retail?
(c) retail across multiple sites?
(d) any retail on one site?

Does retail capture analysis result in capture rate exceeding 100%?

- **Create economic profile**
- **Profile existing retail overlap with project anchors**
- **Describe Future No Action**
- **Describe Future With Action**
- **Will new anchor stores impact ability of similar stores to remain in operation?**
- **Will new stores divert shopper traffic?**
- **Will there be limited demand for retail tenants based on purchasing power?**

C. ADVERSE EFFECTS ON SPECIFIC INDUSTRIES

Preliminary Assessment

The third category of analysis examines a project's potential to "affect the operation and viability of a specific industry."[22] Here the analysis refers to "industry" as a particular type of business and not necessarily an industrial sector, such as manufacturing or transportation. Similar to the retail saturation category, this section does not look at impacts to any individual businesses but assesses impacts to specific categories of businesses as defined by the North American Industry Classification System (NAICS) codes. At first, the Manual seems to set a firm bar against ending the analysis here by saying that if EIS authors cannot state with a clear "no" that a project would not significantly affect business conditions, substantially reduce employment, or impair the economic viability of any industry, a Detailed Analysis is required.[23] But because the Technical Manual declines to define the standard for clearing this bar by providing specific thresholds or quantitative metrics for making these determinations, ultimately, it is at the subjective discretion of the EIS authors to make these judgments.

Detailed Analysis

The guidance for this section centers on developing an understanding of the relationship between the proposed project and potentially vulnerable categories of businesses. According to the Manual, a finding of significant impact is possible if the "operating conditions" of a Priority Business category are impaired, and that category could not continue operating within the city.[24] The direction for this analysis is sparse and leaves much to the subjective interpretation of EIS authors.

To gain greater clarity about how this guidance was applied in practice we turned to our review of several EISs. Curiously, we found that commonly EIS authors performing analysis in this section only examine the impact of the businesses that will be directly displaced and do not consider a much broader set of impacted companies. For example, in the EIS for East New York, the analysis on Adverse Effects on Specific Industries focuses on the 88 businesses that would be directly impacted by the project but does not consider the larger, indirect impact on a wider number of auto-repair companies.[25] However, since the EIS for East New York concluded that there would not be any significant indirect business displacement (just as all of the EISs we reviewed for this study), theoretically only directly impacted businesses would need to be assessed for this part of the analysis.

Here too, the final conclusion rests on whether the businesses in question are considered Priority Businesses or not and can move anywhere else in the city. For example, in the Jerome Avenue rezoning, where EIS authors in this section recognized the larger universe of auto repair companies that could be displaced (including from indirect displacement), a finding of significance was avoided because first, the directly displaced businesses were dismissed as not falling under the Priority Business definition and second, the indirect businesses representing "six percent of employment within the industry in the Bronx [are] expected [to] relocate within the City [sic], potentially in other auto-related clusters."[26] As a result, no finding of significance is concluded and therefore no mitigation strategies are required.

Figure 4

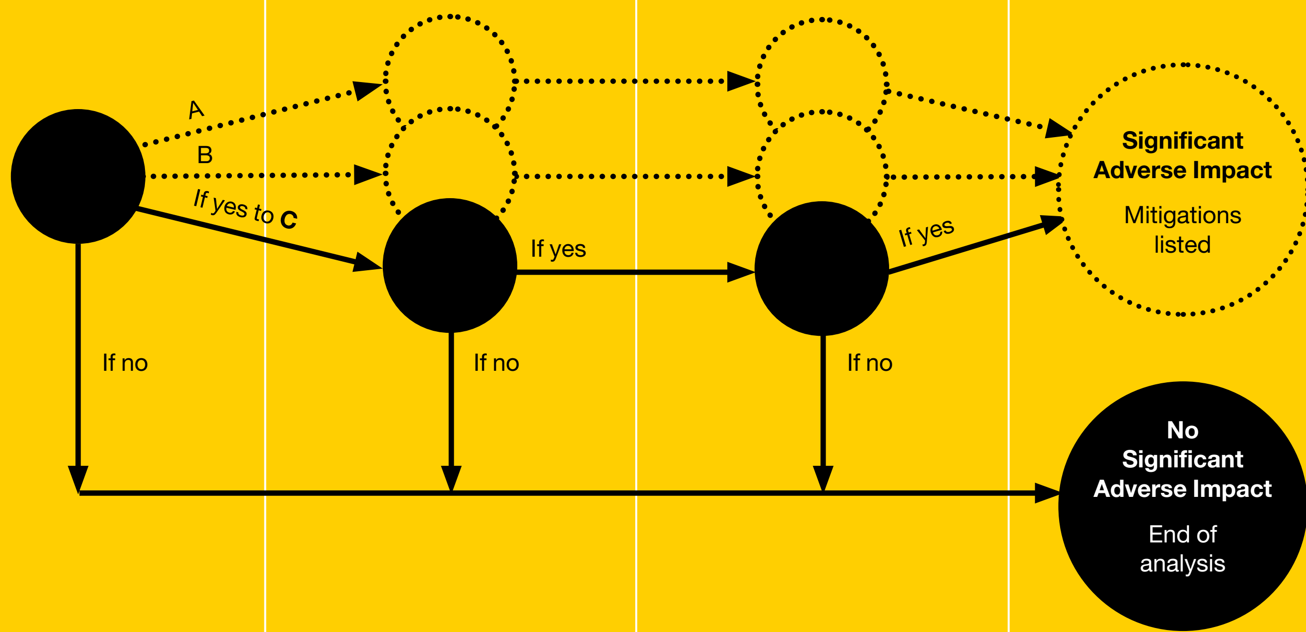
C. Adverse Effects on Specific Industries

PRE-ASSESSMENT

PRELIMINARY ASSESSMENT

DETAILED ANALYSIS

FINDINGS



C
Will the project impact a specific industry?

Would project significantly impact (substantially reduce employment or impair viability of) any industry or category?

- **Describe relationship between project and vulnerable category**
- **Describe Future No Action**
- **Describe Future with Action**
- **Will project impact priority business' operations, and is relocation in the city not possible?**

MITIGATION

> **For any mitigation measures to be included in an EIS, a finding of significance must first be declared—a conclusion that was not found in any of the EISs we reviewed.**

If a finding of significant adverse impact is declared, potential mitigation measures are required to be listed—that is, written into the text of the document; funding and implementing mitigation efforts are not part of CEQR.[27] CEQR requires that actions be taken to mitigate, but not necessarily avoid, impacts. There is also no requirement that the mitigations enacted are proportional to the scale of the impact. However, illustrative mitigation measures recommended in the Manual are quite substantive, and if they were listed and then enacted could offset some impacts. For General Business Displacement, potential mitigation includes "enactment of regulations and policy to preserve affordable space and providing relocation assistance, including repayment of moving expenses." For Retail Market Saturation, mitigation options include funding for commercial revitalization efforts and business attraction programs. For Adverse Effects on Specific Industries, the mitigation examples include financial assistance to reduce operating costs and lifting regulations.[28] However, for any of the mitigation measures to be included in an EIS, a finding of significance must first be declared—a conclusion that was not found in any of the EISs we reviewed.

Industrial properties in Gowanus are slated to be rezoned for mixed (manufacturing-residential) use in 2020. Residential uses are dramatically more lucrative to property owners, leaving them with very little incentive to preserve or create new industrial space once a use change is allowed.

The amount of land available for critical industrial activities has dropped precipitously in recent years.

Even if an EIS does not have a positive finding, mitigation measures are often the subject of stakeholder advocacy and last minute negotiations in the land use review (ULURP) process. Examples include the creation of an industrial relocation fund for displaced Greenpoint-Williamsburg companies and retraining grants for Jerome Avenue auto firms. The funding sources and planning for these mitigation efforts are often considered outside of the formal rezoning action.

The Garment Center is another example where extensive advocacy led to the addition of mitigation measures outside of the environmental review when the City proposed to lift special zoning restrictions protecting apparel manufacturing, resulting in a tailored tax abatement program and the potential for capital funding for newly created industrial space. Ironically, the current Technical Manual references the old Garment Center Special District as an example of a potential mitigation measure for indirect business displacement. When describing mitigation measures to consider for General Business Displacement such as enacting regulations or policy, the Technical Manual states: "For example, the Special Garment Center District zoning requires the preservation of space for manufacturing users in the event of conversion to office uses in an effort to limit displacement of industrial businesses."[29]

4

HOW THE TECHNICAL MANUAL FAILS TO ADEQUATELY ANALYZE INDIRECT BUSINESS DISPLACEMENT

Neighborhood businesses are critical community assets, providing essential services, employment and entrepreneurial opportunities and creating a sense of place, familiarity and security. They are fundamental to our basic conception of community and the city's urban fabric. Yet, the CEQR Technical Manual's guidance for analyzing indirect business displacement dismisses the intrinsic value businesses of all types contribute not only at the neighborhood level, but at the city level as well. Commercial turnover is an inevitable reality. While the periodic opening and closing of businesses is acceptable as a fact of urban life, what communities find unacceptable is widespread displacement of companies that collectively form a core part of a community's identity, provide essential goods and services to area residents and workers, or form an ecosystem that adds vitality to particular business sectors.

When reading the socioeconomic chapter of an EIS, readers view numerous tables, charts, and maps illustrating what appears to be thorough and objective analysis. However, a close review of the Technical Manual's guidance on how to evaluate displacement clearly shows that a finding of significant adverse impact is virtually impossible to declare, given that the criteria for such a finding are set in a way that no project would ever meet them. In fact, as we report in the following chapter, a review of 14 EISs conducted over the past 15 years shows that there has not been one instance where a project was found to have a significant adverse impact on indirect business displacement. This is true even when the intent of the rezoning is to change the area uses and streetscape, such as in the case of Willets Point and Jerome Avenue.

The main problems with the Manual's methodology are summarized in 8 flaws that we have broadly grouped into 5 categories. Together, these flaws lead to poor decision-making and missed opportunities to mitigate business distress and job losses.

- **Eroding the meaning of displacement**
- **Failing to require metrics or other substantiation for conclusions**
- **Failing to regard the neighborhood by failing to describe the neighborhood**
- **Divorcing impacts on businesses from impact on workers and economic policy**
- **Ignoring potential disparate impacts by race or ethnicity**

• ERODING THE MEANING OF DISPLACEMENT

1. Because business relocation anywhere in the city is theoretically possible, displacement from a current location is not considered to be displacement.

The Technical Manual's guidance evades a finding of significance by preserving the finding only for Priority Businesses that cannot relocate somewhere in the city. The Technical Manual assumes that because a business has a legal right to move to a new location within the five boroughs, relocation is therefore possible, so displacement is not a potential impact that deserves redress. Essentially, it changes the common-sense meaning of displacement to make an argument that having to move will not impact business success. This not only changes the meaning of the word but makes an assumption that is problematic for several reasons.

First, it dismisses the notion that many businesses are directly tied to the community they serve because of customer base, employee base, or both, and in some instances because they serve other area businesses as well. Second, it disregards one of the most basic features of successful economic configurations, which is the clustering of related types of companies in proximity to each other and other locational assets such as specialized schools and financial institutions. The natural clustering that occurs generates value and increases competitiveness. The competitive advantage of clustered industries could only be replicated if all (or most) of the companies moved to the same new area. Third, it disregards how disruptive an attempt at relocating is for a business. Finding and building out new space, tending to employees' changing transportation needs, disrupting cash flow, and reestablishing an identity in a new location takes a major toll on businesses, one that most companies, especially those that serve lower-income, immigrant, and communities of color, or are owned by entrepreneurs who experience a racial wealth gap, cannot endure. Fourth, while businesses can potentially move to a new site in a properly zoned area, there is simply no guarantee that a displaced business will be able to find a suitable new home. There are numerous factors that a business must take into consideration when searching for a new location, including space affordability, transportation access, and myriad operational needs. **The assumption that a legal right to relocation renders displacement irrelevant is not just a problem, it is also a complete fallacy.**

For industrial companies the challenges of relocation are particularly significant, as the amount of land available for industrial activities has dropped precipitously in recent years. Between 2009 and 2015, there was a decrease of 10 million square feet of land zoned as C8 (a zoning district that allows auto repair) and a decrease of 98 million square feet of land zoned as M (a zoning district that allows manufacturing and industrial uses, which are tremendously space-intensive activities). Today, C8 zones represent only 1% of available land in NYC and M zones only 14%.[30] Nonetheless, the findings of the General Business Displacement and Adverse Effects on Specific Industries analyses hinge on the ability of a potentially displaced business to relocate. The logic conveyed by the Technical Manual says that if a business can legally relocate—i.e. if there are any areas in the city also zoned for the displaced use—there is no adverse impact.

Adding to this high bar is that each land use action is evaluated independently, even if multiple actions are pursued in close succession as was the case of rezoning industrial and automotive areas in East New York and Jerome Avenue where the decrease in available land from one action was not considered in the other. After Willets Point and East New York, Jerome Avenue was the third rezoning targeting an area with a large number of auto repair uses. The East New York rezoning (2016) concluded that those businesses could move elsewhere and as such it found that there would be no significant impact. It is more than likely that the Jerome Avenue rezoning (2018) was already under consideration during the East New York rezoning. While the very low standard (the availability of any relocation option anywhere in the city) would have prevented a finding of significant impact, the failure to acknowledge the cumulative impact—the potential rezoning of Jerome and the further shrinkage of relocation options—undermines informed decision-making and the extent of the challenges that would have confronted the auto-related businesses in both East New York and Jerome Avenue. While evaluating cumulative impacts may not be appropriate for every environmental review, a supplemental analysis should be conducted as needed.

By not addressing the cumulative effects of similar actions, impacts are masked. Without at least the acknowledgment of cumulative impacts, **a finding of significant adverse impact would arguably only be possible if the area under review was the last remaining zoning district in the entire city legally zoned for potentially displaced businesses. This false logic was applied in every EIS we reviewed for this study.**

2. All displacement is assumed to be legal.

The Technical Manual states, "in keeping with general CEQR practice, the assessment of indirect displacement assumes that the mechanisms for such displacement are legal."[31] Similar to a major flaw in the residential displacement analysis, here too this important statement showcases a blanket refusal to acknowledge the displacement of businesses through either explicitly illegal or legally ambiguous means, including tenant harassment.

In recognition of this practice, in 2016, New York City passed the Non-Residential Tenant Harassment Law to protect commercial and industrial tenants from unfair practices ranging from threats to unnecessary construction or repairs that interfere with business operations, and additional anti-harassment legislation recently passed. Harassment remains a major challenge for businesses in many sectors, including manufacturing, and particularly for immigrant owned businesses: according to a recent survey of immigrant owned businesses by the Association for Housing & Development, 40% reported instances of landlord harassment.[32] As rents rise in an area, there is an incentive for landlords to remove lower-paying tenants to attract higher paying commercial tenants or convert industrial to residential or commercial uses, if the zoning allows. These practices are known to occur throughout the city, particularly in neighborhoods undergoing rapid change. Yet the Manual fails to require any analysis of how a proposed project may exacerbate these trends and fuel further indirect displacement.

Between 2009 and 2015, there was a decrease of 10 million square feet of land zoned as C8 (a zoning district that allows auto repair). Today, C8 zones represent only 1% of available land in NYC.

• FAILING TO REQUIRE METRICS OR OTHER SUBSTANTIATION FOR CONCLUSIONS

3. EIS authors are given broad discretion in determining impact significance and which, if any, businesses are evaluated for potential displacement.

Much of the indirect business displacement analysis is qualitative, and the Manual fails to require metrics for important components of the evaluation. Two of the most egregious examples can be found in the process for defining Priority Businesses at the start of the analysis and determining the importance of a company's products or services at the end of the analysis. When defining Priority Businesses—the definition that guides all subsequent analysis—EIS authors are directed to decide "whether the businesses to be displaced provide products or services *essential* to the local economy" (emphasis added).[33] There is no objective test required by the Manual to determine if a business or its products or services are "essential" nor a definition of "local"—is it the neighborhood? The Study Area? The borough? The city? The larger the scale, the less likely they will be deemed important. Nonetheless, if the EIS authors state that a particular business or type of business is non-essential, then that business or type is found to not be a Priority Business, and no further displacement risk analysis is required. **In all 14 EISs reviewed for this report, no business met the definition of a Priority Business according to the EIS's author.**

In the final stage of the Detailed Analysis, EIS authors must again make a very subjective determination regarding "whether the business to be displaced has an *important* or *substantial* economic value to the city" (emphasis added).[34] Once again there are no metrics, criteria, or other thresholds to guide the assessment, a critical omission given how influential these determinations are to the final finding of significance. None of the reviewed EISs made this determination. Some of the older EISs we reviewed did provide back-up data to substantiate their claims, but their use of data was not robust. Even when data was provided, the lack of a threshold metric for evaluating that data opened the door for EIS authors to subjectively determine what was important and what was not. For example, the Willets Point EIS did not acknowledge the impact on what was then 17% of all auto-related businesses and jobs in Queens.[35] Some may argue 17% is substantial; others, such as the EIS authors, implied it was not and concluded there would be no significant impact to business displacement as a result.

More recent EISs, such as those for the East New York and Downtown Far Rockaway rezonings, simply state that local businesses do not provide essential services and substantial economic value to the city.[36] There is no data—quantitative or qualitative—presented to substantiate the assertion, automatically converting it to a finding. As such, readers are expected to take the EIS authors' assessment of these important facts at face value.

• FAILING TO REGARD THE NEIGHBORHOOD BY FAILING TO DESCRIBE THE NEIGHBORHOOD

4. Local businesses' value and contributions as defining elements of neighborhood character are ignored.

The CEQR Technical Manual is periodically updated; changes to it reflect revised priorities and interpretations related to development. Interestingly, the 2001 version of the Manual directed EIS authors to consider "if the business or institution defines or contributes substantially to a defining element of neighborhood character" when evaluating the potential for indirect displacement.[37] Neighborhood character was broadly defined in that version as "an amalgam of the various elements that give neighborhoods their distinct 'personality'."[38] The intersection of residential demographics, cultural preferences, and local businesses are commonly acknowledged as elements of neighborhood character and identity outside the CEQR framework, and the inclusion of this concept in an earlier version was at least a nod to the lived experience of people in the city.

However, the removal of this key analytical element in the 2010, 2012 and current (2014) editions of the Manual has enabled several EIS authors to conclude a finding of no impact. For example, part of the rationale for finding no impact in the 2018 Jerome Avenue rezoning EIS states that, "although the Jerome Avenue corridor is characterized by automotive-related uses and currently supports clustering of these businesses, automotive and repair shops are common in manufacturing and C8 zoning districts, and can be found throughout the Bronx and New York City."[39] With the removal of the defining neighborhood character element, current EIS authors are not required to consider the wide array of impacts for displacing a prominent neighborhood business type. Theoretically, if the defining element criterion were still part of the current 2014 edition, the Jerome Avenue rezoning would have concluded with an adverse impact finding with regard to indirect business displacement.

However, even when the neighborhood character metric was included in the Manual, EIS authors still found ways to evade a finding of significance. The Willets Point 2008 EIS states, "the proposed Plan would completely change the character of the District from an auto-related and industrial area to a mixed-use community...this change is one of the key goals of the Plan...Due to the relative isolation of the District, displacement [of existing uses] is unlikely to affect the neighborhood character of the broader study area."[40] EIS authors were then able to bolster their claim of no significance by emphasizing the lack of impact of the larger study area character rather than the character of the localized district within the study area that was being rezoned, completely ignoring the intent of the neighborhood character metric.

Members of the Bronx Coalition for a Community Vision call for anti-displacement measures in the lead up to the 2018 Jerome Avenue rezoning. Photo courtesy of CASA-New Settlement Apartments

5. The impacts of breaking up industry clusters are not adequately analyzed.

Similar type businesses tend to locate near each other, creating competitive advantages for attracting customers, delivering supplies and marketing. The Technical Manual acknowledges these types of relationships between businesses located in close physical proximity but does not provide descriptive language for identifying a cluster or guidance to analyze impacts when portions (or the entirety) of the cluster is compromised. It also does not provide guidance on how to evaluate the value of the cluster spin-offs, such as ancillary businesses that support a geographic cluster.

Presumably, the Adverse Effects on Specific Industries lens would be the appropriate place to analyze the impacts to business clusters, but the Technical Manual states that this section "should focus on the potential effects upon specific industries that are not related to the displacement of businesses or residents, as this should be considered in the direct and indirect displacement analyses."[41] However, **the direct and indirect displacement analysis only evaluates impacts on Priority Businesses, which according to the Technical Manual are businesses which do not provide comparable goods or services to other study area businesses, the exact opposite of a cluster.** As a result, the impacts of clusters are excluded from both the General Business Displacement and Adverse Effects on Specific Industries. Nonetheless, the current guidance rests on whether displaced businesses can relocate anywhere in the city or not; as a result, even with a granular analysis on cluster impacts, a finding of significance would be unlikely.

6. All customers are assumed to be the same, with little to no appreciation for how changes in price point or cultural preferences will impact businesses.

While the Technical Manual is focused on a company's ability to afford to stay in a neighborhood in the face of rising real estate costs, it dismisses the notion that bringing a new residential population to the area with demographics different from the existing community will impact the viability of existing businesses. The Technical Manual does state that the Detailed Analysis should "consider who the customers are of these products or services and whether similar products or services would continue to be available to these customers" but this is only in the context of whether the company provides "significant value" to the city overall.[42] Consequently, for example, a successful cluster of discount clothing stores operating in a low-income residential area that is rezoned for market rate condos would not be considered at risk for displacement because it is assumed the new, wealthier residents would offset any losses to the company's low-income customer base; this argument would be irrelevant if the Technical Manual directed EIS analysts to evaluate whether the new residents are likely to shop in the existing retail establishments. Further, the displacement risk of the existing businesses due to market demand for higher-end goods, which will impact commercial rent prices in favor of higher-revenue businesses, is not considered.

The Inwood rezoning EIS plainly stated, "any potential loss of existing customers would be more than offset by the introduction of a new residential population," without any supporting evidence other than looking at the net increase in residents.[43] Some recent EISs, such as for the East New York and East Harlem rezonings, have implied that residents living in the affordable housing created by the Mandatory Inclusionary Housing (MIH) program would likely shop at existing, lower price-point stores, but there was no analysis completed to substantiate this claim or any analysis to determine if consumer demand would be sufficient in the face of rising commercial rents and changing neighborhood demographics.[44] Neither of these EISs looked at how differing cultural preferences would impact consumer demand. The CEQR Technical Manual does not in any way address how new, higher-end neighborhood retail serving new, higher-income households will impact existing commercial rent levels. Finding an appropriate methodology to predict price point and cultural preferences will likely be difficult as underlying assumptions can easily be manipulated. However, the practice of ignoring the potential or likelihood of these changes is equally problematic.

Customer preference is also disregarded in the retail market saturation analysis. While purchasing power of existing residents is compared to purchasing power of new residents, the differences in the types and prices of goods and services is not a part of the evaluation. Further, since the retail market saturation analysis is only interested in whether there will be storefront vacancies or not, it explicitly ignores the impact on changing the type of stores as long as the retail strip remains vibrant and occupied.

Industrial-to-residential rezonings have forced industrial businesses across the city to compete for a dwindling supply of space.

Finally, the analysis assumes that new residents will have the shopping patterns of a bygone era – the preference for brick and mortar stores versus online retail. To the extent new residents are more likely to shop via online services, a lower percentage of their purchasing power will remain local. This reduction may not be sufficient to trigger a finding of a shrinking consumer base, but it might. There is insufficient data about the impact of these antiquated shopping assumptions.

• DIVORCING IMPACTS ON BUSINESSES FROM IMPACTS ON WORKERS AND ECONOMIC POLICY

7. Indirect business displacement impacts on employees barely figures into the analysis.

A project's impact on the study area's workforce is largely dismissed in the Technical Manual. While the number of employees impacted by direct business displacement is calculated, it is not an explicit outcome of the indirect displacement analysis. The General Business Displacement analysis is concerned with a Priority Business's ability to afford to stay in the area and ultimately if that business can legally relocate. To some extent it is also concerned with the ability of customers to maintain access to goods and services similar to those previously provided by displaced businesses. However, it entirely avoids the impact that displacement has on employment. Further, the Technical Manual does not consider how a change in employment mix can impact wages. For example, projects involving changing manufacturing zoning to commercial zoning may in fact bring a net increase in jobs to the study area but that does not equate to the same displaced employees obtaining one of these new jobs nor to the new jobs offering comparable wages. In 2017, manufacturing employees earned on average $20,000 more than retail employees.[45] Conversely, there is no guidance on assessing the impact on the job base if higher-skilled jobs that may not be obtainable to existing employees will result from a project, displacing lower-skilled jobs in the process. Further, there is no required analysis about the cumulative impact of similar rezonings on the skill and wage levels of the citywide job base.

The only time the indirect business methodology takes employee impact into consideration is in the Preliminary Assessment stage of the Adverse Effects on Specific Industries section. There, EIS authors must consider whether the project would "indirectly substantially reduce employment…in the industry or category of business."[46] However, the consideration is on how reduced employment would impact an overall industry and not on the impact to the employees as individuals.

Displacement and the lack of relocation alternatives were high on the list of concerns expressed by auto business stakeholders during the 2018 rezoning of Jerome Avenue in the Bronx. Photo by William Mathis, courtesy of Norwood News

• IGNORING POTENTIAL DISPARATE IMPACT BY RACE OR ETHNICITY

> **The racial wealth gap and other barriers such as unequal access to capital dramatically heighten the challenges of relocation that the guidance in the Technical Manual assumes is possible.**

8. The collective impact of these flaws masks disparate impacts on immigrants and people of color.

In the immediately preceding subsections, we identified a variety of factors that cause the particular impacts on immigrants and people of color to be ignored, both from the perspective of business owners and from the essential connections that businesses have in communities. Immigrants and other marginalized populations are more likely to be vulnerable to illegal harassment that leads to displacement, the racial wealth gap and other barriers such as unequal access to capital dramatically heighten the challenges of relocation that the guidance in the Technical Manual assumes is possible.

One of the ways that businesses are interconnected with communities—the particular cultural and neighborhood character created by local businesses and the products and services they provide—is excluded from the analysis. This ignores the impact on specialized economies that develop intimate and delicate relationships to ethnic communities that, if disrupted, cannot be simply replicated or accessed in other neighborhoods. This relates to the impact on customers, who may be reliant on purchasing products or services in their native language and cultural context, and who need to do so close to home. Similarly, when the mix of available products and services shifts to respond to newer, wealthier residents and/or higher rents, the livability of the neighborhood for lower income residents who are struggling to stay in their homes may sharply decline, adding another factor to residential displacement pressure.

For employees, whether they live in the neighborhood or not, the failure to examine how business displacement may affect their livelihood, at the neighborhood level or in citywide context, allows for land use policy to impact economic development policy in unquantified or unexamined ways. History shows that those most likely to bear the brunt of this lack of consideration are those with the greatest barriers to employment and economic and social upward mobility.

5 REVIEW OF RECENT REZONING ACTIONS

> **"The main takeaway is stunning: not one EIS concluded a project would have a significant impact on business displacement."**

Pratt Center evaluated environmental review documents associated with 14 rezonings over the past 15 years, including all of the most recent neighborhood rezonings sparked by Mayor de Blasio's *Housing New York* plan. The main takeaway is stunning: not one EIS concluded a project would have a significant impact on business displacement.

While this report focused on indirect displacement, the same is true for direct business displacement as well. At a deeper level, it is telling how few EISs made it to the final Detailed Analysis stage of analysis, the stage where a positive finding would even be possible: only five times for General Business Displacement, four for Retail Market Saturation and only two for Adverse Effects on Specific Industries (see Figure 6, page 41). Ultimately, the phase is irrelevant as no matter the geography—a relatively small area as in the case of Gateway Center or wide neighborhood swaths as in East New York—the bar is always set so high in the methodology that a positive finding is virtually impossible.

Figure 5

Recent Rezoning Actions

Pratt Center evaluated environmental review documents associated with 14 rezonings over the past 15 years: none of them concluded there would be any significant impacts on business displacement.

KEY
A General Business Displacement
B Retail Market Saturation
C Adverse Effects on Specific Industries

Downtown Brooklyn

In 2004, the City rezoned Downtown Brooklyn to encourage new office and academic development. The EIS acknowledged the rezoning would directly displace 100 businesses, employing approximately 1,700 people, but ultimately concluded a finding of no significant impact for direct or indirect business displacement. EIS authors claimed the existing businesses did not define nor contribute to neighborhood character and would benefit from increased residential and worker populations, despite the absence of any evidence to support this claim.

Analysis Completed

A Preliminary
B Preliminary
C Pre-Assessment

→ **No Finding of Significant Impact**

Gateway Center at Bronx Terminal Market

In 2005, the City rezoned an existing wholesale food market, the Bronx Terminal Market, to develop a large-scale mall featuring big box retail. The EIS devoted a fair amount of attention to the market saturation component but concluded that despite the proposal for large-scale retail, adjacent retail corridors would not be negatively impacted. The EIS acknowledged that industrial uses would be displaced, which would impact the neighborhood's character, but did not consider them substantial so concluded with a finding of no significant impact.

Analysis Completed

A Detailed
B Detailed
C Preliminary

→ **No Finding of Significant Impact**

Greenpoint/ Williamsburg

In 2005, the City rezoned the North Brooklyn waterfront and a large part of the adjacent upland area to encourage residential development. Despite an explicit intent to encourage new residential and commercial uses in existing manufacturing zoned areas, the EIS concluded a finding of no significant impact for all aspects of business displacement citing that vulnerable businesses would be able to move to other industrial or commercially zoned areas. The EIS includes a short, inadequate description of real estate trends but lacks any analysis on the impact that rising real estate costs will have on existing businesses. Given the amount of analysis conducted in recent years on the rezoning's actual impact on industrial displacement,[47] it is notable that the analysis ended at the Preliminary Assessment stage.

Analysis Completed

A Preliminary
B Preliminary
C Preliminary

→ **No Finding of Significant Impact**

KEY
A General Business Displacement
B Retail Market Saturation
C Adverse Effects on Specific Industries

Manhattanville/ Columbia Expansion

In 2007, Columbia University initiated a rezoning of the Manhattanville portion of West Harlem in order to expand its campus and promote office and residential development. The EIS advanced to the Detailed Assessment stage, yet it ultimately concluded with a finding of no significant impact. Manhattanville is notable as one of the few EISs that acknowledged the impact on neighborhood character that would occur from business displacement and is the only EIS reviewed for this study that noted that while new jobs would be created, they would not be the same type as those that were lost.

Analysis Completed

A Detailed
B Detailed
C Preliminary

No Finding of Significant Impact

Willets Point (2008, 2013)

In 2008, the City initiated a wholesale redevelopment of Willets Point, an area well known for its environmental degradation, lack of infrastructure, and intense cluster of active auto repair companies, into a large-scale residential and mixed-use area. Subsequent modifications to the proposal prompted a supplemental environmental review in 2013. In many ways, the fact that Willets Point did not result in a finding of significant impact for either direct or indirect displacement illustrates the impossibly high bar set by the Technical Manual. The City's intent in the proposal was to create an entirely new neighborhood. Even with an acknowledgment that the area housed a large amount of Queens' auto repair employment and jobs, EIS authors still concluded the impact would not be significant.

Analysis Completed

A Preliminary
B Detailed
C Detailed

No Finding of Significant Impact

Gateway Mall (Estates II)

In 2009, the City in partnership with a private developer initiated a rezoning to support the expansion of the existing Gateway Mall in East New York, more than doubling its size. The EIS only advanced to the Detailed Analysis phase for the market saturation component concluding the project would not have an impact on the surrounding area. The analysis rested on several assumptions, including that local grocery stores would not be impacted because they were physically closer to shoppers' homes, to support a finding of no impact.

Analysis Completed

A Preliminary
B Detailed
C Preliminary

No Finding of Significant Impact

KEY
A General Business Displacement
B Retail Market Saturation
C Adverse Effects on Specific Industries

East New York

East New York was rezoned in 2016, the first of the Housing New York rezonings to advance through ULURP. While the EIS recognized that employees of displaced firms, which constituted 13% of the study area's employment, formed a portion of the existing customer base, the EIS stated the influx of new residents and employees would offset the loss. No attention was given to the demographic differences between these groups. The Detailed Analysis on General Business Displacement stated vulnerable businesses could move elsewhere in the city so concluded there would be no significant impact.

Analysis Completed

A Detailed
B Pre-Assessment
C Preliminary

→ **No Finding of Significant Impact**

Baychester

In 2017, a private developer initiated a rezoning of a vacant MTA site to build an open-air retail and residential complex. The business displacement section was notably short with the analysis advancing only to the Preliminary Assessment stage. Ultimately, the EIS concluded that adjacent large, national brand retail uses would not be subject to displacement pressure and that there was unmet shopping demand so to not impact market saturation. The EIS concluded with a finding of no impact. This project was advanced by a private developer and ultimately did not make it through City Council review.

Analysis Completed

A Preliminary
B Preliminary
C Pre-Assessment

→ **No Finding of Significant Impact**

Downtown Far Rockaway

The 2017 Downtown Far Rockaway rezoning included plans to revitalize the area's commercial core and promote mixed-income residential development as part of the City's Housing New York initiative. The EIS acknowledged that higher-income residents moving into the area could impact the ability for local retail businesses to withstand rising rents, but because these businesses were not considered Priority Businesses that fact was inconsequential. Industrial companies were noted as particularly vulnerable to displacement as a result of the rezoning, but it stated they too were not essential or important. As such, there was a finding of no significant impact.

Analysis Completed

A Detailed
B Pre-Assessment
C Preliminary

→ **No Finding of Significant Impact**

KEY
A General Business Displacement
B Retail Market Saturation
C Adverse Effects on Specific Industries

East Harlem

East Harlem, the third Housing New York rezoning, was approved in 2017 to facilitate high-rise housing and commercial development. Despite its large geographic scope and number of businesses in the study area, it is notable the analysis ended with a very short evaluation at the Preliminary Assessment stage. This section stated that rents could rise in the area at a rate that existing businesses could not sustain but did not evaluate that trend further. Similarly, the EIS stated new residents and employees would offset any customer losses without any analysis of price points or other preferences. As such, the EIS concluded with a finding of no significant impact.

Analysis Completed

A Preliminary
B Pre-Assessment
C Preliminary

→ **No Finding of Significant Impact**

Jerome Avenue

The 2018 Jerome Avenue rezoning sought to pave the way for a transformation of a long, narrow strip of auto-repair shops into a residential corridor. During the rezoning process, the community expressed deep concern for the fate of the auto businesses and their employees in the wake of new housing and rising real estate costs. The EIS barely recognized the displacement pressure this would place on existing companies—a key component of the Technical Manual guidance. EIS authors subjectively determined displacing 16% of the area's employees who form the area's customer base was not substantial. The EIS ended at the Preliminary Assessment stage with a finding of no significant impact.

Analysis Completed

A Preliminary
B Pre-Assessment
C Preliminary

→ **No Finding of Significant Impact**

Inwood

The 2018 Inwood rezoning encouraged increased residential and mixed commercial development. The community strongly opposed the City's proposal on several fronts, including the impact development would have on local businesses, particularly those that were immigrant owned. Notably, the proposal would make several existing industrial companies legally non-conforming as a result of the rezoning, and the EIS acknowledged landlords might seek to vacate existing tenants in order to redevelop their properties for higher-paying uses. However, the EIS stated the existing uses were not important to the city's overall economy and as such their displacement risk was insignificant. For the market saturation and adverse effects on industries analyses, the EIS stopped at the Pre-Assessment stage. As a result of a community lawsuit, the rezoning was annulled in 2019.

Analysis Completed

A Detailed
B Pre-Assessment
C Pre-Assessment

→ **No Finding of Significant Impact**

KEY
A General Business Displacement
B Retail Market Saturation
C Adverse Effects on Specific Industries

Garment Center

In 2018, the City approved a zoning text amendment to remove protections for apparel production in Manhattan's Garment Center. NYC DCP conducted a cursory Environmental Assessment (EA), concluding no impact, and consequently an EIS was not required. However, by checking "yes" to a potential adverse effects on specific industries on the EA, it supplied supplemental analysis that followed the CEQR Technical Manual guidance for that specific section. Despite the City initiating the text amendment to specifically encourage non-apparel uses in the district and developing a business assistance package to help relocate apparel businesses outside of the district, the Assessment ultimately concluded there would not be an adverse impact to the garment industry. The City rationalized that garment companies would be permitted by zoning to continue to operate in the area and apparel employment would decline regardless of the text amendment so therefore any impact was not significant.

Analysis Completed

A Pre-Assessment
B Pre-Assessment
C Detailed

→ **No Finding of Significant Impact**

Bay Street

The 2019 Bay Street rezoning, the most recent of the Housing New York rezonings, seeks to stimulate housing and commercial development in the St. George, Tomkinsville and Stapleton neighborhoods in Staten Island by among other actions, rezoning manufacturing areas for residential uses and increasing density. The analysis in the EIS was light, claiming only Preliminary Assessments were needed for General Business Displacement and Adverse Effects on Specific Industries; the action did not meet the requirements to advance beyond the Pre-Assessment stage for retail saturation. A finding of no impact was declared for all business displacement.

Analysis Completed

A Preliminary
B Pre-Assessment
C Preliminary

→ **No Finding of Significant Impact**

Figure 6

Findings of Significant Impact were nonexistent in our review of 14 recent neighborhood rezonings

		A. General Business Displacement			B. Retail Market Saturation			C. Adverse Effects on Specific Industries			Finding of Significant Impact
		Pre-Assess	Preliminary Assess	Detailed Analysis	Pre-Assess	Preliminary Assess	Detailed Analysis	Pre-Assess	Preliminary Assess	Detailed Analysis	
2004	**Downtown Brooklyn**	●	●		●	●		●			**No**
2005	**Gateway Center Bronx Terminal Market**	●	●	●	●	●	●	●	●		**No**
2005	**Greenpoint/ Williamsburg**	●	●		●	●		●	●		**No**
2007	**Manhattanville Columbia Expansion**	●	●	●	●	●	●	●	●		**No**
2008 / 2013	**Willets Point**	●	●		●	●	●	●	●	●	**No**
2009	**Gateway Mall**	●	●		●	●	●	●	●		**No**
2016	**East New York**	●	●	●	●			●	●		**No**
2017	**Baychester**	●	●		●	●		●			**No**
2017	**Downtown Far Rockaway**	●	●	●	●			●	●		**No**
2017	**East Harlem**	●	●		●			●	●		**No**
2018	**Jerome Avenue**	●	●		●			●	●		**No**
2018	**Inwood**	●	●	●	●			●			**No**
2018	**Garment Center**	●			●			●	●	●	**No**
2019	**Bay Street**	●	●		●			●	●		**No**
	Total	14	13	5	14	7	4	14	11	2	**0**

6 RECOMMENDATIONS

1. NYC should convene a Task Force of technical and economic development experts and other stakeholders to revamp the CEQR Technical Manual's approach to evaluating business displacement.

The CEQR manual has been updated several times since its first publication, and another update is urgently needed. In the past, representatives from city agencies have convened to provide technical input on revisions with little opportunity for outside comment. This limited input restricts the perspectives that could inform what could be a useful tool to evaluating project-specific impacts. To revamp the Technical Manual and address its many flaws, the City should convene a Task Force comprised of representatives from the public sector as well as private sector economic development experts. Equally important is the opportunity for the public to provide official input for consideration by the Task Force before a revised version is released. While this report has focused on the flaws associated with the indirect business displacement analysis, all categories of the Technical Manual should be reviewed and updated. In terms of the business displacement analysis, at a minimum the Task Force should address the:

- **subjective and limiting manner by which only those businesses deemed important enough (i.e. Priority Businesses) are considered as part of the displacement analysis;**

- **impact changing neighborhood demographics, including race, can have on a business' ability to stay in operation;**

- **central role local businesses play in defining a neighborhood's character;**

- **need to evaluate the impact business displacement has on employees as individuals and not just collectively as an industry workforce;**

- **cumulative impact multiple actions have on a particular industry, including the availability of appropriate and affordable space; and**

- **the racial impacts of the anticipated business changes on owners, workers, and customers.**

A revamped Technical Manual could allow more thoughtful, nuanced and accurate evaluations of business displacement.

2. NYC should conduct a citywide business existing conditions analysis and use it to inform economic development policy.

Currently, the City's sole vehicle to assess displacement is through the CEQR process, which as demonstrated in this report, is woefully inadequate to assess the true risk of displacement that businesses face. As real estate prices rise across the five boroughs, the City should conduct a comprehensive analysis on existing conditions and of the ability of businesses to withstand rent increases, separate and apart from a subjective determination of businesses being essential or important to the city's economy. The analysis should be conducted by sector and neighborhood to identify particular segments at risk. The analysis should also consider the consumer's impact and assess whether particular customer segments such as by race/ethnicity and income are more prone to be served by businesses that are at risk. Once the analysis is complete, the City would be better positioned to refine its current suite of business assistance programs and/or develop new initiatives to target businesses, consumers and neighborhoods in need.

3. NYC should undertake and support planning for commercial and industrial districts as part of any substantial rezoning.

In 2016, the Department of Small Business Services launched the Neighborhood 360 program to "to identify, develop, and launch commercial revitalization projects in partnership with local stakeholders."[48] While this program has been an important source of funding for projects shaped by local organizations that has been deployed mostly in neighborhoods undergoing rezonings, the reach and purview of the program stops short of planning. Neighborhood 360's focus on programs, services, and amenities is distinct from, and not a substitute for, an integrated approach to developing a local vision for economic development in an area and how that can best be fostered through land use proposals that balance competing priorities. Too often, proposals geared toward protecting local businesses through land use mechanisms are ignored in rezoning conversations, and the mitigations that are offered in the end are minimal gestures insufficient to address the impact of the rezoning. Integrating planning for commercial and industrial districts at the start of the process would yield different and more meaningful outcomes.

4. NYC should assess the success and value of the myriad of business assistance and relocation programs stemming from rezonings.

While there were no EISs that concluded a project would have a significant impact on business displacement under CEQR, there have been several instances where advocacy by community representatives and elected officials resulted in negotiated settlements to assist vulnerable businesses as a condition of a project's approval. For example, as part of the Greenpoint-Williamsburg rezoning in 2005, the City created an Industrial Development Fund to support the non-profit development of industrial space as well as a relocation fund to support displaced businesses. More recently, as part of the Jerome Avenue rezoning, the City agreed to hire a staff person to support a range of business and employee assistance programs including relocation grants, compliance support and workforce training. However, much more needs to be done to hold the City accountable to the deals it strikes at the last minute of the ULURP process. In almost every instance, the delivery of these programs will roll out over several years. In 2016, the City Council passed legislation requiring the City to track these types of commitments and report on their progress.[49] However, the current tracker only includes the most recent rezonings and does not evaluate the effectiveness of these programs in actually mitigating the impacts they were designed to address. Failure to do so minimizes the ability for lead agencies to effectively account for the mitigation anticipated by these strategies in future rezoning efforts.

7
CONCLUSION

New York City's businesses are deeply intertwined with a sense of place and cultural identity and add to the diversity of the city's landscape. The richness of goods, business activity, and cultural offerings are reflections of the communities who support and rely on these establishments, be it for employment, for daily necessities, or a deep cultural connection. As drivers of the city's economy, maintaining and growing a successful business sector is paramount to the city's ongoing vitality. However, without a comprehensive way to assess the pressure businesses' face in the wake of ongoing development, and by relying on an inadequate measurement tool for project-level impacts, the City is missing critical opportunities to address displacement risk.

Stable businesses reflect stable neighborhoods. As it currently stands, communities are left to unfairly bear the burden of the City's dismissal of displacement risk, just as they are with residential displacement. Both issues are in urgent need of attention. Maintaining options for businesses to stay or expand while serving existing customers and welcoming new residents and neighboring businesses is possible. To identify and address the scale of business displacement impact, we need a calibrated series of tools and strategies based on adequately identified impacts. CEQR and the current Technical Manual are not sufficient for this critical task.

ENDNOTES

1. For more context on CEQR, please see our companion piece Flawed Findings Part 1 at www.prattcenter.net
2. NYC Mayor's Office of Environmental Coordination, CEQR Technical Manual, (2014), page 5-1.
3. Evergreen and Pratt Center for Community Development, Food + Workforce: Connecting Growth and Good Jobs for NYC's Emerging Specialty Food Manufacturing Sector, (April 2015); Center for An Urban Future, Scale Up New York: Creating Middle Class Jobs by Growing New York City's Small Businesses, (November 2016); Association for Neighborhood Housing and Development, The Forgotten Tenants: New York City's Immigrant Small Business Owners, (March 2019), to name a few examples.
4. The New York City Council recently passed legislation requiring the NYC Department of Small Businesses to publicly release data on storefront vacancy rates in neighborhoods across the city as part of its ongoing efforts to address this issue.
5. Direct business displacement analysis is conducted only on specific sites in the study area that EIS authors identify as "projected" development sites, which are subjectively determined to be more likely developed than other sites.
6. NYC Mayor's Office of Environmental Coordination, CEQR Technical Manual, (2014), page 1-14.
7. Ibid, page 5-1.
8. Ibid, page 5-1.
9. Ibid, page 5-3.
10. Ibid, page 5-3 – 5-4.
11. Technically, the Adverse Effects on Specific Industries section is separate from the Indirect Business Displacement section but it follows the same methodology and evaluates ancillary impacts to groups of businesses, much like the Indirect Business Displacement section. As such, we present it here as a third lens of the Indirect Business Displacement analysis.
12. The Technical Manual does not refer to these businesses explicitly as "priority businesses." However, it repeatedly refers back to section 321.2 as the litmus test for businesses that can be considered part of the displacement analysis. For clarity purposes for this report, we refer to them as Priority Businesses.
13. Ibid, page 5-6.
14. Ibid, page 5-6.
15. The Technical Manual refers to this category as simply "indirect business displacement" but for clarity purposes for this report, we refer to is a General Business Displacement to indicate it is a specific category of the overall Indirect Business Displacement analysis.
16. Ibid, page 5-9.
17. Ibid, page 5-17.
18. Ibid, page 5-18.
19. Ibid, page 5-19.
20. Ibid, page 5-10.
21. Ibid, page 5-10.
22. Ibid,, page 5-11.
23. Ibid, page 5-11.
24. Ibid, page 5-22.
25. Final Environmental Impact Statement for East New York (2016), page 3-5.
26. Jerome Avenue Final Environmental Impact Statement (2017), page 3-45.
27. NYC Mayor's Office of Environmental Coordination, CEQR Technical Manual, (2014), page 1-14.
28. Ibid, page 5-23.
29. Ibid, page 5-23.
30. Pratt Center for Community Development, Under the Hood: A Look Into New York City's Auto Repair Industry (2017), page 9.
31. NYC Mayor's Office of Environmental Coordination, CEQR Technical Manual, (2014), page 5-2.
32. Association for Neighborhood Housing and Development, The Forgotten Tenants: New York City's Immigrant Small Business Owners, (March 2019), page 5.
33. NYC Mayor's Office of Environmental Coordination, (2014), page 5-6.
34. Ibid, page 5-18.
35. Final Generic Environmental Impact Statement for Willets Point (2008) page 4-86.
36. Final Environmental Impact Statement for East New York (2016), page 3-23; Final Environmental Impact Statement for Downtown Far Rockaway (2017), page 3-5.
37. New York City Office of the Mayor, CEQR Technical Manual (2001), page 3B-4.
38. Ibid, page 3H-1.
39. Jerome Avenue Final Environmental Impact Statement (2017), page 3-45.
40. Willets Point Final Generic Environmental Impact Statement (2008), page 4-44.
41. NYC Mayor's Office of Environmental Coordination, CEQR Technical Manual, (2014), page 5-11.
42. Ibid, page 5-18.
43. Inwood Final Environmental Impact Statement (2018), page 3-29.
44. East New York Final Environmental Impact Statement (2016), page 3-66 -3-67; East Harlem Final Environmental Impact Statement (2017), page 3-4.
45. New York State Department of Labor, Quarterly Census of Employees and Wages, 2017
46. NYC Mayor's Office of Environmental Coordination, CEQR Technical Manual, (2014), page 5-11.
47. New York City Council, Engines of Opportunity (2014); Pratt Center for Community Development, Making Room for Housing and Jobs (2015).
48. https://www1.nyc.gov/site/sbs/about/publications-reports.page#cdna
49. https://www1.nyc.gov/site/operations/performance/neighborhood-rezoning-commitments-tracker.page

FLAWED FINDINGS
Part II

How NYC dismisses business displacement and its impact on communities

PRATT CENTER FOR COMMUNITY DEVELOPMENT